

# TEXAS DISTRICT & COUNTY ATTORNEYS ASSOCIATION

## **DWI Prosecutor Task Force Meeting**

**Courtyard by Marriott Austin Pflugerville & Pflugerville**

**Conference Center**

Pflugerville, Texas

November 9, 2023

### **Thursday, November 9, 2023**

**9:00 a.m. Introductions; State of Impaired & Driving Prosecution**

*All Task Force members*

**10:00 a.m. DWI Resource Prosecutor Project**

*Clay Abbott*

- DWI Manual
- Case Summary
- SFST Review
- Regional Training
- 2025 Grant
- Potential Video Projects

**12:00 p.m. Lunch (provided)**

**1:00 p.m. Texas DRE**

*Carlos Champion*

**1:45 p.m. DPS Lab/NMS Lab**

*TBD*

**2:45 p.m. Marijuana Distributorship & Breweries**

**3:45 p.m. Report Drafting & Assignments**

**4:00 p.m. Adjourn**

## FY2024 DWI Prosecutor Task Force

Monica Yvonne Barron Auger  
Hidalgo County - CDA  
Asst. Criminal District Attorney  
100 E. Cano St.  
Edinburg, TX 78539  
Phone: 956.292.7600  
Fax: 956.318.2078  
Hire Date: 7/11/2022  
County Population: 870,781  
Email: monica.auger@da.co.hidalgo.tx.us

Lauren Renee Black  
Dallas County - CDA  
Deputy Administrator  
133 N. Riverfront Blvd., LB-19  
Dallas, TX 75207-4399  
Phone: 214.653.3705  
Fax: 214.653.5774  
Hire Date: 1/14/2019  
County Population: 2,613,539  
Email: lauren.black@dallascounty.org

Alison L. Baimbridge  
Fort Bend County - DA  
Vehicular Crimes Chief  
301 Jackson St.  
Richmond, TX 77469  
Phone: 281.341.4460  
Fax: 281.238.3340  
Hire Date: 1/6/2020  
County Population: 822,779  
Email: alison.baimbridge@fortbendcountytexas.gov

Kriste G. Burnett  
Palo Pinto County - DA  
29th Judicial District Attorney  
P.O. Box 340  
Palo Pinto, TX 76484-0340  
Phone: 940.659.1251  
Fax: 940.659.3885  
Hire Date: 1/1/2017  
County Population: 28,409  
Email: kriste.burnett@co.palo-pinto.tx.us

Lauren Bard  
Harris County - DA  
Asst. District Attorney  
1201 Franklin St., Ste. 600  
Houston, TX 77002-1930  
Phone: 713.274.5800  
Fax: 713.755.5900  
Hire Date: 3/19/2007  
County Population: 4,731,145  
Email: bard\_lauren@dao.hctx.net

John Thomas Fleming  
Nacogdoches County - CA  
County Attorney  
101 W. Main St., Rm. 230  
Nacogdoches, TX 75961-5119  
Phone: 936.560.7789  
Fax: 936.560.7809  
Hire Date: 1/1/2009  
County Population: 64,653  
Email: jfleming@co.nacogdoches.tx.us

Jessica Lee Frazier  
Comal County - CDA  
Chief Civil Prosecutor  
199 Main Plaza, Ste. 2007  
New Braunfels, TX 78130  
Phone: 830.221.1300  
Fax: 830.608.2008  
Hire Date: 1/7/2019  
County Population: 161,501  
Email: frazj@co.comal.tx.us

Nicole Griffin  
Lubbock County - CDA  
Asst. Criminal District Attorney  
P.O. Box 10536  
Lubbock, TX 79408-3536  
Phone: 806.775.1100  
Fax: 806.894.7930  
Hire Date: 1/17/2022  
County Population: 310,639  
Email: ngriffin@lubbockcounty.gov

Brittany Hansford  
Montgomery County - DA  
Asst. District Attorney  
207 W. Phillips St., 2nd Fl.  
Conroe, TX 77301-2824  
Phone: 936.539.7800  
Fax: 936.760.6940  
Hire Date: 10/1/2013  
County Population: 620,443  
Email: brittany.hansford@mctx.org

Michael W. Hartman  
Scurry County - CA  
County Attorney  
1806 25th St., Ste. 201  
Snyder, TX 79549-2530  
Phone: 325.573.7440  
Fax: 325.573.1266  
Hire Date: 1/1/1997  
County Population: 16,932  
Email: scurryca@co.scurry.tx.us

Raoaa Riad King  
El Paso County - DA  
Asst. District Attorney  
500 E. San Antonio Ave., Rm. 201  
El Paso, TX 79901-2419  
Phone: 915.546.2059  
Fax: 915.533.5520  
Hire Date: 6/1/2021  
County Population: 871,047  
Email: r.king@epcounty.com

Landon Paul Lambert  
Donley County - CA  
County Attorney  
P.O. Box 876  
Clarendon, TX 79226-0876  
Phone: 806.874.0216  
Fax: 806.874.1847  
Hire Date: 10/1/2006  
County Population: 3,258  
Email: landonplambert@gmail.com

Kacey Briann Launius  
Galveston County - CDA  
Asst. Criminal District Attorney  
600 59th St., Ste. 1001  
Galveston, TX 77551-4137  
Phone: 409.766.2355  
Fax: 409.766.2290  
Hire Date: 5/23/2012  
County Population: 350,682  
Email: kacey.launius@co.galveston.tx.us

Alexander Eugene Mansker  
Victoria County - CDA  
Asst. Criminal District Attorney  
205 N. Bridge St., Ste. 301  
Victoria, TX 77901-6576  
Phone: 361.575.0468  
Fax: 361.576.4139  
Hire Date: 12/7/2021  
County Population: 91,319  
Email: amansker@vctx.org

Laura A. Nodolf  
Midland County - DA  
142nd Judicial District Attorney  
500 N. Lorraine St., Ste. 200  
Midland, TX 79701  
Phone: 432.688.4411  
Fax: 432.688.4938  
Hire Date: 1/1/2017  
County Population: 169,983  
Email: lnodolf@midcounty.com

Anne Pickle  
Jasper County - CDA  
Criminal District Attorney  
121 N. Austin St., Rm. 101  
Jasper, TX 75951-4130  
Phone: 409.384.4362  
Fax: 409.384.1309  
Hire Date: 1/1/2019  
County Population: 32,980  
Email: anne.pickle@co.jasper.tx.us

Mariel Puryear  
Williamson County - CA  
Asst. County Attorney  
405 Martin Luther King St., Box 7  
Georgetown, TX 78626-4900  
Phone: 512.943.1111  
Fax: 512.943.1120  
Hire Date: 6/14/2021  
County Population: 609,017  
Email: mariel.puryear@wilco.org

Susie Diane Saxion  
Smith County - CDA  
Asst. Criminal District Attorney  
100 N. Broadway Ave., Ste. 400  
Tyler, TX 75702-7201  
Phone: 903.590.1720  
Fax: 903.590.1719  
Hire Date: 8/17/1998  
County Population: 233,479  
Email: sturner@smith-county.com

Bonnie Snell  
Denton County - CDA  
Asst. Criminal District Attorney  
1450 E. McKinney St., Ste. 3100  
Denton, TX 76209-4524  
Phone: 940.349.2600  
Fax: 940.349.2601  
Hire Date: 8/11/2021  
County Population: 906,422  
Email: [bonnie.snell@dentoncounty.gov](mailto:bonnie.snell@dentoncounty.gov)

Rebekah Marie Whitworth  
Mason County - CA  
County Attorney  
P.O. Box 157  
Mason, TX 76856-0157  
Phone: 325.347.5614  
Fax: 325.294.4074  
Hire Date: 4/14/2014  
County Population: 3,953  
Email: [mco.attorney@co.mason.tx.us](mailto:mco.attorney@co.mason.tx.us)



# TEXAS DISTRICT & COUNTY ATTORNEYS ASSOCIATION

## **DWI Prosecutor Task Force Meeting**

**Courtyard by Marriott Austin Pflugerville & Pflugerville  
Conference Center**

Pflugerville, Texas  
November 9, 2023

### **Thursday, November 9, 2023**

#### **9:00 a.m. Introductions: State of Impaired & Driving Prosecution**

*All Task Force members*

Clay Abbott opened the meeting with everyone introducing themselves (please see DWI Prosecutor Task Force meeting sign-in sheets for a list of Task Force members in attendance). Some issues that were discussed during introductions regarding DWI cases were:

- Law enforcement offices and Prosecutor offices being short staffed. Officers not being able to attend training or having to fast track them through training to get them out on the streets.
- Needing adequate training to train-up new prosecutors and offices to take DWI cases to court successfully.
- DWI juries expecting CSI evidence and returning not guilty verdicts.
- Continuing back log of cases. Burnout of prosecutors from the pressure of moving cases because of COVID; figuring out which cases should be moved first.
- Cases showing intoxication from impairing substances other than alcohol.

Clay asked for anyone who had an idea of how to handle the "COVID hangover", please consider writing an article for the Texas Prosecutor. Jessica said an idea is recognizing a prosecutor for a job well done to boost morale.

Clay proposed nominating a County Office's DWI unit to receive recognition/award from TxDOT to help bring DWI resources to that office and hopefully more offices. All in attendance agreed. Susie Saxion suggested nominating a smaller county and a large county each year. Clay suggested making one for DWI and one for Intoxication Manslaughter to be able to reach the smaller counties. All in attendance agreed. Clay will work on getting nominations for one office this year and two next year.

## **10:00 a.m. DWI Resource Prosecutor Project**

*Clay Abbott*

- DWI Manual

Clay is redrafting this manual in 2024. He requested the Task Force members to please read through the manual and send in any changes/updates that need to be added.

- Case Summary

Clay proposed that Jessica Frazier continue to update the DWI Appellate Case Law Manuscripts in FY2025. All in attendance approved.

- SFST Review

Clay proposed that Mariel Puryear update the SFST Review for FY2024 and FY2025. All in attendance approved.

- Regional Training

Discussed what courses should be taught in 2024. Jessica Frazier made a motion to continue teaching Guarding Texas Highways again. Comal, Dallas, Smith County requested this course to be brought to their area. Jose Castaneda requested Rolling Stoned be one of the regional offered and would want to have one in their area. Monica Auger requested ECT be offered in 2024 and Edinburg and Fort Bend County would host this training in their areas. Clay asked if Worst Case Scenario should be taught again, and everyone approved. Clay will send out applications to Task Force members when the application is available. No major revisions to curriculum were suggested.

- 2025 Grant

The two books that will be mailed out to all prosecutors in the FY2025 grant year will be the Transportation Code and Warrant Manual. Clay asked if the Task Force members have a warrant they want to include in the manual to send it to him.

- Potential Video Projects

Clay proposed creating a video that pertains to Expert witnesses on SFSTs for officers. It would be recorded as if they were in a courtroom setting. All in attendance agreed this would be a great video project and approved proposing \$15,000.00 for this video in the FY2025 grant.

Clay discussed video projects for future years and asked if continuing the video projects is a good idea. All in attendance agreed. Discovery was discussed. This will continue to be discussed in the future, but for the short term, we will have 2 articles written regarding this topic for TDCAA's Texas Prosecutor.

**12:00 p.m. Lunch Break**

**1:00 p.m. Texas DRE**

*Carlos Champion*

Carlos Champion presented a PowerPoint presentation to the Task Force members regarding updates to the DRE program. Carlos provided a handout ahead of time and it was included in the packet given to the Task Force members. He also provided a copy of this presentation to Clay. The Task Force voted unanimously to support Texas DRE and encourage increasing the number of DREs and DRE funding.

**1:45 p.m. DPS Lab/NMS Lab**

*Anna Mudd, Austin DPS Crime Lab and Kacie Tross, NMS Labs*

Anna Mudd offered to send a case spreadsheet to anyone who wants one. Everyone raised their hand. Kaylene will send her a roster to contact the Task Force members. She explained how the case spreadsheet works and that they can be done monthly. It is a great way to let them know what cases are inactive so they can stop working on those and focus on the active cases only.

Anna then discussed their retention policy and that they need help getting destruction documentation to stop preserving evidence that is no longer needed. Task Force members can reach out to her for help with obtaining forms.

Anna went on to talk about how they are working through the backlog of cases and how they are working on methods and programs to help now and in the future. They are also working on hiring and training more people, which will help in the long run.

Clay asked her about outsourcing. NMS Labs is helping with the tests they are having to outsource (10,000 to 12,000 -roughly- outsourced per year right now). Anna said they are trying to cover all the costs that come with outsourcing with the grant money they have. Can not confirm that they can cover all.

Clay and Anna reiterated, please make sure to look of the case spreadsheets monthly to close out inactive cases. This will help tremendously.

Jessica asked about if they would have the problems they had with chain of custody objections and if they do, how will they handle it. Anna said they will have DPS forensic toxicologists to testify that have handled the evidence in question and the scientists at the outsourced lab who are licensed. They are doing everything they can to help. Clay suggested if you get an outsourced case, you should call witnesses on both from DPS and the outside lab to help with any issues that may arise.

Kacie talked about what NMS Labs is and what kind of work they do. Kacie discussed how they have prepared to work with Texas and have only individuals that are in Texas working on Texas cases. Further, everyone touching the cases is certified by the Texas Forensic Science Commission. She also talked about how they work with DPS for contacts, but if anyone wants to reach out to be a contact in their area (distribution list), you can reach out to her, and she will get you (or who you recommend) on the list. She went over the documents that were given to put into the packets given to the Task Force members that go over their workflow and procedures. Clay suggested requesting a Certificate of Analysis, and Lit packets from NMS on cases they handle. Clay also



suggested giving information about the contract with DPS and NMS labs, so they have a heads up.

**2:45 p.m. Marijuana Distributorship & Breweries**

Clay asked who's all seeing THC and Alcohol together. The majority of the Task Force members raised their hands. These cases are being filed, but prosecutors currently do not have the legal, financial and scientific resources to successfully make societal changes through prosecution. For these reasons, Clay proposed to have all stakeholders, not just prosecutors, advocate for better consumer regulations for marijuana. All in attendance approved.

**3:45 p.m. Report Drafting & Assignments**

- Susie Saxion, Smith County, 2–3-page article regarding using prosecutors from other jurisdictions for in house CLE.
- Mariel Puryear, Williamson County, and Jessica Frazier, Comal County, will each write a Discovery article. One will work on Intox and one will work on Breath.
- Languages in DWI – will assign at a later time.

**4:00 p.m. Adjourn**

◆ **FREE DWI training** ◆  
**Effective Courtroom Testimony**  
**for police and prosecutors**

Texas District and County Attorneys Association (TDCAA) Statewide DWI Training  
 in cooperation with the Texas Department of Transportation

**T**DCAA is proud to offer 6 hours of TCOLE and CLE credit for peace officers and prosecutors to attend this free, high-quality training. Every defense lawyer who advises clients to refuse a breath test admits that officers are arresting for DWI only people that are intoxicated—yet DWI cases are very hard to win in front of juries. One reason is that prosecutors and officers are not conveying to jurors what the officer actually saw at the scene and knows from his training and experience. This course is dedicated to ethically and professionally presenting officer testimony in DWI cases. Well-crafted reports, effective direct examinations, clear demonstrations, and honest responses to less-than-honest defense tactics on cross will all be discussed, modeled, and practiced.

Today's schedule	
8:15 a.m.	Registration
8:40 a.m.	The Role of Prosecutors and Police Witnesses in DWI Trials
9:50 a.m.	Trial preparation & Presenting Cases to Prosecutors
11:00 a.m.	Effective Report Writing
Noon	Lunch (if provided)
1:15 p.m.	10 Simple Rules of Direct Examination
2:15 p.m.	10 Simple Rules of Cross-Examination
3:25 p.m.	Beating the Defense: Direct Examinations that Minimize Cross
4:15 p.m.	Adjourn

✿ In addition to this excellent free training, every attendee will receive two TDCAA publications: *DWI Investigation & Prosecution* and *Traffic Stops*. These books give attendees resources in many areas not covered by this seminar.

Please be sure you've signed in and double-checked your Bar number or TCOLE number. The TCOLE Course number is 2057, and the CLE Course number is 174074120. If lunch is not provided, all afternoon times are delayed by 15 minutes.



**Save a Life™**  
 Texas Department of Transportation

◆ FREE DWI training ◆

# Guarding Texas Highways: Revisiting Impaired Driving Investigation & Prosecution

The Texas District and County Attorneys Association's (TDCAA) statewide DWI training  
in cooperation with the Texas Department of Transportation

**T**his course is specifically designed for prosecutors and officers to attend together. It revisits the DWI case using the four steps in DWI investigation. If the initial traffic stop is suppressed, the whole case fails, so making valid stops is covered in the first segment. But it does not end there. Often the traffic violation gets sold short in trial, so this segment will also focus on presenting the vehicle in motion to a jury. Likewise, personal contact with the driver and SFSTs will get the same treatment. Finally, the course will cover getting and using breath and blood samples. This course is perfect for new officers and prosecutors, but it was also created for experienced folks who need to revisit and expand their skills. We are proud to offer 6 hours of TCOLE and CLE credit for peace officers and prosecutors to attend this free, high-quality training.

### Today's Schedule

8:30-8:40 a.m.	Registration and Introductions
8:40-10:00 a.m.	The Traffic Stop
10:00-10:15 a.m.	Break
10:15-11:45 a.m.	Personal Contact: Conversation with the Suspect
11:45 a.m.-1:00 p.m.	Lunch
1:00-2:30 p.m.	Using and Defending SFSTs
2:30-2:45 p.m.	Break
2:45-4:15 p.m.	Getting and Presenting Breath & Blood
4:15 p.m.	Adjourn

✿ In addition to this excellent free training, every attendee will receive two TDCAA publications: *DWI Investigation & Prosecution* and *Traffic Stops*. These books give attendees resources in many areas not covered by this conference.

Please be sure you've signed in and double-checked your Bar number of TCOLE number. The TCOLE course number is 3402, and the CLE course number is 174186291.

If lunch is not provided, all afternoon times are delayed by 15 minutes.



◆ FREE DWI training ◆  
**Rolling Stoned:**  
**Investigating and Prosecuting the Drugged Driver**

Texas District and County Attorneys Association (TDCAA) Statewide DWI Training  
 in cooperation with the Texas Department of Transportation

**W**e are proud to offer 6 hours of TCOLE and CLE credit free of charge for this important training. Over the last 30 years, police and prosecutors have gotten pretty good at detecting and prosecuting the alcohol-impaired driver, thanks to SFSTs, lots of training, lots of resources, and then—with “no refusal” programs—we obtained blood evidence of a driver’s intoxication. But these days, we’ve noticed many more drivers who’ve used drugs with their alcohol, or drugs without alcohol. How do these “combination” cases change how officers and prosecutors do their jobs? This course will help answer that question. Its focus is the special issues of drugged driving. The scope of the problem will be addressed first, followed by best practices on the road and in the courtroom. We will cover combination cases, move to marijuana, discuss illegal drugs, and then address prescription drugs. Forensic toxicologists, lab procedures, DREs, and the ARIDE program will also be included.

**Today's schedule**

8:15 a.m.	Registration
8:40 a.m.	A Shot and a Beer: New Habits Resulting in Mixed Toxicology
9:50 a.m.	The Three-Legged Stool of Drugged Driving Cases
11:00 a.m.	Blood Toxicology
Noon	Lunch (if provided)
1:30 p.m.	Marijuana (and Other Illegal Drugs)
3:15 p.m.	Prescription and No-Toxicology Cases
4:45 p.m.	Adjourn

✿ Registration for this seminar is available only online at [www.tdcaa.com/training](http://www.tdcaa.com/training). Because space may be limited and walk-ins may not be admitted, please register online promptly.

In addition to this excellent free training, every attendee will receive two TDCAA publications: Richard Alpert's *DWI Investigation & Prosecution* and Diane Beckham's *Traffic Stops*. These books give attendees resources in many areas not covered by this seminar.



Please be sure you've signed in and double-checked your Bar number or TCOLE number. The TCOLE Course number is 3402. If lunch is not provided, all afternoon times are delayed by 15 minutes.



◆ **FREE DWI training** ◆

# Worst Case Scenario: Impaired Driving Crashes from Crash to Courtroom

Texas District and County Attorneys Association (TDCAA)  
in cooperation with the Texas Department of Transportation

**T**here is no worse place to investigate a homicide than in the middle of a busy road in the middle of the night. Yet Texas has thousands of such crime scenes every year. Investigating and prosecuting these cases is no easy task. Once the scene is cleared, you can never go back and revisit it, so conducting a full investigation in the moment is key to the criminal case. This course is a survey of common investigative and legal issues in impaired-driving prosecutions. Great focus is placed on the responsibilities of the first investigating officer and how his actions form the case's foundations for crash investigators, the grand jury, and the prosecutor preparing to try the case. Information on basic scene preservation, evidence preservation, scene documentation, witness interviews, crash reconstruction, blood evidence collection, and dealing with victims will all be included. This course is designed for prosecutors new to intoxication manslaughter cases and officers new to impaired-driving crash investigations—yet it is also a great review and update for officers and prosecutors well-versed in these cases.

### Today's schedule

8:15 a.m.	Registration
8:40 a.m.	Securing the Crime Scene
9:50 a.m.	Investigating, Documenting, and Presenting the Crime Scene
11:00 a.m.	Suspects as a Crime Scene
Noon	Lunch (if provided)
1:00 p.m.	Gathering and Presenting Blood and/or Breath Evidence
2:10 p.m.	Post Scene Investigations
3:20 p.m.	Punishment and Victim Issues
4:15 p.m.	Adjourn

✿ In addition to this excellent free training, every attendee will receive two TDCAA publications: *DWI Investigation & Prosecution* and *Traffic Stops*. These books give attendees resources in many areas not covered by this seminar.

Please be sure you've signed in and double-checked your Bar number or TCOLE number. The TCOLE Course number is 2070, and the CLE Course number is 174074129. If lunch is not provided, all afternoon times are delayed by 15 minutes.



**OBJECTIVES, PI&E, PERFORMANCE MEASURES AND ACTIVITIES**

**Objective statement:** To Provide 1 DWI Resource Prosecutor to provide technical assistance to Prosecutors and Traffic Safety Partners by 9/30/2024

Activity	Responsible	Activity Completion Date
1. Maintain DWI related materials on TDCAA's website.	Subgrantee	9/30/2024
2. Prepare 12 case notes on important DWI appellate decisions each year. Cases will be briefed each week of the year as opinions are handed down.	Subgrantee	9/30/2024
3. Distribute weekly e-mail alerts of case notes on important DWI appellate decisions as they are handed down.	Subgrantee	9/30/2024
4. Archive on the TDCAA website each week's e-mail alerts of case notes on important DWI appellate decisions as they are handed down.	Subgrantee	9/30/2024
5. Write or edit 4 DWI specific articles for TDCAA periodical yearly. Publish, distribute to all Texas prosecutors and archive at tdcaa.com the articles.	Subgrantee	9/30/2024
6. Review request for speakers by Traffic Safety Partners.	Subgrantee	9/30/2024
7. Provide qualified speakers to Traffic Safety Partners to present or train on DWI and Traffic Safety topics at Partner's trainings. (Target 4)	Subgrantee	9/30/2024
8. Provide technical assistance by e-mail (120 per year), phone and TSRP list serve prosecutors, peace officers and traffic safety partners.	Subgrantee	9/30/2024
9. Attend TDCAA programs to provide technical assistance to prosecutors on DWI related issues as the DWI Resource Prosecutor at TDCAA seminars.	Subgrantee	9/30/2024
10.		

OBJECTIVES, PI&E, PERFORMANCE MEASURES AND ACTIVITIES

Objective statement: To Provide 1 publication to all new investigators at TDCAA's Annual Investigator School by 3/4/2024

	Activity	Responsible	Activity Completion Date
1.	TDCAA will provide Department with a copy of this book.	Subgrantee	12/1/2023
2.	Department will determine if the publication satisfies the purpose set out in the Problem Analysis/Solution, Performance Objectives and Activities.	Department	12/15/2023
3.	Hold a specialized New Investigator training at TDCAA's Annual Investigator Course.	Subgrantee	3/4/2024
4.	Provide each attendee with TDCAA's Case Preparation book.	Subgrantee	3/4/2024
5.			
6.			
7.			
8.			
9.			
10.			

**OBJECTIVES, PI&E, PERFORMANCE MEASURES AND ACTIVITIES**

Objective statement: To Provide 2 publications to all Texas Prosecutors or all Texas prosecutor offices by 9/30/2024.

Activity	Responsible	Activity Completion Date
1. Update the Traffic Stops publication with new laws after legislative session and new state and federal case law.	Subgrantee	1/5/2024
2. Provide the Traffic Stops publication to every prosecutor in Texas. (Estimated 3300).	Subgrantee	1/5/2024
3. Update the DWI Investigation and Prosecution publication with newly enacted laws, new case law, new forms and new material.	Subgrantee	2/5/2024
4. Provide the DWI Investigation and Prosecution publication to all criminal prosecutors in Texas. (Estimated 3300).	Subgrantee	2/5/2024
5.		
6.		
7.		
8.		
9.		
10.		



**OBJECTIVES, P.I.E, PERFORMANCE MEASURES AND ACTIVITIES**

**Objective statement:** To Conduct 26 regional DWI programs for prosecutors and police officers by 9/30/2024.

Activity	Responsible	Activity Completion Date
1. Submit course material to department.	Subgrantee	12/1/2023
2. Department will determine if the courses satisfy the purpose set out in the Problem Analysis/Solution, Performance Objectives and Activities.	Department	12/10/2023
3. Repeat curriculum for one-day DWI courses, including Effective Courtroom Testimony, Worst Case Scenario, Guarding Texas Highways and Rolling Stoned.	Subgrantee	12/28/2023
4. Market and solicit statewide application for regional DWI training from local prosecutors. Prepare any other relevant courses.	Subgrantee	12/28/2023
5. Select Approximately 26 sites from local applications to provide statewide coverage of regional training.	Subgrantee	12/28/2023
6. Train 1390 prosecutors, peace officers, judges and toxicologist combined at regional workshops.	Subgrantee	9/30/2024
7. Provide TDCAA's DWI Investigation and Prosecution and Traffic Stop publications to each attendee.	Subgrantee	9/30/2024
8. Collect and study participant evaluations of the ongoing program and modify presenters, topics and instruction based on those evaluations.	Subgrantee	9/30/2024
9. Select, monitor and evaluate additional faculty to teach at these programs.	Subgrantee	9/30/2024
10. Provide all participant evaluations to department.	Subgrantee	9/30/2024

**OBJECTIVES, PI&E, PERFORMANCE MEASURES AND ACTIVITIES**

**Objective statement:** To Conduct 1 statewide Task Force meeting of DWI prosecutors by 8/1/2024

Activity	Responsible	Activity Completion Date
1. Identify lead DWI assistant prosecutors in at least 10 of the 20 largest prosecutor's offices in Texas.	Subgrantee	10/31/2023
2. Identify outstanding DWI prosecutors in mid-sized offices from all regions of the state.	Subgrantee	10/31/2023
3. Identify the State's best small jurisdiction DWI prosecutors.	Subgrantee	10/31/2023
4. Invite the identified 20 prosecutors to a statewide DWI Prosecutor Task Force.	Subgrantee	10/31/2023
5. Coordinate a yearly Task Force meeting by providing location, reimbursement for lodging and travel, an agenda and materials.	Subgrantee	11/30/2023
6. Conduct a Task Force meeting discussing this grant, best practices, available resources, concerns, needs and recommendations of DWI prosecutors.	Subgrantee	11/30/2023
7. Provide minutes and collected contacts and materials assembled after the meeting to each participant of the Task Force.	Subgrantee	6/3/2024
8. Provide a report to TxDOT for review, containing minutes, recommendations, concerns and needs identified by the prosecutor DWI Task Force.	Subgrantee	6/3/2024
9. Provide comments, if necessary, to Prosecutor DWI Task Force report.	Subgrantee	7/15/2024
10. Provide comments and minutes to the Impaired Driving task force.	Subgrantee	8/1/2024

**OBJECTIVES, P&E, PERFORMANCE MEASURES AND ACTIVITIES**

Objective statement: To Develop 1 Strategic Plan by 11/30/2023

	Activity	Responsible	Activity Completion Date
1.	Prepare strategic action plan.	Subgrantee	11/30/2023
2.	Submit to department for review.	Subgrantee	11/30/2023
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

**OBJECTIVES, PI&E, PERFORMANCE MEASURES AND ACTIVITIES**

**Objective statement:** To Conduct 1 Train the Trainer program for prosecutors and prosecutor support staff by 4/1/2024

	Activity	Responsible	Activity Completion Date
1.	Submit curriculum to department.	Subgrantee	12/1/2023
2.	Department will determine if the course satisfies the purpose set out in the Problem Analysis/Solution, Performance Objectives and Activities.	Department	12/10/2023
3.	Recruit faculty for a Train the Trainer program.	Subgrantee	4/1/2024
4.	Train prosecutors and prosecutor support staff at Train the Trainer program.	Subgrantee	4/1/2024
5.			
6.			
7.			
8.			
9.			
10.			

OBJECTIVES, PI&E, PERFORMANCE MEASURES AND ACTIVITIES

**Objective statement:** To Conduct 2 week-long Prosecutor Trial Skills programs and provide students with publications by 7/31/2024

	Activity	Responsible	Activity Completion Date
1.	Develop and market a January Basic Trial Skills Course for new prosecutors rich in DWI-related material.	Subgrantee	12/1/2023
2.	Submit provided publications for department comment.	Subgrantee	12/1/2023
3.	Department comment on provided publications.	Department	12/10/2023
4.	To train new Texas prosecutors at week-long January Basic Trial Skills program.	Subgrantee	1/28/2024
5.	Provide each new January prosecutor attendee with four TDCAA's publications as course material and as a continued resource. (see note).	Subgrantee	1/28/2024
6.	Develop and market a July Basic Trial Skills Course for new prosecutors rich in DWI-related material.	Subgrantee	6/1/2024
7.	To train new Texas prosecutors at week-long July Basic Trial Skills program.	Subgrantee	7/31/2024
8.	Provide each new July prosecutor attendee with four TDCAA's publications as course material and as a continued resource. (see note).	Subgrantee	7/31/2024
9.	Collect and study participant evaluations of the ongoing program and modify presenters, topics and instruction based on those evaluations.	Subgrantee	7/31/2024
10.	Submit evaluations to department.	Subgrantee	7/31/2024

# IACP Technical Advisory Panel for Impaired Driving Programs

## Considerations Document

### DRE Post-Incident Review

**Preface:** Each jurisdiction operates in a unique environment of court procedures, state laws, local ordinances, regulations, judicial and administrative decisions. Because of this, Drug Recognition Experts, prosecutors, law enforcement administrators and officers are cautioned to consult with the prosecuting attorney, the state's Traffic Safety Resource Prosecutor (TSRP), and/or the DRE state coordinator in their jurisdiction about the type of testimony and opinion which may be given in DRE post-incident reviews. This process is commonly referred to in some jurisdictions as DRE Reconstruction.

This document is not intended to be an International Drug Evaluation and Classification (DEC) Program standard.

#### I. PURPOSE

This document is intended to provide Drug Recognition Expert (DRE) state coordinators, DRE agencies, prosecutors and individual DREs with information for consideration when utilizing the practice of DRE post-incident reviews. The information and practices discussed herein should not be considered an alternative for having a DRE conduct an actual drug influence evaluation whenever possible.

The decision to have a DRE post-incident review conducted and introduced in court should not be taken lightly. The prosecutors and the DREs should carefully review the case when choosing to present a DRE post-incident review in court. The case should have sufficient evidence which allows for an in-depth post-incident review of the facts available. Cases with toxicology results are best suited for this review and will assist in the admissibility of the DRE's testimony.

If a DRE post-incident review is completed, and sufficient facts or data exists to support an opinion, the DRE should express an opinion as to impairment being consistent with a drug category(ies) and not render an opinion that the suspect was in fact under the influence of an actual category(ies).

#### II. DEFINITIONS

**DRE INSTRUCTOR:** A trained and certified DRE who has successfully completed the NHTSA/IACP DRE Instructor Development Course (IDC) or an approved equivalent, met

any other state requirements to obtain this certification, and has been credentialed as a DRE Instructor by the International Association of Chiefs of Police (IACP).

**DRE POST-INCIDENT REVIEW:** A process utilized by certified Drug Recognition Experts to provide follow-up investigative steps to collect, review, analyze, and interpret evidence and facts post-incident to render articulable facts and information, which may include opinions related to impairment.

**DRUG INFLUENCE EVALUATION:** A process of systematically examining a person suspected of being under the influence of a drug, for the purpose of ascertaining what category of drugs (or combination of categories) is causing that person's impairment. A trained DRE can identify, with a high degree of reliability, the distinguishing signs and symptoms of seven broad categories of drugs.

**DRUG RECOGNITION EXPERT (DRE):** An individual who has successfully completed all phases of the DRE training requirements for certification established by the IACP and NHTSA and who has been approved for certification by the state coordinator for the state wherein they have law enforcement jurisdiction or within their primary state of employment. The word "evaluator," "technician," or similar words may be used as a substitute for "expert", depending upon locale or jurisdiction.

### III. QUALIFICATIONS

Careful consideration should be taken before a DRE undertakes the task of performing a DRE post-incident review. DRE post-incident reviews are commonly requested by a law enforcement agency or a prosecutor's office to provide an opinion from a DRE perspective following an impaired driving incident. When requests are made, it is critical to ensure an experienced and qualified DRE is utilized. It is recommended that currently certified DRE instructors be utilized for the DRE post-incident review process. In cases where a post incident review is requested or done, the state coordinator should be made aware as early on as possible.

Items to consider when selecting a DRE for the purpose of a DRE post-incident review:

- Is the DRE currently certified?
- How long has the DRE been certified?
- How many DRE evaluations has the DRE conducted?
- Has the DRE conducted any previous DRE post-incident reviews?
- Are they a DRE Instructor, and do they have experience as an instructor?
- Have they testified as an expert witness in court previously?

- Are they recommended by their DRE state coordinator to perform DRE post-incident reviews?

#### IV. PROCEDURES - DREs

The collection of facts and evidence will be one of the most critical steps in a DRE post-incident review process. In most DRE post-incident reviews, the DRE will rely primarily on information collected, recorded, or observed by other individuals. Additional facts and evidence should only be sought or obtained by the DRE during the post-incident review through the direction of the prosecuting attorney.

Common sources of data provided by the prosecuting attorney for review by the DRE during the post-incident review process may include, but is not limited to:

- Law enforcement arrest or incident reports
- Body worn videos of any officer in contact with the suspect
- Reports made to a police communication center before, during and after the incident
- Civilian witness observations before, during, and after the incident
- EMT/Paramedic observations and notes
- Doctor/nurse observations and notes
- Hospital records and test results
- Video recordings of the incident or recordings of the suspect
- Suspect's statements
- Direct/Indirect evidence found on or near the suspect
- Jail booking information and video, if applicable
- Other records of the suspect's normal behavior and mannerisms
- Collision reconstruction reports
- Toxicological analysis reports

The DRE should work at the direction of the prosecuting attorney by reviewing facts and investigative information provided by the prosecutor. However, the scope of testimony should be carefully assessed by the DRE and prosecutor to ensure consistency with applicable legal standards.

How a DRE presents evidence and the manner in which they testify can have an impact on the jury and can also broadly impact future use of this process in other courts around the country. Prosecutors and DREs should ensure the DRE has the training and experience necessary to properly present clear and factually supported testimony which is tailored for a DRE post-incident review.



## V. PROCEDURES -- PROSECUTORS

Prosecutors should ensure they are complying with local discovery rules. Most discovery rules will require disclosure of the name of the DRE that will be called to testify. Some jurisdictions will also require disclosure of the DRE's opinion. Be sure to disclose the DRE's CV (Curriculum Vitae), DRE School Training Certificate, DRE Certification Card and Letter and any other training material that would be relevant to laying a thorough foundation of the DRE's experience. Also, decide if the DRE needs to complete a supplemental report to be part of the case file.

Carefully consider who will conduct the DRE post-incident review and testify as a witness. A thorough foundation needs to be laid regarding the DRE's qualifications to admit the DRE post-incident review testimony. This includes details of the DRE's extensive training and experience that qualifies the DRE to conduct a post-incident review (see examples below). It is much easier to admit this type of testimony if the witness is a DRE instructor as an instructor's expertise is much more extensive than simply attending DRE school. In addition, a DRE instructor has received specialized training in teaching others about the program which will translate well in educating a judge and jury. If a DRE instructor is not available to testify, consider having your DRE witness consult with a DRE instructor or the state coordinator to ensure the quality of the case analysis. Have the DRE reference if a consultation was conducted as part of the DRE's testimony. This careful consideration as to the DRE conducting the post-incident review is especially important if this type of testimony is new to your jurisdiction.

In a DRE post-incident review, a DRE's analysis and testimony will be greatly improved if the DRE is able to review all the discovery available to the prosecutor including medical records, EMT/Paramedic reports, officer reports, video, etc. The DRE should be prepared to testify as to the materials the DRE reviewed in preparation for the DRE's testimony. This will be part of the foundation needed to qualify the DRE to testify about the case.

A DRE should not conduct a DRE post-incident review if he/she is not comfortable doing one. The DRE should not form an opinion if there is not enough evidence to do so.

There are many aspects of a DRE's training and experience that support a DRE's ability to conduct a post-incident review. A discussion of the relevant training should be included and emphasized in the DRE's testimony in order to make a complete record. Examples include:

- Incomplete DRE examinations are now included in the DRE curriculum and in appropriate circumstances allowed by the protocol. This is referenced in Session 4 of the DRE 7-Day School, and the DRE Instructor Manual. The latter emphasizes that the DRE should be able to "explain the reasons for this in their narrative report and if they are still able to form an opinion, what evidence and observations support their opinion." Make sure to emphasize this training

regarding incomplete DRE examinations, as well as any additional training received in this regard. If the DRE has experience where the DRE was not able, for whatever reason, to complete all 12 steps but none the less was able to formulate an opinion, that experience should be provided. Point out how this helps prepare for DRE post incident reviews.

- During DRE training, the students watch videos of DRE examinations of drug impaired subjects they did not conduct. They review face sheets and reports that they did not author and describe impairment they did not observe firsthand. They are trained to recognize impairment using these methods. This should enhance their ability to do a DRE post incident review.
- If your witness is a DRE instructor or state coordinator, the person should have experience reviewing DRE reports conducted by others to ensure the DRE rendered the correct opinion based on the evidence presented (for example certification, re-certification, or any other reason). This is really good experience that is applicable to DRE post-incident review.
- Has the DRE previously conducted drug influence evaluations on other suspects who have been under the influence of the drug category(ies) suspected of being used in the current post-incident review?
- If the DRE has served as a scribe for a case where the DRE did not conduct the actual DRE examination and the DRE believes this experience assists with the ability to do DRE post-incident reviews, have the DRE explain why.
- Has the DRE been involved in drug-impaired driving cases where a DRE examination was not conducted, such as when the DRE was the arresting officer, but the person refused to do an evaluation? Was the DRE able to offer an opinion of impairment consistent with a drug category(ies)? If so, have the DRE explain the basis of the DRE's opinion.
- Include in the DRE's testimony any previous DRE post-incident reviews that the DRE completed as well as any training received specific to DRE post-incident reviews.
- Add all relevant experience or training that would assist with a DRE post-incident review including training as an EMT, crash reconstruction training, etc.

Prepare for testimony. Meet with your DRE to discuss how the DRE arrived at an opinion of impairment consistent with a particular drug category(ies). Discuss the DRE's qualifications that enable the DRE to give an opinion even when the DRE did not conduct an evaluation. Be prepared to discuss the general indicators of any drug category observed by the officers present during the incident and how those observations of impairment relate to driving. If the arresting officer gathered evidence of clinical indicators such as the person's pulse or made observations of pupil size being inconsistent

with the lighting conditions, discuss how that evidence is relevant to the DRE's analysis. Be prepared to tie toxicology results, drugs/paraphernalia found, and admissions to the symptoms of impairment observed by officer(s) present on the date of the incident and how those are relevant.

Consider whether the DRE formed an opinion before the DRE knew the toxicology results. If not, prepare for the defense argument that the DRE solely relied on the toxicology results.

In some jurisdictions the court may only allow the DRE to testify that the signs and symptoms of impairment the defendant exhibited on the date of the incident are consistent with the drugs that were in the blood or urine sample (if there is one). In this circumstance, do not press the DRE to give an opinion regarding the drug category or impairment to safely operate a motor vehicle if the court specifically does not allow this testimony.

Be careful which cases you choose to use a DRE post-incident review. Make sure the DRE has sufficient information available to form an opinion. Consider if this type of testimony is new to your jurisdiction or judge.

Be cognizant as to what the court is willing to allow. If the judge is hesitant, start with calling a DRE for post-incident review as rebuttal evidence rather than in the state's case in chief. Create a good record and include case law from cases where DRE post-incident reviews have been admitted. Make sure the testimony provided is detailed and thorough and that an adequate foundation is laid.

Notes for additional considerations:

- It is much easier to admit this testimony if toxicology results are available.
- Create a good record.
- Ensure testimony is detailed and thorough.
- Start small. Ease your court into it. For example, use in rebuttal.
- Be flexible and anticipate the judge may not admit everything. Have a backup plan.
- Use case law from cases where DRE post-incident review was admitted if there are any applicable court ruling or cases from your jurisdiction.

## VI. OPINION AND TESTIMONY

Written or oral testimony about the interpretations of a DRE post-incident review process shall be presented in an ethical and substantiated manner. A DRE post-incident review report should be expressed in a clean and coherent manner and any statements or opinions must be supported by established principles and foundations.

Reports or opinions should be based on the totality of the information available at the time. It is recommended to include in the report that the DRE's opinion may be subject to change based upon new information becoming available.

Any report or opinion should include a list of the materials/evidence relied upon in developing such opinions. It should also be clear that any opinions are based upon a post-incident review and is not a DRE drug influence evaluation or other personal examination of the suspect.

In the case of a DRE post-incident review, DREs and prosecutors should generally limit opinions to interpretation of paralleling lines of evidence without making causal inferences. For example, a DRE may interpret behaviors as consistent with those expected from drug impairment and also opine that a particular drug category(ies) is likely to cause certain types of behaviors. It is generally inappropriate to directly opine that a person was impaired by certain drugs (or categories of drugs) based only upon a post-incident review.

In offering an expert opinion, it is generally acceptable for the qualified DRE to:

- Discuss reports and evidence which they relied upon in developing their opinion. Limitations should also be acknowledged.
- Discuss signs and symptoms consistent with use of the various drug categories as utilized in the DEC Program.
- Discuss if signs and symptoms offered into evidence are consistent with drug impairment.
- In some cases, it may be appropriate to classify certain observations as consistent with a particular drug category, but DREs are reminded that there is significant overlap in category symptomatology and from polycategory drug use that further complicates such interpretations. This type of opinion should generally be reserved for cases where a toxicology report supports the presence of a certain category.

The following are generally inappropriate testimony / opinions for a DRE to offer based solely upon a post-incident review, as they lack consensus with the relevant community or exceed the scope of the DRE's expertise:

- An opinion should not imply the extent of impairment based solely upon quantitative results in a toxicology report.
- An opinion should not include extrapolation calculations for drugs other than ethanol, and ethanol calculations should not be included unless the witness has sufficient training on this topic beyond DRE or DRE Instructor certification.
- An opinion should not be offered that a person used a specific drug based solely upon behavioral observations.

Reports or opinions should be based on the totality of the information available at the time. It is recommended to include in the report that the DRE's opinion may be subject to change based upon new information becoming available.

Any report or opinion should include a list of the materials/evidence relied upon in developing such opinions. It should also be clear that any opinions are based upon a post-incident review and is not a DRE drug influence evaluation or other personal examination of the suspect.

In the case of a DRE post-incident review, DREs and prosecutors should generally limit opinions to interpretation of paralleling lines of evidence without making causal inferences. For example, a DRE may interpret behaviors as consistent with those expected from drug impairment and also opine that a particular drug category(ies) is likely to cause certain types of behaviors. It is generally inappropriate to directly opine that a person was impaired by certain drugs (or categories of drugs) based only upon a post-incident review.

In offering an expert opinion, it is generally acceptable for the qualified DRE to:

- Discuss reports and evidence which they relied upon in developing their opinion. Limitations should also be acknowledged.
- Discuss signs and symptoms consistent with use of the various drug categories as utilized in the DEC Program.
- Discuss if signs and symptoms offered into evidence are consistent with drug impairment.
- In some cases, it may be appropriate to classify certain observations as consistent with a particular drug category, but DREs are reminded that there is significant overlap in category symptomatology and from polycategory drug use that further complicates such interpretations. This type of opinion should generally be reserved for cases where a toxicology report supports the presence of a certain category.

The following are generally inappropriate testimony / opinions for a DRE to offer based solely upon a post-incident review, as they lack consensus with the relevant community or exceed the scope of the DRE's expertise:

- An opinion should not imply the extent of impairment based solely upon quantitative results in a toxicology report.
- An opinion should not include extrapolation calculations for drugs other than ethanol, and ethanol calculations should not be included unless the witness has sufficient training on this topic beyond DRE or DRE Instructor certification.
- An opinion should not be offered that a person used a specific drug based solely upon behavioral observations.

described in the reports to corroborate the drug categories identified the blood results and does not determine impairment based on the amount of the drugs in the blood report, the trial court did not abuse its discretion in admitting her testimony.

*Burton v. Commonwealth*, 300 S.W.3d 126 (Kentucky 2009). [Second-degree manslaughter and second-degree assault.] Appellate court ruled testimony of DRE who did not observe the defendant on the date of violation was improperly admitted under the facts of the case. This case demonstrates the importance of tox results and thorough preparation in these cases. The decision to call the DRE was made at the last minute in response to the defense late disclosure of a defense expert and the urine test results were suppressed pre-trial.

#### VIII. REFERENCES

Medical-Legal Aspects of Abused Substances, Old and New, Licit, and Illicit. Marcelline Burns, Ph.D., Thomas E. Page, M.A. Lawyers and Judges Publishing Company, Inc. Tucson, Arizona. Copyright 2005. Chapter 2: The Role of the Law Enforcement Officer, by Thomas E. Page. Subsection, The Art and Science of DRE Reconstruction, pages 23-32.

Drug Information Handbook for the Criminal Justice Professional. Marcelline Burns, Ph.D., Thomas E. Page, M.A. Lexi-Comp, Inc. Hudson, Ohio. Second Edition. Copyright 2004. The Art and Science of Drug Recognition Expert (DRE) Reconstruction, pages 709-716.

Guidelines for Opinions and Testimony in Forensic Toxicology. AAFS Standards Board. Colorado Springs, Colorado.

# Helping our friends at the DPS lab with an avalanche of blood kits

In October 2004, I started in this position at TDCAA.

For the first several years, much of my time was spent crisscrossing the state of Texas pleading with prosecutors and police to get search warrants for blood in DWI cases. And we did. Things got even more lively in 2013 when the Supreme Court of the United States returned *Missouri v. McNeely*.<sup>1</sup> Suddenly it was easy to convince police to get blood search warrants. Every jurisdiction in Texas started doing just that.

There is always a downside and unintended consequences to any great change. Only in 2014 did I start to wonder just what a massive influx of blood kits would do to our labs. And the answer is: We buried them alive. (I am lucky anyone at the DPS Lab still speaks to me.) More blood kits require more testing, and DPS has also expanded the number of substances it tests for in toxicology. These blood cases also go to court.

All of which has led to this request, below, from Trevis Beckworth at the DPS Lab in Austin. It is probably way overdue. Please give it a careful read.

## From Trevis Beckworth Assistant Lab Director Department of Public Safety in Austin

In addition to analyzing thousands of blood toxicology cases annually, the Texas DPS Crime Laboratory also serves as the permanent storage facility for all toxicology kits collected by the Texas Highway Patrol. These kits present a unique challenge because they must be refrigerated until their final disposition. Over time, the crime lab has accumulated more than 50,000 kits due to a lack of authorization for disposal. This high volume nearly maxes out the lab's storage capacity, making it crucial for Texas prosecutors to help expedite the authorization process for their destruction.

Following the implementation of Article 38.50 in the Code of Criminal Procedure in 2015, the lab adopted a disposition process that mandated a judge's signature, ensuring compliance with all notice and retention requirements. This prevented officers and prosecutors from authorizing the destruction of toxicology kits.

In September 2021, SB 335 came into effect, modifying and clarifying these provisions. Consequently, the crime lab transitioned to a process allowing prosecutors to grant de-



By **W. Clay Abbott**  
*TDCAA DWI Resource Prosecutor in Austin*

struction authorization. However, any case with an offense date before September 1, 2021, still requires a judge's signature for authorization. This requirement has resulted in a significant number of cases in inventory that necessitate judicial attention and likely already exceed the immediate destruction eligibility date.

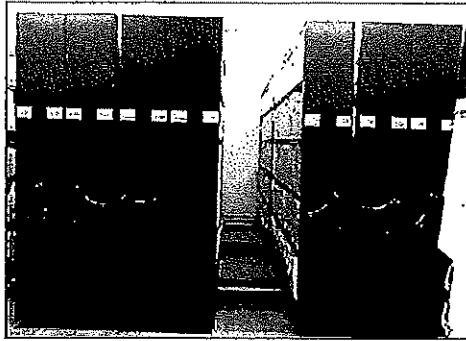
District and county attorney's offices can play a role in addressing the current critical storage situation and preventing its recurrence. For older kits, the crime lab can provide your office with a list of aged cases in storage, which can then be routed to the appropriate court for disposition. These cases can be authorized for destruction either by using a Toxicology Disposition Form, or in bulk through a court order. For current cases, it's highly advisable to consider waiving evidence preservation, as destruction can be authorized immediately upon case adjudication.

If you need information on cases in storage in your region or assistance with disposition documentation, please reach out to your nearest regional crime laboratory; find contact information for each one at [www.dps.texas.gov/section/crime-laboratory/contact-information](http://www.dps.texas.gov/section/crime-laboratory/contact-information).

*Continued on page 8*

### Answering the call

In response to Mr. Beckworth's request, remember that labs and prosecutors must exercise great care so we don't destroy important evidence. Yet we clearly need to help—take a look at the photos, below, of the stacks of blood kits DPS is storing! Reach out to your local lab and help them make space—without accidentally damaging the lab's (and prosecutors') credibility by destroying a needed blood kit.



In addition to blood kits that are tested for alcohol, the DPS Toxicology Lab tests blood kits for drugs and tests in those cases where there was a fatality. Like the alcohol testing lab, the DPS Toxicology Lab is seeking to shrink the size of the backlog by removing kits that no longer need testing. If you have cases that are not going to be prosecuted for whatever reason (no-file, the defendant went to the pen on other charges, or other reasons), please reach out to the DPS Toxicology Lab to remove them from the queue. Otherwise, those blood kits are still in line and delaying every other case where a prosecutor is waiting on a lab report for a plea or trial.

DPS has made great inroads in the last couple years in blood alcohol testing. There was some pain (moving kits around to address backlog) and some new contacts and procedures, but the process got better and faster. The legislature just sent the first big surge in funding to toxicology since we started burying them in blood kits in 2004. But that means change and a bit of discomfort.

For instance, Toxicology will be outsourcing some of the backlog to NMS Labs. This will not be permanent, and effort is being made for DPS to keep cases involving injury and death. But some equalization is necessary to help the new funding, personnel, and equipment really work their magic.

On the opposite page is some info reprinted from NMS about the upcoming outsourcing. Watch our website at [tdcaa.com/resources/dwi](http://tdcaa.com/resources/dwi) for additional information about labs.

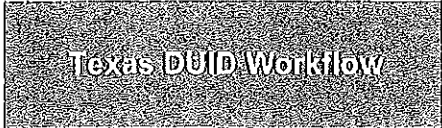
Better communication gets everyone faster results. Better communication with the lab also means when your county's name comes up at the Toxicology Lab because of a special request, there are good feelings and not frustrated ones. We constantly preach kindness and understanding for offenders and victims—how about some for our friends in the labs?

And please remember: The only folks in criminal justice who have a backlog greater than our misdemeanor divisions are those at the DPS laboratory. That fact alone should make us understanding allies. #

### Endnote

<sup>1</sup> 133 S. Ct. 1552, 185 L. Ed 2d 696 (2013)





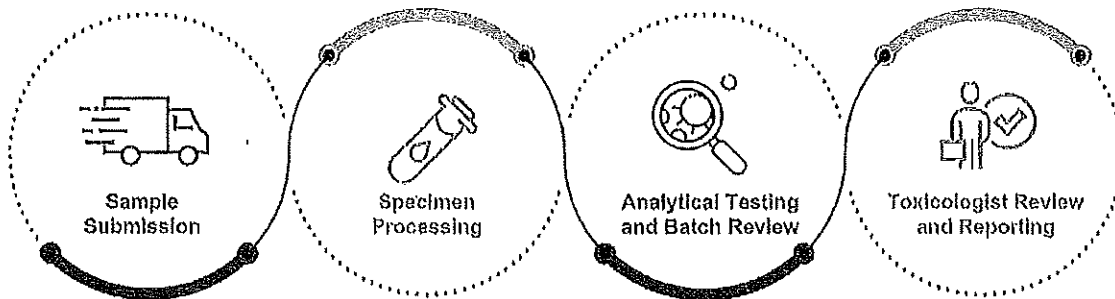
NMSlabs.com

## A Process that Delivers Affordable, Quality Lab Results Quickly

NMS Labs maintains meticulous records of the chain of custody and documents every step in the process, so the toxicologist who finalizes and signs the report can testify to the completeness of testing, the quality of the analysis and the forensic reliability of the result.

### Segmented Process

A segmented workflow with defined tasks helps prevent errors, ensures scientific rigor and objectiveness aligned to the highest industry standards, and delivers timely results at a large scale.



### Proven Quality

Industry-leading organizations recognize the NMS Labs process for the checks and balances at each step that ensure quality and procedural efficiencies that lead to faster turnaround times.



Fast turnaround time



Reliability



Accreditation



Contact Kacie Tross at [Kacie.Tross@NMSlabs.com](mailto:Kacie.Tross@NMSlabs.com) or [682.252.9202](tel:682.252.9202) to gain routine access to reports for cases worked out of a Texas jurisdiction.



#### Contact

NMS Labs  
200 Welsh Road, Horsham, PA 19044

T: 682.252.2216  
F: 215.388.1601

[www.NMSlabs.com](http://www.NMSlabs.com)

©2023 NMS Labs, NMS Labs, the associated logo and all associated NMS Labs marks are the trademarks of NMS Labs. All third-party marks are the property of their respective owners. All rights reserved. 23234



**NMS Labs - Expert Services  
TXDPS Toxicology Project**

NMS Labs' Expert Services team is responsible for the receipt of subpoenas and testimony scheduling as well as production of court related documents. To best serve you in a timely manner, kindly adhere the following:

***Subpoenas***

- Preference to receive subpoenas via fax or email (details below)
- Please include the NMS Labs' Case Number or Workorder Number.
- Please send subpoenas 14 days, minimally, prior to the trial to schedule. We support many clients and schedule on a first come first served basis.

***Affidavits***

- The use of remote online notaries will be implemented for this portion of the project using a practice that adheres to Government Code Sections 406.016, 406.106, and 406.107 as well as Administrative Code Section 87.1; fees apply.
- All NMS Toxicologists signing this document are aware that they are doing so under oath.

***Testimony***

- Please provide contact information for scheduling in your jurisdiction.
- A pre-trial conference with the expert via phone or zoom is recommended prior to each testimony; fees apply.
- Testimony is available via video and in-person; fees apply.
- Please confirm the expert is needed 24 hours prior to testimony.
- Please notify Expert Services immediately via phone if the expert does not need to appear.
- Our experts go to great lengths to prepare for the testimony of their cases. In order to provide that same level of quality for each case, they will only be able to testify for the case for which they were originally subpoenaed, scheduled, and prepared for trial. Merely receiving a subpoena does not equate to being prepared to testify.

***Litigation Packages***

- Please send an email request to Expert Services a minimum of 4 weeks prior to the trial to allow for preparation. This in-depth process requires the gathering of information from multiple departments within the laboratory leading to a longer review and therefore turnaround time; fees apply.

***Expert Services Contact Information***

- Phone: 844-276-0768
- Fax: 215-657-2972
- Email: [ExpertServices@NMSLabs.com](mailto:ExpertServices@NMSLabs.com)
- Address: NMS Labs  
Attn.: Expert Services  
200 Welsh Road  
Horsham PA 19044