The Mandatory Reporting of Impaired Driver Arrests to the Bureau of Motor Vehicles

The Bureau of Motor Vehicles administrative suspension process is an excellent tool that can help get dangerous drivers off the road quickly. However, it works best when everyone does their part. This brief article identifies a potential weakness in the process and suggests how we might be able to do it better.

Background

Keeping Maine's highways safe from impaired drivers is a multi-faceted task involving several processes implemented co-operatively through a number of different agencies. Normally, this process begins with law enforcement officers apprehending suspected impaired drivers. In many cases, these officers collect evidence that needs interpretation by State labs, and prosecutors use the evidence both from the police and the lab to present a competent case for the court system to adjudicate. In most cases while the lengthy court process is underway, an administrative suspension procedure is initiated and finalized with the Maine Secretary of State’s Bureau of Motor Vehicles (BMV). Continued on page 2

Slow Down New England

Agencies across Maine will be participating in a national speed enforcement campaign from July 20th to August 14th. All agencies are invited to participate. There will be NHTSA and MeBHS advertisements and we’re asking agencies to use their social media to get the word out.

We are in the 100 deadliest days and Maine’s fatality count is already way over the count for this date for the past several years.
The Mandatory Reporting of Impaired Driver Arrests to the Bureau of Motor Vehicles

Administrative suspension laws are common throughout the United States. The concept is designed to allow a State to rapidly respond to the problem of having a licensed driver who is suspected of driving while impaired from holding an active license while waiting for the lengthy court adjudication process. Ideally, a certain, swift, and severe license suspension serves as deterrent – both for the actual suspended driver and others – while simultaneously keeping the highways safer. Maine’s administrative suspension laws also have the effect of encouraging the taking of a chemical test by enhancing an OUI conviction’s sentence for refusal of a chemical test.

To wit: Title 29-A M.R.S. provides the Secretary of State the authority to “immediately suspend a license of a person determined to have operated a motor vehicle with an excessive alcohol level,” §2453 (1) – (3). This authority also extends to immediately suspending drivers “determined to have operated a motor vehicle under the influence of drugs.” §2453-A (4). Drivers who refuse a chemical test receive 275 days (non-concurrent) for the first refusal and the penalty is increased for subsequent ones. §2521(6).

Issue

The gatekeepers of this administrative process are Maine’s law enforcement officers. The BMV cannot act to suspend a driver on their own. Therefore, law enforcement must initialize this procedure by sending the BMV a sworn affidavit of probable cause indicating that the driver was suspected of being impaired (or refused a chemical test) AKA the Blue or the Green form.

Title 29-A M.R.S. says an officer “shall” send the BMV a report if the officer has probable cause to believe a person has committed OUI or “has violated the terms of a conditional driver’s license, commercial driver’s license or provisional license.” §2481 (1). This report must be made under oath, i.e., notarized, and contain information that will identify the person who was charged, (and) the reasons for the officer’s probable cause. This report “must be submitted” within 72 hours (excluding weekends and holidays), however even if it is filed later than this, “the BMV shall impose the suspension, unless the delay has prejudiced the person’s ability to prepare or participate in the hearing.” §2481 (2).

If the driver is charged with OUI drugs, a drug recognition expert “who has probable cause to believe that a person was operating a motor vehicle under the influence of a specific category of drug, a combination of specific categories of drugs, or a combination of alcohol and one or more specific categories of drugs” must submit a report made under oath to the BMV. 29-A M.R.S. §2453-A (2). This report must identify the driver and state the grounds for the drug recognition expert’s probable cause. §2453-A (2) (A)–(B). Further, “[t]he person who analyzed the drug or its metabolite in the blood or urine” of the driver “shall send a copy of a confirmed positive test result certificate to the Secretary of State.” §2453-A (3). “The Secretary of State shall make a determination on the basis of the information required in the report,” which “is final unless a hearing is requested and held.” 29-A M.R.S.A. §2481 (3).

However, despite the clear statutory requirements found in 29-A M.R.S. §2481, There appears to be an institutionalized disconnect in this process. A disconnect that occurs likely due to a lack of awareness of what the law actually says. – hence the purpose of this brief article. It seems that some law enforcement agencies in Maine are unaware that the reporting of an OUI arrest to the Maine Bureau of Motor Vehicles is mandatory and those agencies do not submit their OUI arrest reports to the BMV.

This failure is problematic for several reasons: (1) it means the State fails to take action on a suspected impaired driver while the court process is in play; action that could result in the saving of lives from the deterrence effect; (2) Law enforcement is ignoring a statutory requirement and thereby perhaps leaving themselves open to the real possibility liability and; (3) there are ethical issues with failing to comply with the requirements of an administrative statute that are hard to reconcile.

Continued on next page
Solution

Perhaps the easiest remedy is for Maine law enforcement officers to make every effort to educate themselves and their fellow departments on the mandatory requirements of 29-A M.R.S. §2481 and to comply with those requirements. Furthermore, law enforcement should recognize the advantages that complying with this statutory mandate brings:

For example, as discussed in the opening there is obvious deterrent effect on both the suspected impaired driver, and the public at large when suspending the license of those drivers suspected of driving while impaired. This should be a priority for every law enforcement officer in Maine as it has the potential to keep Maine’s roadways safer and reduce the danger (not to mention the workload) for all.

Additionally, a conviction in BMV provides a license suspension that takes affect before the case is likely to be adjudicated in court. Defendants that are already under suspension are more likely to accept prosecution plea deals when their case adjudication comes up. This helps the system work more effectively. It’s also worth noting that refusal suspensions count as convictions for purposes of sentencing. 29-A M.R.S. §2411 (5); §2401(11).

Another benefit to complying with §2481 is that it provides better statistics for the State to track OUI offenses and adjudications. If reports aren’t sent the problem can’t be tracked. We know a problem with data collection exists, however, we are not precisely sure of its extent.

Lastly, while this is merely anecdotal evidence noted through conversations with Maine law enforcement, some agencies claim they don’t send in OUI arrest reports to BMV because a prosecutor is not present, and they do not feel fairly represented in Maine Bureau of Motor Vehicle Hearings. Likewise, they also argue that defense attorneys are often allowed to question them far “beyond the scope” of the issues for hearing.

While these issues are undoubtedly a concern to the extent that they present themselves, they can also be viewed as an opportunity for testimonial practice and discovery. In the post Covid world of the courts, there are not as many situations for less experienced officers to get practice testifying in court. BMV hearings provide such opportunity. And while defense attorneys may indeed be given more freedom within the “scope” of the BMV hearing than law enforcement might think is appropriate (and no doubt some attorneys may be “fishing”) that strategy is a double-edged sword. While the defense attorney may be exploring the law enforcement officer’s case, this provides an opportunity for the law enforcement officer to discover the strategy of the defense attorney. This may be beneficial when and if the case subsequently goes to trial, especially if the information is relayed to the prosecutor.

In closing, the main concern is for the State to be able to utilize the BMV’s administrative suspension procedure to get suspected impaired drivers off the road long before their court trial via the license suspension. This works only if all the stakeholders involved do their part. There are many benefits to all when a suspected impaired driver is put through this process.

Scot Mattox
Maine Traffic Safety Resource Prosecutor
Auburn, ME
July 2022

The Maine OUI Guide has been updated for 2022

The latest version is posted in the Maine Highway Safety Website: https://www.maine.gov/dps/bhs/impaired-driving/lep/documents.html Every OUI hunter should have a copy. Print one up for constant reference.
Recall Checks and Child Passenger Safety
A great time to check for vehicle safety recalls is during seat check events, when parents and professionals are focused on improving the safety for all occupants. Check To Protect is now part of the National Digital Car Seat Check Form, and we are encouraging all technicians to share recall results with families and urge them to schedule their free repairs.

Listen: Trucks and SUVs are getting bigger, D.C. wants owners to pay extra
Big trucks and SUVs are becoming more popular and they’re growing bigger and heavier by the year. These vehicles have an environmental impact, but also pose a safety risk to pedestrians.

Alcohol and Crash Risk
When people are impaired by alcohol, they may have poor judgment, impaired visual functions, declines in coordination and reduced reaction time (Moskowitz & Fiorentino, 2000; Moskowitz et al., 2000). Even when people don’t appear drunk, small amounts of alcohol may impair driving skills (Moskowitz & Fiorentino, 2000). As alcohol levels rise in a driver’s system, impairment also increases (Moskowitz et al., 2000).

Pedestrian Traffic Fatalities by State: 2021 Preliminary Data
GHSA’s annual spotlight report, Pedestrian Traffic Fatalities by State: 2021 Preliminary Data, offers the a comprehensive look at state and national trends in pedestrian deaths for 2021. The report projects that drivers struck and killed 7,485 people walking in 2021 – the

Five Automated Vehicle Safety Technologies That Save Lives, Explained – The next big thing in vehicle safety is autonomous safety vehicle technology. While there is no law that demands all cars to feature this technology, most new models include it in an effort to save lives, prevent countless injuries and bring down crash numbers. Read more >>
Breath Testing Device Operators

Observation Period Reminder

Just a reminder that the proper location to conduct the observation period prior to any breath test being conducted is at the breath testing device site. The BTD Operator should have all the necessary materials and paperwork required for the processing of the subject and subject breath test. An effort should be made to minimize all distractions during observation and testing so the operator can testify that a proper observation period was conducted. Closely staring at the test subject is not required although the operator must be in close enough proximity to see and hear any of the prohibitions that will void your process. (eat, smoke, drink, burp, belch, regurgitate, or place anything in their mouth). The operator should not leave the room or camera view, nor should they be performing SFSTs or other tasks during the observation period. The observation period is required for at least 15 minutes prior to any breath test and throughout the entire testing procedure.

Every observation period must start with a mouth check. Ask if the subject has anything in their mouth and visually inspect the mouth for any foreign objects that can be removed. Review the Breath Testing Device Operators Manual for the entire procedure.

We continue to have a high rate of success in impaired driver cases involving breath testing and use of the Intoxilyzer. The majority of the problems we see are with operator error and improper observation periods. JL

Did you know that Dirigo Safety is now the proud owner of

The Law Enforcement Officers Street Reference?

This iconic reference has been a staple to Maine Law Enforcement for over 25 years. Its size, simplicity, and dependability have made it a success. Dirigo Safety intends to keep it that way.

Departments & customers that received this book in the past will continue to do so by auto-ship. We will be reaching out soon for updated quantities and proper billing information.

We have some 2022 books still in stock. If you'd like to order please send an email to ashley.bedard@dirigosafety.com with: the number of books wanted, the email address for billing, and a mailing address. You will be emailed an invoice that you pay with a credit/debit card online. Once paid, we mail the book out. It's that easy!
DHHS Issued Blood Collection Kits

**Notification:**
HETL currently has 700 blood collection kits in house (Exp 04/2023) with 500 more secured with vendor. Our order of 500 blood collection kits shall be prioritized but fulfillment shall depend on product availability/shortages.

Please help preserve supplies by using kits with earlier expiration dates first!

To Order Blood Kits:
Email: Valerie.J.Leathers@maine.gov
Phone: 207-287-1712

Remember to fill out the Analysis Request Form (located in all DHHS issued kits) for all submitted blood samples.

For extra forms please contact: 207-287-1713 or Ellen.A.Fraser@maine.gov

**Important:**
If blood drug testing is not requested for a sample HETL shall only perform blood alcohol testing.
U.S. Traffic Deaths Reach 16-Year High.

New data released from NHTSA shows over 42,000 people died in motor vehicle crashes in 2021 - a 10.5% increase over 2020 data. NHTSA’s 2021 Early Estimates of Motor Vehicle Traffic Fatalities also highlights concerning increases in several types of roadway deaths, including pedestrians (up 13%), on urban roads (up 16%) and in speeding-related crashes (up 5%).

Pedestrian fatalities were up 17% for the first half of 2021 compared with 2020 according to GHSA’s new report, Pedestrian Traffic Fatalities by State: 2021 Preliminary Data. GHSA advocates a Safe System Approach to support a decrease in crashes, deaths, and injuries.

Sign up for Email Notifications of Child Seat Recalls If you are not already signed up to receive email notifications when a child seat or vehicle is recalled, we encourage you to sign up on the NHTSA website. You can also register your child seat or file a child seat complaint on this page.

Check for Recalls: Vehicle, Car Seat, Tire, Equipment | NHTSA
I want to take this opportunity to introduce myself and talk about some of the traffic safety programs AAA has to offer. I was just recently hired by AAA after a long career in law enforcement here in Maine. Throughout my law enforcement career, I was actively involved in traffic safety related initiatives. For over 25 years I taught Maine’s Driving Dynamic course offered by the Maine Bureau of Highway Safety. I am now a certified instructor for AAA’s Driver Improvement & Road Wise Programs.

Please keep me in mind for the listed traffic safety programs below that can be offered in your community. I welcome partnering with a law enforcement representative for each of these programs as you know your community best, and it supports good community relations.

“Keeping the keys” - This is a class for the mature driver with a focus on how our driving abilities change as a result of natural aging.

“Shifting Gears” - A program that provides evidence-based information about the dangers of marijuana-impaired driving.

School’s Open and School Safety Patrol programs.

“Dare to Prepare” – a workshop that provides resources and guides pre-permit teens (ages 14-17) and their parents through many important driving topics.

“Road Wise” - A driver improvement class for 55+.

If you are having a safety fair, please remember that AAA has impaired vision goggles, a driving simulator, Vince & Larry, and Buckle Bear outfits.

Please feel free to reach out to me at Baran.Thomas@NNE.AAA.com or by phone at 207-791-8578.

Be safe,
Tom Baran

Traffic Safety Award Recipients

- Jim Lyman, MCJA, was recognized for his steady support of the State’s impaired driving program and as the State’s DRE coordinator.
- Pat Mador and Marianne Lynch were recognized for their continued support of the OUI training and prosecution of impaired drivers. Their input has been much appreciated.
- Seth Allen, Maine State Police, is the Statewide Impaired Driving Coordinator and manages the DRE classes. He also travels across the state for DRE evals.
- Presenting the awards is Pat Moody, AAA NNE.

Thank you to all for their continued support to remove impaired drivers from our roadways.

What a great Impaired Driving Summit we just had in Augusta last month. We heard the heart tugging stories from people who lost loved ones due to impaired drivers. They’re the reason we work so hard. We learned about commercial vehicle enforcement and listened to a fantastic panel on the pitfalls of OUI investigations. This panel included prosecutors and defense attorneys offering suggestions for improved investigations. The nationally know Dr, Karl Citek spoke about HGN and how it differs from other types of nystagmus. Finally we learned some tips about how to improve your investigations using the body cameras. All great stuff. We anticipate another summit next year so watch for the announcement. Thank yuo to Dan Goodman and the AAA staff that brought this all together. TR
What is your first instinct when you see a cruiser roadside? You slow down and check your speed, even if you weren’t speeding. This is the desired effect we need to save lives and reduce crashes.

If you are doing reports or just taking a break consider doing it roadside where you have a high crash area. Let the motorists think you are looking for speeders.

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Speed

Speed has a major impact on the number of crashes and injury severity (Elvik, 2005). It influences the risk of crashes and crash injuries in three basic ways:

- It increases the distance a vehicle travels from the time a driver detects an emergency to the time the driver reacts.
- It increases the distance needed to stop a vehicle once the driver starts to brake.
- It increases the risk that an evasive steering maneuver will result in loss of control.

It increases the crash energy exponentially. For example, when impact speed increases from 40 to 60 mph (a 50 percent increase), the energy that needs to be managed increases by 125 percent.
2020 Fatality Analysis Reporting System (FARS) Data

FARS is a nationwide census providing NHTSA, Congress, and the American public data regarding fatal injuries suffered in motor vehicle traffic crashes. In 2020, 38,824 lives were lost in traffic crashes nationwide—the highest number of fatalities since 2007. While the number of crashes and traffic injuries declined overall, fatal crashes increased by 6.8%. The fatality rate per 100 million vehicle miles traveled increased to 1.34, a 21% increase from 2019. FARS data files and associated FARS reports and documentation are available for download now.

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<th>Research Confirms Roadway Safety Benefits of Traffic Enforcement</th>
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<td>WASHINGTON, D.C. – A new research study released yesterday by the National Highway Traffic Safety Administration (NHTSA) confirms that high visibility enforcement (HVE) of traffic safety laws has a positive and measurable impact on roadway safety by reducing dangerous driving behaviors that put road users at risk.</td>
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- The synthesis of existing research examined data across 80 studies on the relationship between HVE efforts and safety outcomes, with a focus on the dangerous driving behaviors that are some of the greatest behavioral contributors to crash fatalities: not buckling up; speeding; and drunk, distracted and aggressive driving. The results indicate that initiatives involving equitable enforcement and public outreach can reduce these risky behaviors, which makes roads safer for everyone using them. Specifically, the data showed that seat belt use rates increase an average of 3.5 percentage points when an HVE campaign is utilized. One additional checkpoint per 100,000 people per week increased the belt use rate by 0.76 percentage points, according to the analysis. Even relatively small increases in the belt use rate can translate to hundreds of lives saved. The federal “Click It or Ticket” seat belt enforcement program has proven incredibly successful, with U.S. belt use rates rising from only 58% in 1994 to more than 90% in 2020. But alarmingly, after years of steady progress, that rate fell slightly in 2020 during the first year of the COVID-19 pandemic when many police departments reduced traffic enforcement. “This study reinforces the need for equitable traffic enforcement focused on the most dangerous driving behaviors,” said Governors Highway Safety Association (GHSA) Executive Director Jonathan Adkins. “Over the past two years, traffic enforcement has declined in many parts of the country while traffic deaths surged.” The study also found that enforcement is effective at reducing other dangerous behaviors that are leading contributors to roadway fatalities. HVE campaigns focused on distracted driving, alcohol-impaired driving and speeding led to a reduction in hand-held phone use, lower rates of drunk driving crashes and citations, and decreased speeds in work zones, respectively. Each of those behaviors are incredibly dangerous and put everyone on the road at risk. “Enforcement alone will not solve the traffic safety crisis,” said Adkins. “We cannot simply enforce, build, design or educate our way out of this problem. The Safe System necessitates a comprehensive approach for achieving our collective goal of zero traffic deaths, including equitable enforcement that focuses on risky driver choices that endanger all road users.” The full research study is available here. The study was conducted by the National Cooperative Research and Evaluation Program (NCREP), a federal research program managed by NHTSA and GHSA with the objective of helping State Highway Safety Offices enhance their programs. The program was renamed the Behavioral Traffic Safety Cooperative Research Project (BTSCRP) in Federal Fiscal Year 2018, although the goal remains the same. More information about NCREP and BTSCRP is available on the GHSA website.
SAVE THE DATE

Northeast Transportation Safety Conference

SAFE SYSTEMS FOR ALL

OCTOBER 4–5, 2022 | HOLIDAY INN BY THE BAY | PORTLAND, ME

This innovative conference will bring together transportation safety specialists involved in law enforcement, research, engineering, education and advocacy, EMS, automotive, and state & municipal governments.

For more information contact Dan Goodman at goodman.daniel@nne.aaa.com or 207-780-6988.