

# Crash, Boom, Bang



Prosecuting Attorneys Institute  
Traffic Safety Resource Prosecutor  
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## Web Sites

WV Prosecuting Attorneys  
Institute  
[www.wypai.org](http://www.wypai.org)

National Highway Traffic  
Safety Administration  
[www.nhtsa.dot.gov](http://www.nhtsa.dot.gov)

National District Attorneys  
Association / American  
Prosecutors Research Institute  
[www.ndaa-apri.org](http://www.ndaa-apri.org)

Governor's Highway Safety  
Program  
[www.wvdot.com](http://www.wvdot.com)

WV State Police  
[www.wvstatepolice.com](http://www.wvstatepolice.com)

## Changes Coming to WV DUI Law

On October 8th, 2007, a joint Judicial sub-committee considering changes in the current DUI and related law heard from members of a special work group assigned to recommend changes. Following is a list of some of the modifications that the work group is considering making to the sub-committee:

DUI 1st, BAC < .15	No minimum 24 hours in jail. Maximum is still 6 months. Same fine.
Aggravated DUI 1st, BAC $\geq$ .15	New offense. 2 days to 6 months in jail.
DUI 2nd	Same penalties.
DUI 3rd	Same penalties.
Driving on Sus- pended—Non DUI Conviction	<i>1st Offense:</i> same penalty. <i>2nd Offense:</i> change the jail time from 10 days to 2-5 days. Same fine. <i>3rd Offense:</i> change the jail time from 6 months to 30-90 days. Same fine.
Driving on Re- voked—DUI Con- viction	<i>1st Offense:</i> change the jail time from 6 months to 30 days up to 6 months. Change the fine from \$100 to \$500, to \$250 to \$500. <i>2nd Offense:</i> same penalties. <i>3rd Offense:</i> same penalties.

Drunk driving is the nation's most frequently committed violent crime, killing someone every 31 minutes. Because drunk driving is so prevalent, about three in every ten Americans will be involved in an alcohol-related crash at some time in their lives. In 2003, an estimated 17,013 people died in alcohol-related traffic crashes in the United States. These deaths constituted 40 percent of the nation's 42,643 total traffic fatalities.

—Statistics courtesy of MADD.

According to the National Center of Addiction and Substance Abuse, a recent survey revealed that at least once a week on their school grounds, more than four million students see other students drink.

# Top Ten List

## For Effective Prosecution of DUI Cases

Adapted from an article featured in "Between the Lines," APRI National Traffic Law Center, Volume 12, Number 3.

### 1. Visit the Scene

You are the only one who hasn't been there. Do you really want the defendant to know more about the scene than you?

### 2. Get Booking Photographs

Often they are in stark contrast to the defendant's sober appearance in court. Also, compare defendant's drunken scribble on the booking log with his/her straight, sober signature on his/her driver's license.

### 3. Take the Same SFST Training as Officers

To explain standardized field sobriety tests (SFSTs) to a jury, you had better know them inside and out. For the latest on SFSTs, see the newly released CD-ROM from the National Highway Traffic Safety Administration (NHTSA), complete with instructions, validation studies and digital video suitable for demonstrative purposes in court. Check with the Traffic Safety Resource Prosecutor, Brian J. Lanham at the Prosecuting Attorneys Institute, or visit [www.dot.nhtsa.gov](http://www.dot.nhtsa.gov).

### 4. Spend Time with Your Toxicologist

More prosecutors need to understand retrograde extrapolation of blood alcohol tests. Can you explain the difference between a medical blood sample versus a forensic blood sample? Learn the research and limits of toxicology and what you can reasonably expect from a toxicologist. Check out Alcohol Toxicology for Prosecutors from APRI's Special Topic Series, available on-line.

### 5. Review Police Agency Checkpoint Policies

Are your local agencies complying with state and federal constitutional requirements?

### 6. Take a Breathalyzer Test

Take a field trip to your local police station, sheriff's office or state police office and spend twenty seconds blowing into the Intoximeter.

Drugs other than alcohol (e.g., marijuana and cocaine) are involved in about 18% of motor vehicle driver deaths. These other drugs are generally used in combination with alcohol (NHTSA 1993).

Each year, alcohol-related crashes in the United States cost about \$51 billion (Blincoe et al. 2002).

Most drinking and driving episodes go undetected. In 2002, about 1.5 million drivers were arrested for driving under the influence of alcohol or narcotics (NHTSA 2004). That's slightly more than one percent of the 120 million self-reported episodes of alcohol-impaired driving among U.S. adults each year (Dellinger et al. 1999).

More than two-thirds of child passengers ages 14 and younger who died in alcohol-related crashes during 1997–2002 were riding with the drinking driver; only 32% of them were properly restrained at the time of the crash (Shults 2004).

*Courtesy CDC,  
www.cdc.gov*

### **7. Know Procedures Regarding Medical Records**

Know how to obtain medical records. Also, many hospitals are slow to release records because of Health Insurance Portability and Accountability Act of 1996 (HIPAA).

### **8. Develop Strong Visual Skills**

Seeing is believing. If you don't use visual aids, juries will only retain 20% of what you say. Check with the Traffic Safety Resource Prosecutor if you need help or suggestions.

### **9. Build a Strong Relationship with Law Enforcement Agencies**

Do ride-a-longs or spend time at a sobriety checkpoint. Understand how your cases originate on the road and move into court. Participate in police in-service training. Invite officers to observe a DUI trial from jury selection to verdict. As in most things, a team approach makes everyone's job easier.

### **10. Remember, You Are Not Alone**

While a cadre of defense attorneys may await your next visit to court, you are not outnumbered. A strong national, state and local community of prosecutors and other professionals is waiting to help you in a number of ways. Contact the Traffic Safety Resource Prosecutor for more information.

## **ALCOHOL IS SOCIETY'S OLDEST, LEGAL AND MOST POPULAR DRUG.**

\* A standard drink is defined as 12 ounces of beer, 5 ounces of wine, or 1.5 ounces of 72-proof distilled spirits, all of which contain the same amount of alcohol—about .54 ounces.

\* Beer is the drink of choice in most cases of heavy drinking, binge drinking, drunk driving and underage drinking.

\* Beer is the drink most commonly consumed by people stopped for alcohol-impaired driving or involved in alcohol-related crashes.

\* Alcohol-related fatalities are caused primarily by the consumption of beer (80 percent) followed by liquor/wine (20 percent).

- *Statistics courtesy MADD*

The speed of alcohol absorption affects the rate at which one becomes drunk. Unlike foods, alcohol does not have to be slowly digested. The average person metabolizes alcohol at the rate of one drink per hour. As a person drinks faster than the alcohol can be eliminated, the drug accumulates in the body, resulting in higher and higher levels of alcohol in the body.

## **Save the Date**

Winter Prosecuting Attorneys Conference

February 13-15, 2008

Charleston, WV

Summer Prosecuting Attorneys Conference

June 25-27, 2008

Wheeling, WV



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