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Impaired Driving:
Keeping Up With the Latest Trends And
The Tools to Combat It

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ABSTRACT

Law enforcement deals with an abundance of different types of crimes on a daily basis. Each crime is unique and as crime itself evolves, law enforcements way to deal with those crimes also evolves. New technology available to law enforcement helps combat those crimes. Impaired drivers have cost the public billions of dollars in damages and claims yet some agencies and officers shy away from driving while intoxicated investigations.

There are tools available to law enforcement right now that have little to no cost of burden on the agency but have the ability to enhance the way that agencies and officers see DWI enforcement. It may not be possible to make every officer enjoy working a DWI investigation, but with these new tools, the process can be less intimidating and more manageable. As the trends in impaired driving changes, law enforcement agencies should be utilizing drug recognition experts (DRE), the Law Enforcement Advanced DUI/DWI Reporting System (LEADRS) program, and saturated patrols to prevent injury and death related to impaired driving crashes. The use of these three tools has been proven to reduce the number of impaired driving collisions and arrest when implemented. The LEADRS program reduces the time spent on paperwork associated with impaired driving arrest, and the DRE program assists with making drug impaired driving cases more solid during trial and prosecution.

TABLE OF CONTENTS

Page

INTRODUCTION

Today's work force is changing in many different ways, and much of that has to do with technology. Law enforcement is no exception to this, and there are many other factors that keep officers and administrators alike on their toes. One of the most rapidly changing crimes that officers see to date is the evolution of a different kind of impaired driver. Throughout history, impaired driving has been strictly associated with a person who is operating a motor vehicle under the influence of alcohol alone. Over the past decade, there has been a tremendous increase in the number of persons driving under the influence of illicit drugs and therapeutic drugs. The purpose of this research paper is to identify the growing trends of impaired driving and the latest tools afforded to law enforcement to combat the problem (Hayes, 2010).

Two traffic officers from the Los Angeles Police Department (LAPD) started a program back in the 1970's that quickly became one of the most successful international programs at targeting drug-impaired drivers (Hayes, 2003). That program has become known as the Drug Recognition and Classification Program (DECP), and certified officers that complete the training are known as Drug Recognition Experts (DRE). As great as the DECP program has become, it is just one of the newest tools offered to law enforcement officers when combating impaired drivers.

It is well known throughout the law enforcement community that another hurdle to combating impaired driving is the time that it takes to process a driver from the initiation of the stop to the booking paperwork being completed at the jail. In 2004, the Texas Municipal Police Association (TMPA) created a web based reporting system for Driving While Intoxicated (DWI) reports. This system was aimed at shortening the time officers

spent on the actual arrest but it did not compromise the case, future testimony, and it pre-populated numerous forms that required the same information. This allowed officers to make the DWI arrest and helped them get back onto the streets faster.

Another tool to combat impaired driving has become the use of saturated patrols and mock sobriety checkpoints. Even though Texas is still one of the few states that outlaws sobriety check points, the idea of posting "phantom or mock" checkpoints and then saturating an area with enforcement officers has been quite beneficial (Walden & Walden, 2012). Research has indicated that sobriety checkpoints that are well publicized, are conducted frequently, and are highly visible can serve as a deterrent to impaired (Association for the Advancement of Automotive Medicine, 2008)

Law enforcement administrators are rapidly taking fire for drug impaired driving deaths and serious injury caused by impaired drivers within their jurisdictions. This research paper is a road map of the latest tools out there for officers to be trained in and to be utilized. As the trends in impaired driving changes, law enforcement agencies should be utilizing drug recognition experts, the Law Enforcement Advanced DUI/DWI Reporting System program, and saturated patrols to prevent injury and death related to impaired driving crashes. Impaired drivers cost the public approximately $230 billion a year and the innocent citizen's end up picking up half of that bill (Hayes, 2010). Law enforcement should do everything possible to correct the problem.

POSITION

When the DECP was developed in the late 1970's, the founding officers realized that there was a need to better train officers on the signs, symptoms, and evaluation of drivers under the influence of drugs or the combination of drugs. What the founding

officers created as a training need has become one of the greatest tools available to modern policing in the area of drug impaired driving. In the early 1980's, there was a two stage validation study done to prove that the program worked. John Hopkins University in Maryland conducted a laboratory validation and the Los Angeles Police Department conducted field validations with actual impaired drivers to document the validity of the evaluation process. The results of the field study showed that DRE's correctly identified the drug category for 90% of subjects that were impaired. The laboratory study showed that officers correctly identified the category of drug for 91% of those subjects impaired by strong doses of drugs (NHTSA, 2010).

Much like the widely used and validated Standardized Field Sobriety Test (SFST), the DRE 12-step process was put to the test before it would be allowed in court. As with any new crime fighting tool, the courts and defense counsels argued that the validity of the evaluation was not admissible because it was scientific in nature. This was true but once the data was reviewed from the major field studies, the process was generally accepted amongst the relevant scientific community. Therefore, the science behind the process met the Frye standard. This standard comes from the court case Frye v. United States (1923). The Frye case dealt with the admissibility of a polygraph examiners testimony and general admissibility of the polygraph results since the polygraph was considered scientific. The court ultimately ruled that the practice gained general acceptance in the particular field in which it belonged. This led the way for expert testimony on the behalf of Drug Recognition Experts.

Fast forward nearly 40 years and the DECP is being utilized in numerous countries abroad. The country is seeing a noticeable increase in the number of

impaired drivers that are either under the influence of a drug, multiple drugs, or alcohol and drugs (Hayes, 2010). The technical term for having more than one drug in your system at one time is poly drug use. Even though alcohol is considered a drug, it still singled out due to its overwhelming general association with drunk driving. The DECP evaluates drivers not only under the influence of illicit drugs but also prescription medications. These prescription drugs can be a medicinal dose that when taken with other medications can impair the ability of a person to operate a motor vehicle, but more often than not, the issue is that of over medicating or taking medicine that does not belong to the person driving.

The trained DRE knows that all drugs are broken into seven separate drug categories. These categories are central nervous system depressant, central nervous system stimulant, hallucinogens, dissociative anesthetics, narcotic analgesics, inhalants, and cannabis. When a DRE evaluation is conducted, it is done in a systematic method so that any DRE in any country could look over his/her notes and be able to make the same conclusion. Over the past ten years, Texas DRE's have submitted a total of 18,747 evaluated cases and 11,920 have had toxicology results. Of those cases with toxicology results, the DRE's have an 80.71% accuracy rate at identifying the drug category or multiple drug categories that the driver was impaired by (www.sobrietytesting.org, 2013). To date, there are roughly 74,000 licensed police officers in Texas and only approximately 400 certified DRE's. As valuable of tool the DECP program has become in the fight against drug impaired drivers, agency administrators should be asking themselves why so few are certified. The training is all free through the Sam Houston State University yet it is seldom utilized by agencies.

Very few other training classes or certification classes make a participant a certified "expert" in his/her field for no cost to the agency. The reality is that in 2009, a study of all fatality drivers that were impaired and had toxicology results showed that one out of every three drivers was impaired on an illicit drug (NTSB, 2009).

One of the most discussed issues amongst police officers regarding DWI arrest is the time that it takes to process a drunk driver coupled with the fact that the charge is only a misdemeanor for a first offense, with the exception of certain enhancements. In 2001, the TMPA organization heard the cries of local and state law enforcement officials and decided to do something that would simplify the DWI arrest process (TMPA, 2013). The organization came up with the Law Enforcement Advanced DUI/DWI Reporting System (LEADRS).

The program did not go online as a pilot program until 2004 and has since exceeded all performance expectations by its designers. The initial hope was that the program would reduce DWI reporting by a third of the time it had taken in years past. After only a short time in the pilot phase, LEADRS users were reporting DWI arrest taking less than half the time to complete compared to the pre-LEADRS reporting (TMPA, 2013). The programs main goal was to reduce DWI reporting time by eliminating redundant data entry on multiple forms and by automatically completing forms necessary for prosecution. The program allows the user to input data such as an arrestees name on a main page and that is then populated in all other forms such as DIC paperwork, blood draw affidavits, and blood search warrants.

The program also goes through simple yes/no check boxes that cover everything from SFST's to things that the officer may or may not have seen on the scene. The

program has become a favorite among prosecutors because it covers every aspect of the DWI case from the original probable cause for the stop to the evidence collection and witness/suspect statements. The LEADRS program is a vital tool for law enforcement agencies as a whole but its affects are greatly seen in smaller agencies were freeing up man power by reducing report writing and overtime is a constant dilemma. A survey of several LE agencies in Texas back in 2009 was conducted, and each agency was asked if they had the man power to handle lengthy arrest. The survey indicated that 82% of the agencies responded that manpower would be an issue (Compton, 2009). Yet another tool that agencies have become fond of is the saturation patrols. These targeted patrols in conjunction with media coverage have decreased the number of impaired drivers in an area. Saturation patrols involve an increased enforcement effort, targeting a specific area, to identify and arrest impaired drivers.

It is well known that Texas is one of only ten states that does not allow the use of sobriety check points. A sobriety check point is identified as a law enforcement strategy of stopping vehicles in a specific sequence, such as every other vehicle or every fourth, fifth, or sixth vehicle through a designated point. The sequence varies greatly in the man power allotted for the check point. Sobriety check points have been highly regarded as one of the single best enforcements at targeting impaired drivers. Texas A&M University's Texas Transportation Institute also did an intense study of the success that sobriety check points have had across the country, yet Texas has failed to come on board (Walden & Walden, 2012).

With sobriety check points being out of the question for the time being, saturation patrols are the next best thing. Saturation patrols/dedicated patrols in areas where

impaired drivers have been a major problem can be just as effective as or more effective than a sobriety check point (IIHS, 2013). While sobriety check points yield fewer arrest than saturation patrols, it is more of a deterrent as a whole. Saturation patrols target a larger geographic area and garnish more arrest and enforcement that those provided by sobriety check points. The two enforcement actions working together would be the ideal way to do specialized enforcement because the check point would cause impaired drivers to go out of their way to avoid being detected and the saturation patrol would target the routes around the sobriety check point. According to the Centers for Disease Control and Prevention in 2002, the use of sobriety check points has been shown to reduce the number of alcohol related crashes by approximately 20% (Centers for Disease Control and Prevention, 2002). The fight against impaired driving is clearly an uphill battle but utilizing every tool out there gives law enforcement agencies the ability to close the distance between the epidemic and the solution.

COUNTER POSITION

When it comes to utilizing Drug Recognition Experts (DRE's), one of the first complaints by agencies and some prosecutors is that there is no need to waste the time and resources of a department on a drug evaluation when blood or urine is provided. The logic behind this is that if there is toxicology to support impairment, the DRE evaluation is not needed. While the fact that toxicology results are very influential in impaired driving cases, the results are not as cut and dry as those in an alcohol related arrest alone. With the rise in impaired drivers using prescription medication (Hayes, 2010), having a toxicology result that only shows drugs in the system only supports that the user was taking his or her prescribed medication at the time of the arrest.

The use of the DRE allows the trained officer to show impairment at the time of the arrest was due to a level of intoxication associated with a non-medicinal dose of medication, if it was in fact a prescribed medication. The trained DRE can testify that at the conclusion of the standardized and systematic evaluation, the driver was impaired on one of the seven drug categories and that impairment rendered the driver unable to operate a motor vehicle. Assuming that the impaired driver was only under the influence of one drug and that drug was prescribed to him or her, toxicology results do very little to enhance a drug impaired driving case without DRE testimony. The trained DRE also has the knowledge to conclude that an impaired driver is suffering from a medical condition which the typical standardized field sobriety test would not have concluded. This relieves and agencies liability from arresting an ill person versus an intoxicated one.

The LEADRS program has been in existence for nearly nine years but little is known about it by many agencies. Some of the issues that have been brought up in regards to its use are the fact that the software does not integrate with the agency's current reporting software. Many agencies require that a report be generated with their reporting software so that name screens and narratives can be researched in the future. This would require agencies to duplicate DWI reporting with the use of LEADRS, furthering man power issues and overtime. Another issue is that smaller agencies or underfunded agencies do not have internet capabilities in the patrol cars or laptops for booking at the jail which makes an internet based reporting program useless.

To alleviate the issue of duplicating the DWI reports, most agencies have adapted to LEADRS by merely generating a case report within the agencies own

reporting system and then referring the narrative back to the LEADRS site. All the information is searchable online just as it would be from the agencies own system. Others have allowed support staff or records personnel to copy and paste as much as needed from the LEADRS report into the agencies report writing system. The LEADRS site is protected and readily available to the District Attorney's office for review as soon as it is inputted. This speeds up trial dates and the need for supplement information.

Agencies with budget constraints can utilize grant funds, seizure funds, and red light camera profits for the purchase of laptops and internet capabilities. The use of LEADRS can be considered a traffic enforcement issue and an officer safety issue as its use has been proven to get officers back out on the street quicker during DWI arrest. For a small agency, having an officer back on the streets quicker for other duties is beneficial in many ways.

When it comes to sobriety check points, other states have proven that they can be successful but little can be done in Texas with it still being considered illegal. Pressure by law enforcement and private interest organizations such as MADD can push legislatures to get on board with other states and join in on more proactive policing when it comes to the issue of impaired driving. Some citizens and defense attorneys argue that saturation patrols and check points only violate ones constitutional right to be free from illegal search and seizure. One prominent Houston based DWI defense attorney wrote "we believe that nearly every motorist stopped will be arrested and subjected to a blood draw or breath test whether true probable cause exists or not" (Floyd & Sinclair, 2010, para 14).

It is this type of misinformation that scares the law abiding public and paints law enforcements efforts in a bad light. What the attorney and others alike do not talk about is that fact that during sobriety check points and "no refusal" weekends the average blood alcohol concentration found in drivers that refuse to provide breath samples was 0.19 when blood was drawn (James, 2013).   That is twice the legal limit in Texas. The saturation patrols do not allow officers to stop citizens without probable cause but it does step up traffic enforcement in designated areas. Officers may use charges like defective equipment, speeding, disregarding traffic control devices, etc. as probable cause and a precursor for DWI investigations. The truth is that saturation patrols and sobriety check points deter impaired driving and are part of the solution when dealing impaired driving related crashes (MADD, 2012).

RECOMMENDATION

After completing the research for this paper, it is evident, more now than ever, that law enforcement agencies have got to get on board with proactive policing and the latest trends in combating impaired driving. Agencies should seek out neighboring agencies to see what is and is not working in their areas in regards to reducing and ultimately eliminating impaired driving. Some of the most recent advances in that fight are the use of Drug Recognition Experts, the web based LEADRS reporting system, and saturation patrols in areas of concern. There are also state and regional summits and seminars were law enforcement, attorneys, and private interest groups come to together to talk about what is new in the fight.

Agencies that are not keeping up with technology or the latest training and response techniques to target impaired driving are just as guilty of contributing to the

problem. For decades, officers have complained about the DWI process, the time it takes to book in a suspect and the inability to stand up to rigorous questioning during trial. The use of DRE's and LEADRS solves most of the issues that are spoken so negatively about on a routine basis. Saturation patrols are just another tool to prevent or deter impaired driving in an area.

Agencies that are not aware of how a DRE helps in drug impaired driving cases need to reach out to agencies that do rely on them. The same can be said for contacting prosecutors and seeing just how crucial DRE testimony can be to a case at trial. If agencies are not large enough to allow officers to be trained as DRE's, they should partner with neighboring agencies to have their DRE's available for cases as needed.

As technology changes, some agencies prefer to stay in the dark for fear that proposing something new would just slow down things at the patrol level. The implementation of the LEADRS program is one of the easiest things that law enforcement can do to make it easier and more comfortable for officers to make DWI arrest. It literally takes the uncertainty out of the paperwork and allows officers to overcome their fear of the process. LEADRS is a free program that comes with free department training by TMPA. Rarely does an agency come across a free program and training that has the capability to reduce paperwork, decreases the time it takes an officer to get back on the street after a DWI arrest, reduces overtime, and improves cases for testimony at trail.

Since Texas has not overturned its ruling that sobriety check points are illegal in this state, law enforcement agencies need to do the next best thing and that is

saturation patrols. Saturation patrols have been proven to deter and considerably reduce the number of impaired driver crashes in a geographic area. Some defense attorneys and civil rights organizations counter that the saturation patrols are just another form of sobriety check point where innocent drivers are subjected to illegal stops and seizures. The truth is that the stats show that the saturation patrols can be an effective and proactive way to target impaired driving. Recent studies have shown that more than 82% of the general public supports saturation patrols and sobriety check points with the approval rating increasing to 90% after they begin the enforcement (M.A.D.D., 2012).

Combating impaired driving is without a doubt an uphill battle but with law enforcement agencies keeping up with the latest technology and trends it is a battle that can be suppressed if not eliminated. Agencies spend thousands of dollars on property crime prevention, drug interdiction, and other crime but very little is spent to prevent injury and death caused by impaired driving. Even proponents of some of the impaired driving initiatives cannot argue that Texas is leading many states with impaired driving deaths/injury and cost per person for impaired driving crashes. Law enforcement has to take a stand against the epidemic and empower officers with the tools to combat it.

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