

**Sobriety Checkpoints: Synthesis of Issues**  
**Prepared for Steve Reinmuth,**  
**Director, WSDOT Government Relations**  
**Prepared by**  
**Kathy Lindquist, WSDOT Research Office**  
**With assistance from**  
**Michel Wendt, WSDOT Library**

**January 26, 2007**

*Transportation Synthesis Reports (TSR's) are brief summaries of currently available information on topics of interest to WSDOT staff. Online and print sources may include newspaper and periodical articles, NCHRP and other TRB programs, AASHTO, the research and practices of other state DOT's and related academic and industry research. Internet hyperlinks in the TSR's are active at the time of publication, but host server changes can make them obsolete.*

**Request for Report**

Summary of the Issue:

Steve Reinmuth, WSDOT Director of Government Relations, in collaboration with the Washington State Patrol and the Washington Traffic Safety Commission requested information on the constitutional issues related to sobriety checkpoints and state privacy laws. A quick look at analyses from newspaper features, studies, reviews, commentaries was done on the issue of sobriety checkpoints in use in states with strong privacy laws. The Fourth Amendment to the United States Constitution states that: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Thus the Constitution would appear to prohibit people from being stopped without a search warrant or at least without probable cause that they have committed a crime. The U.S. Supreme Court has, however, found sobriety checkpoints to be constitutionally permissible.

Searches have been allowed in certain cases under "special needs." The "special needs" exception applies to situations in which law enforcement directly conducts searches and seizures without individualized suspicion for the purpose of minimizing a risk of harm.

In *Michigan Department of State Police v. Sitz*, (19) the Court held that the removal of drunk drivers pursuant to a sobriety checkpoint program, under which all vehicles passing through the checkpoint were stopped and their drivers briefly examined for signs of intoxication, did not violate the Fourth Amendment. The fact that approximately 1.5 percent of drivers passing through the checkpoint were arrested for alcohol impairment was sufficiently effective to justify the state's interest in implementing the program. The purpose of the checkpoint was not to gather evidence of criminal activity but to deter drunk driving, which posed a significant public hazard.

Even though there are allowances for sobriety checkpoints and many states allow them, eleven states have found that sobriety roadblocks violate their own state constitutions and have outlawed them. Washington and ten other states including Alaska, Idaho, Iowa, Michigan, Minnesota, Oregon, Rhode Island, Texas, Wisconsin, and Wyoming, do not permit sobriety checkpoints.

Sobriety checkpoints, alone, do not appear to solve the impaired driver problem. Research shows approximately half of all legally impaired drivers stopped at checkpoints, including the hardcore, go through undetected (Simpson and Robertson 2001). When implemented alone, sobriety checkpoints may not be the most effective enforcement tactic. According to the literature, sobriety checkpoints are most effective when used as a part of a comprehensive enforcement program.

This paper includes approaches to detecting impaired drivers that have demonstrated success in a comprehensive strategy of enforcement and education. Background on state privacy laws is provided as well as information on other comprehensive programs to detect impaired drivers.

Key Terms searched:

Sobriety checkpoints  
DWI checkpoints and state laws  
Impaired drivers  
Mother's Against Drunk Driving (MADD)  
Supreme Court and sobriety roadblocks  
State privacy laws and sobriety checkpoints

Published research reports:

**Drinking and Driving: A road safety manual for decision-makers and practitioners  
2007**

The Global Road Safety Partnership has released a report that explores ways to develop coordinated and integrated programs to reduce drinking and driving. The report explores the problem assessment process and how to plan and implement an anti-drinking and driving program. It also examines ways to develop a plan, provides examples of laws and the type of enforcement needed, and reviews how to develop public education and publicity campaigns, and discusses how to evaluate a program.

<http://www.grsproadsafety.org/themes/default/pdfs/Drinking%20Driving%20Manual.pdf>

**What are DWI checkpoints, and are they legal?**

DWI checkpoints are roadblocks set up by law enforcement agencies on selected roads and highways to stop and detain individuals suspected of driving while intoxicated. Much like a roadblock that is established for border crossings or agricultural checks, officers use a neutral policy in which to stop vehicles and check the sobriety of the driver. If the driver appears intoxicated (with slurred speech, glassy eyes, etc.) officers will ask the driver to exit the vehicle and perform field sobriety tests. If the driver is deemed intoxicated, appropriate detention will follow.

Although there has been much debate over whether such roadblocks constitute illegal search and seizure, in 1990, the U.S. Supreme Court ruled that if sobriety checkpoints comply with federal requirements, they do not violate any constitutional amendments and are considered legal. In fact, many states have established their own guidelines to comply with federal rules including providing public notice on the location of checkpoints with reasons why particular locations are selected. Also, the Supreme Court found that the need to reduce alcohol-related accidents more than justified the minimal intrusion accompanying checkpoint procedures, thus allowing sobriety roadblocks to remain effect.

<http://resources.lawinfo.com/index.cfm?action=results1&cat=117&act=faq&keywords=&state=&subcatid=260&i=a>

**Opinion: Why Are DUI Sobriety Checkpoints Constitutional?**

*Attorney Lawrence Taylor explains the constitutionality of DUI roadblocks.  
Thursday, January 26, 2006*

Have you ever wondered how police can stop you at a DUI roadblock (aka "sobriety checkpoint")? Doesn't the Constitution require them to have "probable cause before stopping you"? Yes and no explains Lawrence Taylor who heads up a team of California DUI attorneys that specialize in DUI defense...



The Constitution of the United States clearly says that police can't just stop someone and conduct an investigation unless there are "articulable facts" indicating possible criminal activity. So how can they do exactly that with drunk driving roadblocks? Good question. And it was raised in the case of *Michigan v. Sitz*, in which the Michigan Supreme Court striking down DUI roadblocks as unconstitutional. In a 6-3 decision, however, the U.S. Supreme Court reversed the Michigan court, holding that they were constitutionally permissible.

[http://www.glasgowaccess.org.uk/articles/Legal\\_194/Why-Are-DUI-Sobriety-Checkpoints-Constitutional-122674.html](http://www.glasgowaccess.org.uk/articles/Legal_194/Why-Are-DUI-Sobriety-Checkpoints-Constitutional-122674.html)

### **Understanding Federal and State Courts Case Study**

*Michigan Department of Police v. Sitz*  
496 U.S. 444 (1990)

*Sitz v. Michigan Department of Police*  
193 Mich. App 690 (1993)

The judges and court volunteers will guide students through the case of *Michigan Department of Police v. Sitz*. This case explores (1) the nature of the two court systems (federal and state) that make up the American judicial system and (2) how they interact with each other.

This case study provides an actual case to serve as the basis for examining the differences, similarities, and interactions between the federal and state court systems. These cases demonstrate many of the key concepts that this lesson teaches. Among other things, it demonstrates how a case involving a state legal issue can make its way into the federal court system. It also provides examples of the cases that each court system handles. In addition, it demonstrates that while the U.S. Supreme Court is the final arbiter of the U.S. Constitution, the individual state supreme courts are the final arbiters of their respective state constitutions.

[http://www.uscourts.gov/outreach/resources/fedstate\\_casestudy.htm](http://www.uscourts.gov/outreach/resources/fedstate_casestudy.htm)

### **Summary of Decisions Concerning Constitutionality of Sobriety Checkpoints**

as of April 2006 (no changes since March 2002)

[http://www.iihs.org/laws/state\\_laws/pdf/checkpoints.pdf](http://www.iihs.org/laws/state_laws/pdf/checkpoints.pdf)

### **The "Special Needs" Exception to the Warrant Requirement**

*The Free Library*

By MARTIN J. KING, J.D. FBI Academy

This article examines the "special needs" exception as applied to situations in which law enforcement directly conducts searches and seizures without individualized suspicion for the purpose of minimizing a risk of harm.

In *Michigan Department of State Police v. Sitz*, (19) the Court held that the removal of drunk drivers pursuant to a sobriety checkpoint program, under which all vehicles passing through the checkpoint were stopped and their drivers briefly examined for signs of intoxication, did not violate the Fourth Amendment. The fact that approximately 1.5 percent of drivers passing through the checkpoint were arrested for alcohol impairment was sufficiently effective to justify the state's interest in implementing the program. The purpose of the checkpoint was not to gather evidence of criminal activity but to deter drunk driving, which posed a significant public hazard.

<http://www.thefreelibrary.com/The+%22special+needs%22+exception+to+the+warrant+requirement-a0148279782>

### **THE CENTURY COUNCIL NATIONAL Hardcore DRUNK DRIVER PROJECT**

Research shows approximately half of all legally impaired drivers stopped at checkpoints, including the hardcore, go through undetected (Simpson and Robertson 2001). When implemented alone, sobriety checkpoints may not be the most effective enforcement tactic; it should be used as a part of a comprehensive enforcement program.

Where to Go for More Information on Sobriety Checkpoints Fell, J. et al. Winter 2002. Why sobriety checkpoints are not widely adopted as an enforcement strategy in the United States.

*Impaired Driving Update*. Kingston, NJ: Civic Research Institute, Inc.

Lacey, J.H., Jones, R.K, and Smith, R.G. 1999. *Evaluation of Checkpoint Tennessee: Tennessee's Statewide Sobriety Checkpoint Program*. Washington, DC: National Highway Traffic Safety Administration.

Miller, T.R., Galbraith, M.S., and Lawrence, B.A., 1998. Costs and benefits of a community sobriety checkpoint program. *Journal of Studies on Alcohol*: 462–468.

National Highway Traffic Safety Administration. July 17, 2002. Highway Checkpoint Strikeforce Debuts for July Fourth Holiday:

Multi-State Blitz to Enforce Laws Against Impaired Driving, *NHTSA Now*, Volume 8, No. 7.

National Highway Traffic Safety Administration. June 2001. *Saturation Patrols and Sobriety Checkpoints: A How-to-Guide for Planning and Publicizing Impaired Driving Enforcement Efforts*. Washington, DC: National Highway Traffic Safety Administration.

Shults, R.A., et al. 2001. Reviews of evidence regarding interventions to reduce alcohol-impaired driving. *American Journal of Preventive Medicine*.

[http://dwidata.org/downloads/hdd\\_sourcebook1.pdf](http://dwidata.org/downloads/hdd_sourcebook1.pdf)

*Technical Report*, January 1999

### ***Evaluation of Checkpoint: Tennessee's Statewide Sobriety Checkpoint Program***

John H. Lacey  
Ralph K. Jones  
Randall G. Smith

Prepared for:

U.S. Department of Transportation  
National Highway Traffic Safety Administration Washington, DC 20590

Mid-America Research Institute, Inc. of New England Winchester, Massachusetts

Sobriety checkpoints have long been known to be an effective impaired driving enforcement method. In a review of the literature, it was concluded that the accumulation of positive findings for visible and well-publicized checkpoints provide support for the proposition that sobriety checkpoints are capable of reducing the extent of alcohol-impaired driving and of deaths and injuries on the highway (Ross, 1992a). However, until recently, checkpoints have generally only been implemented in the United States (U.S.) on a local level.

While these results have been encouraging, for various reasons (Ross 1992b) very few states in the U.S. have embarked on statewide sobriety checkpoint programs. Based upon their potential effectiveness, and the strong evidence from Australia on their random breath testing (RBT) program (Homel, 1990), the National Highway Traffic Safety Administration (NHTSA) decided to conduct a demonstration project in a state that was willing to change its philosophy and approach about checkpoints.

Shortcut to: <http://www.nhtsa.dot.gov/people/injury/research/ChkTenn/ChkptTN.html>

### ***Legality in the United States***

The Fourth Amendment to the United States Constitution states that: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or

things to be seized." Thus the Constitution would appear to prohibit people from being stopped without a search warrant or at least without probable cause that they have committed a crime.

However, the United States Supreme Court, in *Michigan Department of State Police vs. Sitz* (1990), found properly conducted sobriety checkpoints to be constitutional. The Michigan Supreme Court had found sobriety roadblocks to be a violation of the Fourth Amendment. In a 6-3 decision, the U.S. Supreme Court reversed. Although acknowledging that such checkpoints violate a fundamental constitutional right, Chief Justice Rehnquist argued that they are necessary in order to reduce drunk driving.

Dissenting justices argued that the Constitution doesn't provide exceptions. "That stopping every car might make it easier to prevent drunken driving ... is an insufficient justification for abandoning the requirement of individualized suspicion", dissenting Justice Brennan insisted.

Chief Justice Rehnquist argued that an exception was justified because sobriety roadblocks were effective and necessary. On the other hand, dissenting Justice Stevens countered that "the findings of the trial court, based on an extensive record and affirmed by the Michigan Court of Appeals, indicate that the net effect of sobriety checkpoints on traffic safety is infinitesimal and possibly negative." And even if roadblocks were effective, the fact that they work wouldn't justify violating individuals' constitutional rights, some justices argued.

Although the U.S. Supreme Court has found sobriety checkpoints to be constitutionally permissible, eleven states have found that sobriety roadblocks violate their own state constitutions or have outlawed them. [1]

[http://en.wikipedia.org/wiki/Sobriety\\_checkpoints](http://en.wikipedia.org/wiki/Sobriety_checkpoints)

### ***Passive Alcohol Sensors: A Study Focusing on their Use, Performance, Effectiveness, and Policy Implications for Traffic Enforcement***

Prepared For:  
Governor Scott McCallum

By: WISCONSIN DEPARTMENT OF TRANSPORTATION

December, 2002

#### **Governor's Mandate**

This study is being conducted at the request of Governor Scott McCallum. On August 30, 2001, Governor McCallum signed 2001 Wisconsin Act 16 (the budget bill) into law. Previous to enactment, language included in Act 16 would have banned the use of passive alcohol sensors in Wisconsin. Governor McCallum vetoed this language (Section 2882m) and directed that the Wisconsin Department of Transportation study the effectiveness and use of passive alcohol sensors including consideration of the legal issues pertaining to their use. In his veto message, Governor McCallum raised two issues about passive alcohol sensors that he felt should be addressed: (1) concerns regarding the accuracy of the devices, and (2), ensuring the consideration of privacy rights"

#### **Purpose of this Report and Intended Audience**

This report summarizes the legal, enforcement and technical research conducted for this study as well as information gathered through the focus groups and survey research that was used to solicit opinions, perceptions and other ideas with respect to the use and effectiveness of passive alcohol sensors and the legal and policy implications associated with their use.

The focus of this study is on the use of passive alcohol sensors in **traffic enforcement**. However, non-traffic enforcement (e.g., to detect alcohol use in schools, the workplace and at large public gatherings such as music concerts) is also reviewed and discussed to a lesser degree.

The results of this report will be provided to the Governor, the legislature and any other interested parties and citizens. The purpose of this study is to meet the Governor's charge, which includes providing meaningful input from law enforcement.

## **Summary of Decisions Concerning Constitutionality of Sobriety Checkpoints**

as of April 2006 (no changes since March 2002)

Alabama **Upheld under Federal Constitution.** Driving into private driveway to avoid a checkpoint justified a stop. *Smith v. State*, 515 So. 2d 149 (Ala. Cr. App. 1987). See also *Cains v. State*, 555 So. 2d 290 (Ala. Cr. App. 1989), *Brunson v. State*, 580 So.2d 62 (Ala. Cr. App. 1991), and *McInnish v. State*, 584 So.2d 95 (Ala. Cr. App. 1991). General checkpoint to deter trouble. impermissible under *Hagood v. Town of Town Creek*, 628 So.2d 1057 (Ala. Cr. App. 1993).

Alaska **No state authority.**

Arizona **Upheld under Federal Constitution.** *State v. Superior Court*, 143 Ariz. 45, 691 P.2d 1073(1984). In *State v. Tykwinski*, 824 P.2d 761 (Ariz. App. 1991), defendants tried to suppress evidence obtained at a checkpoint. Because the checkpoint itself was legal, the evidence was admitted.

Arkansas **Upheld under State and Federal Constitution.** *Brouhard v. Lee*, 125 F.3d 656 (8th Cir. 1997), *Mullinax v. State*, 938 S.W.2d 801 (Ark. 1997). See also *Coffman v. State*, 26 Ark. App. 45, 759 S.W.2d 573 (1988); *Tims v. State*, 26 Ark.App. 102, 760 S.W.2d 78(1988); *Camp v. State*, 26 Ark.App. 299, 764 S.W.2d 463 (1989).

California **Upheld under State and Federal Constitution.** *Ingersoll v. Palmer*, 743 P.2d 1299 (Cal. 1987), *People v. In Re Richar T.*, 750 P.2d 297 (Calif. 1988) (No. 88-318), cert. den., 488 U.S. 986 (1988), 109 S. Ct. 542, 102 L.Ed.2d 572. In *People v. Banks*, the California Supreme Court held that advance publicity is not necessary for a checkpoint to be valid. 6 Cal.4th 926, 863 P.2d 769, 25 Cal.Rptr.2d 524 (1993).

Colorado **Upheld under State and Federal Constitution.** *People v. Rister*, 803 P.2d 483 (Colo. 1990), *Orr v. People*, 803 P.2d 509 (Colo. 1990). The *Rister* court held that the Colorado Constitution should be interpreted as coextensive with the federal constitution with regard to checkpoints.

Connecticut **Upheld under State Constitution.** *State v. Mikolinski*, 775 A.2d 274 (Conn. 2001).

Delaware **Upheld under state law and Federal Constitution.** *Delaware v. Prouse*, 440 U.S. 648 (1979). A trial court has held that a legally executed U-turn in advance of a checkpoint did not justify a stop. *Howard v. Voshell*, 621 A.2d 804 (Del. Super. 1992).

District of Columbia **Upheld under Federal Constitution.** *Galberth v. U.S.*, 590 A.2d 990 (D.C. App. 1991); *U.S. v. McFayden*, 865 F.2d 1306 (D.C. Cir. 1989) upheld license and registration checks. The *McFayden* court found that when the principal purpose of a checkpoint is to regulate traffic using license and registration checks, the fact that the effort has benefits with regard to other offenses does not make an otherwise legal checkpoint invalid. *Duncan v. U.S.*, 629 A.2d 1 (D.C. App. 1993) follows *McFayden*.

Florida **Upheld under Federal Constitution.** *State v. Jones*, 483 So. 2d 433 (1986). *Campbell v. State*, 679 So.2d 1168 (Fla. 1996) found a checkpoint deficient under *Jones* because the written guidelines were insufficient, especially with regard to the method for choosing which vehicle(s) to stop. A delay of less than five minutes before a driver was asked to exit the vehicle was found to be permissible. *Cahill v. State*, 595 So.2d 258 (Fla. App. 4 Dist. 1992).

Transportation Research Information Services (TRIS) Search

### **Hard Core Drinking Drivers Have Drawn Extra Attention in Recent Years**

**AN:** 01033316

**Journal:** Status Report, Vol. 41 No. 7

**Corp. Authors/Publisher:** Insurance Institute for Highway Safety

**Year:** 2006

**Document:** <http://www.iihs.org/sr/pdfs/sr4107.pdf>; <http://www.iihs.org/sr/pdfs/sr4107.pdf>

**Database:** TRIS Online

***Low-Manpower Checkpoints: Can They Provide Effective DUI Enforcement in Small Communities?***

**AN:** 01000278

**Authors:** Lacey, John H; Ferguson, Susan A; Kelley-Baker, Tara; Rider, Raameses P

**Corp. Authors/Publisher:** Insurance Institute for Highway Safety

**Year:** 2005

**Database:** TRIS Online

***PUTTING RESEARCH INTO ACTION: SOBRIETY CHECKPOINTS SAVE LIVES***

**AN:** 00987734

**Authors:** Fell, J C; Lacey, J H; Voas, R B

**Conference:** Putting Research Into Action: A Symposium on the Implementation of Research-Based Impaired Driving Countermeasures

**Journal:** Transportation Research E-Circular

**Corp. Authors/Publisher:** Transportation Research Board

**Year:** 2005

**Document:** <http://trb.org/publications/circulars/ec072.pdf>

**Database:** TRIS Online

***THE PASSPOINT SYSTEM--PASSIVE SENSORS AT MINICHECKPOINTS: BRINGING AUSTRALIA'S RANDOM BREATH TEST SYSTEM TO THE UNITED STATES***

**AN:** 00987735

**Authors:** Voas, R B; Lacey, J H; Fell, J C

**Conference:** Putting Research Into Action: A Symposium on the Implementation of Research-Based Impaired Driving Countermeasures

**Journal:** Transportation Research E-Circular

**Corp. Authors/Publisher:** Transportation Research Board

**Year:** 2005

**Document:** <http://trb.org/publications/circulars/ec072.pdf>

**Database:** TRIS Online

***COMMENTARY ON ENFORCEMENT CHALLENGES***

**AN:** 00987736

**Authors:** Page, T E

**Conference:** Putting Research Into Action: A Symposium on the Implementation of Research-Based Impaired Driving Countermeasures

**Journal:** Transportation Research E-Circular

**Corp. Authors/Publisher:** Transportation Research Board

**Year:** 2005

**Document:** <http://trb.org/publications/circulars/ec072.pdf>

**Database:** TRIS Online

***REFLECTING ON THE ALCOHOL-IMPAIRED DRIVING PROBLEM WORLDWIDE AND WHAT TO DO ABOUT IT***

**AN:** 01001715

**Journal:** Status Report, Vol. 40 No. 4

**Corp. Authors/Publisher:** Insurance Institute for Highway Safety

**Year:** 2005

**Document:** <http://www.highwaysafety.org/sr/pdfs/sr4004.pdf>

**Database:** TRIS Online

***SOBRIETY CHECKPOINTS: THEY DETER IMPAIRED DRIVERS, AND THEY DON'T REQUIRE DOZENS OF POLICE OFFICERS TO CONDUCT***

**AN:** 01001716

**Journal:** Status Report, Vol. 40 No. 4

**Corp. Authors/Publisher:** Insurance Institute for Highway Safety

**Year:** 2005

**Document:** <http://www.highwaysafety.org/sr/pdfs/sr4004.pdf>

**Database:** TRIS Online

***Illinois v. Lidster: Continuing to Carve Out Constitutional Vehicle Checkpoints***

**AN:** 01010604

**Journal:** Journal of Criminal Law & Criminology, Vol. 95 No. 3

**Corp. Authors/Publisher:** Northwestern University School of Law

**Year:** 2005

**Database:** TRIS Online

***Evaluation of Four State Impaired Driving Enforcement Demonstration Programs: Georgia, Tennessee, Pennsylvania and Louisiana***

**AN:** 01025160

**Authors:** Fell, James C; Langston, Elizabeth A; Tippetts, A. Scott

**Conference:** Association for the Advancement of Automotive Medicine 49th Annual Conference

**Journal:** Association for the Advancement of Automotive Medicine 49th Annual Proceedings

**Corp. Authors/Publisher:** Association for the Advancement of Automotive Medicine

**Year:** 2005

**Database:** TRIS Online

***SOBRIETY CHECKPOINTS: EVIDENCE OF EFFECTIVENESS IS STRONG, BUT USE IS LIMITED***

**AN:** 00977447

**Authors:** Fell, J C; Lacey, J H; Voas, R B

**Journal:** Traffic Injury Prevention, Vol. 5 No. 3

**Corp. Authors/Publisher:** Taylor & Francis Limited

**Year:** 2004

**Database:** TRIS Online

***2005 ROADMAP TO STATE HIGHWAY SAFETY LAWS: ROADWORK AHEAD: THE UNFINISHED SAFETY AGENDA***

**AN:** 00985820

**Corp. Authors/Publisher:** Advocates for Highway and Auto Safety

**Year:** 2004

**Document:** <http://www.saferoads.org/Roadmap2005.pdf>

**Database:** TRIS Online

***BATTLING DUI: A COMPARATIVE ANALYSIS OF CHECKPOINTS AND SATURATION PATROLS***

**AN:** 00943444

**Authors:** Greene, J W

**Journal:** FBI Law Enforcement Bulletin, Vol. 72 No. 1

**Corp. Authors/Publisher:** Federal Bureau of Investigation

**Year:** 2003

**Database:** TRIS Online

***NATIONAL SURVEY OF DRINKING AND DRIVING, ATTITUDES AND BEHAVIOR: 2001. VOLUME I: SUMMARY REPORT***

**AN:** 00962874

**Authors:** Royal, D

**Corp. Authors/Publisher:** Gallup Organization; National Highway Traffic Safety Administration

**Year:** 2003

**Database:** TRIS Online

***NATIONAL SURVEY OF DRINKING AND DRIVING, ATTITUDES AND BEHAVIOR: 2001. VOLUME II: METHODS REPORT***

**AN:** 00962875

**Authors:** Royal, D

**Corp. Authors/Publisher:** Gallup Organization; National Highway Traffic Safety Administration

**Year:** 2003



**Database:** TRIS Online

***WHAT CAN BE DONE? : SOME LESSONS FROM PAST SUCCESSES AGAINST DUI***

**AN:** 00962314

**Journal:** Traffic Safety Center Newsletter, Vol. 1 No. 3

**Corp. Authors/Publisher:** University of California, Berkeley

**Year:** 2003

**Document:** <http://www.tsc.berkeley.edu/html/newsletter/Summer03/PastSuccesses.html>

**Database:** TRIS Online

***BRINGING DUI HOME: REPORTS FROM THE FIELD ON SELECTED PROGRAMS***

**AN:** 00962318

**Journal:** Traffic Safety Center Newsletter, Vol. 1 No. 3

**Corp. Authors/Publisher:** University of California, Berkeley

**Year:** 2003

**Document:** <http://www.tsc.berkeley.edu/html/newsletter/Summer03/Programs.html>

**Database:** TRIS Online

***WHY ARE SOBRIETY CHECKPOINTS NOT WIDELY ADOPTED AS AN ENFORCEMENT STRATEGY IN THE UNITED STATES?***

**AN:** 00963972

**Authors:** Fell, J C; Ferguson, S A; Williams, A F; Fields, M

**Journal:** Accident Analysis and Prevention, Vol. 35 No. 6

**Corp. Authors/Publisher:** Elsevier

**Year:** 2003

**Database:** TRIS Online

***DWI CHECKPOINTS WORK***

**AN:** 00965119

**Journal:** Status Report, Vol. 38 No. 2

**Corp. Authors/Publisher:** Insurance Institute for Highway Safety

**Year:** 2003

**Document:** <http://www.highwaysafety.org/sr/pdfs/sr3802.pdf>

**Database:** TRIS Online

***DUI COUNTERMEASURES IN CALIFORNIA: WHAT WORKS AND WHAT DOESN'T, WITH RECOMMENDATIONS FOR LEGISLATIVE REFORM***

**AN:** 00941463

**Authors:** Helander, C J

**Corp. Authors/Publisher:** California Department of Motor Vehicles

**Year:** 2002

**Document:** [http://www.dmv.ca.gov/about/profile/rd/r\\_d\\_report/Section%205/197-SB%20776%20Report.pdf](http://www.dmv.ca.gov/about/profile/rd/r_d_report/Section%205/197-SB%20776%20Report.pdf)

**Database:** TRIS Online

***EVALUATION OF KENTUCKY'S "YOU DRINK AND DRIVE. YOU LOSE" CAMPAIGN***

**AN:** 00933729

**Authors:** Agent, K R; Green, E R; Langley, R E

**Corp. Authors/Publisher:** University of Kentucky, Lexington

**Year:** 2002

**Document:** [http://www.ktc.uky.edu/Reports/KTC\\_02\\_28\\_KSP1\\_02\\_2F.pdf](http://www.ktc.uky.edu/Reports/KTC_02_28_KSP1_02_2F.pdf)

**Database:** TRIS Online

***SOBRIETY TESTS FOR LOW BLOOD ALCOHOL CONCENTRATIONS***

**AN:** 00932319

**Authors:** McKnight, A J; Langston, E A; McKnight, A. S.; Lange, J E

**Journal:** Accident Analysis and Prevention, Vol. 34 No. 3

**Corp. Authors/Publisher:** Elsevier

**Year:** 2002

**Database:** TRIS Online

***SOBRIETY CHECKPOINTS WORK BUT THEY AREN'T USED OFTEN***

**AN:** 00817000

**Journal:** Status Report, Vol. 36 No. 6

**Corp. Authors/Publisher:** Insurance Institute for Highway Safety

**Year:** 2001

**Document:** <http://www.iihs.org/sr/pdfs/sr3606.pdf>

**Database:** TRIS Online

***WHY AREN'T SOBRIETY CHECKPOINTS WIDELY ADOPTED AS AN ENFORCEMENT STRATEGY IN THE UNITED STATES?***

**AN:** 00923462

**Authors:** Fell, J C; Ferguson, S A; Williams, A F; Fields, M

**Conference:** Association for the Advancement of Automotive Medicine 45th Annual Proceedings

**Journal:** Publication of: ASSOCIATION FOR THE ADVANCEMENT OF AUTOMOTIVE MEDICINE

**Corp. Authors/Publisher:** Association for the Advancement of Automotive Medicine

**Year:** 2001

**Database:** TRIS Online

***EVALUATION OF CHANGES IN NEW MEXICO'S ANTI-DWI EFFORTS***

**AN:** 00792156

**Authors:** Lacey, J H; Jones, R K

**Corp. Authors/Publisher:** Mid America Research Institute; National Highway Traffic Safety Administration

**Year:** 2000

**Document:**

[http://www.nhtsa.dot.gov/people/injury/research/NewMexico\\_dwi/NewMexico\\_DWI.html](http://www.nhtsa.dot.gov/people/injury/research/NewMexico_dwi/NewMexico_DWI.html)

**Database:** TRIS Online

***LEGISLATION AND ENFORCEMENT ASSOCIATED WITH A 19 PERCENT REDUCTION IN ALCOHOL-RELATED FATAL CRASHES IN NEW MEXICO***

**AN:** 00797021

**Journal:** TRAFFIC TECH No. 216

**Corp. Authors/Publisher:** National Highway Traffic Safety Administration

**Year:** 2000

**Document:** <http://www.nhtsa.dot.gov/people/outreach/traftech/pub/tt216.html>

**Database:** TRIS Online

***SATURATION PATROLS & SOBRIETY CHECKPOINTS: A HOW-TO GUIDE FOR PLANNING AND PUBLICIZING IMPAIRED DRIVING ENFORCEMENT EFFORTS***

**AN:** 00798857

**Corp. Authors/Publisher:** National Highway Traffic Safety Administration

**Year:** 2000

**Document:** [http://www.nhtsa.dot.gov/people/injury/alcohol/saturation\\_patrols/index.html](http://www.nhtsa.dot.gov/people/injury/alcohol/saturation_patrols/index.html)

**Database:** TRIS Online

***SOBRIETY CHECKPOINTS AND SATURATION PATROLS***

**AN:** 00822658

**Corp. Authors/Publisher:** National Highway Traffic Safety Administration

**Year:** 2000

**Database:** TRIS Online

***HOW TO MAKE SOBRIETY CHECKPOINTS WORK***

**AN:** 00762804

**Authors:** Graham, S

**Journal:** Traffic Safety (Chicago), Vol. 99 No. 2

**Corp. Authors/Publisher:** National Safety Council; National Safety Council

**Year:** 1999  
**Database:** TRIS Online

***EFFECTIVE USE OF DETERRENCE APPROACHES TO REDUCE ALCOHOL-IMPAIRED DRIVING***

**AN:** 00764806  
**Authors:** Williams, A F  
**Conference:** Combating Impaired Driving in an Era of Diminished Resources and Shifting Priorities  
**Journal:** Transportation Research Circular No. 487  
**Corp. Authors/Publisher:** Transportation Research Board  
**Year:** 1999  
**Database:** TRIS Online

***NORTH CAROLINA'S "BOOZE IT & LOSE IT" PROGRAM***

**AN:** 00764815  
**Authors:** PARKER, J  
**Conference:** Combating Impaired Driving in an Era of Diminished Resources and Shifting Priorities  
**Journal:** Transportation Research Circular No. 487  
**Corp. Authors/Publisher:** Transportation Research Board  
**Year:** 1999  
**Database:** TRIS Online

***EVALUATION OF CHECKPOINT TENNESSEE: TENNESSEE'S STATEWIDE SOBRIETY CHECKPOINT PROGRAM***

**AN:** 00765911  
**Authors:** Lacey, J H; Jones, R K; Smith, R G  
**Corp. Authors/Publisher:** Mid America Research Institute; National Highway Traffic Safety Administration  
**Year:** 1999  
**Document:** <http://www.nhtsa.dot.gov/people/injury/research/ChkTenn/ChkptTN.html>  
**Database:** TRIS Online

***FIELD SOBRIETY TESTING: A SWORD OR A SHIELD?***

**AN:** 00765003  
**Authors:** Gilbert, D T  
**Journal:** Traffic Safety (Chicago), Vol. 99 No. 3  
**Corp. Authors/Publisher:** National Safety Council; National Safety Council  
**Year:** 1999  
**Database:** TRIS Online

***GOTCHA!***

**AN:** 00781956  
**Authors:** SMITH, N  
**Journal:** Move, Vol. 4 No. 3  
**Corp. Authors/Publisher:** American Association of Motor Vehicle Administrators  
**Year:** 1999  
**Database:** TRIS Online

***IN-VEHICLE VIDEOTAPING OF DRINKING DRIVER TRAFFIC STOPS IN OREGON***

**AN:** 00759068  
**Authors:** Jones, B  
**Journal:** Accident Analysis and Prevention, Vol. 31 No. 1  
**Corp. Authors/Publisher:** Elsevier  
**Year:** 1999  
**Database:** TRIS Online

***DRINKING DRIVERS MISSED AT SOBRIETY CHECKPOINTS***

**AN:** 00742391

**Authors:** Wells, J K; Greene, M A; Foss, R D; Ferguson, S A; Williams, A. F

**Journal:** Journal of Studies on Alcohol, Vol. 58 No. 5

**Corp. Authors/Publisher:** Alcohol Research Documentation, Incorporated; Rutgers University, New Brunswick

**Year:** 1997

**Database:** TRIS Online

***SUMMARY OF IMPORTANT STATUTORY PROVISIONS AND COURT DECISIONS CONCERNED WITH DRUNK DRIVING***

**AN:** 00927574

**Corp. Authors/Publisher:** National Highway Traffic Safety Administration

**Year:** 1997

**Document:** <http://ntl.bts.gov/lib/17000/17000/17026/PB2000106878.pdf>;

<http://www.nhtsa.dot.gov/people/injury/alcohol/pub/alcsumry.pdf>

**Database:** TRIS Online

***STATE CAMPAIGNS NAB DRUNK DRIVERS***

**AN:** 00715349

**Authors:** Graham, S

**Journal:** Traffic Safety (Chicago), Vol. 96 No. 1

**Corp. Authors/Publisher:** National Safety Council; National Safety Council

**Year:** 1996

**Database:** TRIS Online

***EARLY EVALUATION OF A STATEWIDE SOBRIETY CHECKPOINT PROGRAM***

**AN:** 00714748

**Authors:** CASTLE, S P; Thompson, J D; Spataro, J A; SEWELL, C M; Flint, S; Schirmer, J; Justice, M; LACEY, J

**Conference:** Proceedings of the 39th Annual Meeting of the Association for the Advancement of Automotive Medicine

**Journal:** Publication of: ASSOCIATION FOR THE ADVANCEMENT OF AUTOMOTIVE MEDICINE

**Corp. Authors/Publisher:** ASSOCIATION FOR THE ADVANCEMENT OF AUTOMOTIVE MEDICINE; Association for the Advancement of Automotive Medicine

**Year:** 1995

**Database:** TRIS Online

***EXPERIMENTAL EVALUATION OF SOBRIETY CHECKPOINT PROGRAMS. FINAL REPORT***

**AN:** 00719533

**Authors:** Stuster, J W; Blowers, P A

**Corp. Authors/Publisher:** Anacapa Sciences, Incorporated

**Year:** 1995

**Database:** TRIS Online

***DWI System Improvements for Dealing with Hard Core Drinking Drivers***

Conducted by the Traffic Injury Research Foundation

## Washington State Case Law on Sobriety Checkpoints

### (D) Sobriety checkpoints

*Law enforcement is prohibited by the [state Supreme] Court's decision to conduct sobriety checkpoints, in which vehicles are stopped on a nondiscriminatory basis to determine whether operators are driving while impaired by alcohol or other drugs.<sup>1</sup> Sobriety checkpoints have proven to be an effective tool for law enforcement officers across the nation in reducing the incidence of impaired driving. Although federal courts have ruled that sobriety checkpoints are legal, the Washington State courts have ruled them to be unconstitutional under the State Constitution.<sup>2</sup>*

The state Constitution provides that “no person shall be disturbed in his private affairs, or his home invaded, without authority of law.”<sup>3</sup> While this provision resembles the Fourth Amendment to the U.S. Constitution,<sup>4</sup> our courts have found that it provides a greater protection of individual privacy than the Fourth Amendment. Generally, the state Supreme Court has held that a search or seizure is not valid unless it is authorized by a warrant, or falls within a few narrow exceptions to the warrant requirement.<sup>5</sup> In 1988, the state Supreme Court prohibited the Seattle Police Department from operating a checkpoint program in which all drivers were stopped, at predetermined times and places based on data involving impaired driving, and those showing signs of impairment were arrested for DUI. Less than one percent of the stops resulted in DUI arrests.<sup>6</sup>

Noting that both the state and federal courts had recognized a privacy interest in one's vehicle, Justice Utter's majority opinion held that “because sobriety checkpoints involve seizures, they are valid only if there is ‘authority of law.’”<sup>7</sup> Since checkpoints did not fall within any of the exceptions the Court had recognized to the warrant requirement, the majority found that “no argument has been presented to this court that would bring the checkpoint program within any possible interpretation of the constitutionally required ‘authority of law.’” The Seattle sobriety checkpoint program therefore violated petitioners' rights under article I, section 7.”<sup>8</sup>

In a concurring opinion, Justice Dolliver suggested that Seattle's checkpoint program should have been overturned only because it had not been authorized by a properly written state or local law. “A sobriety checkpoint program, properly authorized by statute or ordinance, could be designed which would violate neither Const. art. I, 7, nor the Fourth Amendment,”<sup>9</sup> he wrote for himself and two other justices. To be valid, he suggested, a checkpoint program should be based on a statute balancing the state's interest in reducing impaired driving with the individual's interest in privacy, taking into consideration the amount of discretion allowed to officers at the checkpoints, the location of checkpoints, advance notice to approaching drivers, safety of the checkpoints, notice to the public at large, how long drivers are stopped, how thorough the program's guidelines are, and how vehicles are chosen to be stopped.<sup>10</sup>

Justice Dolliver's opinion sought to provide guidance, based on decisions of the federal courts and other states as they existed in 1988, for a possible state or local law authorizing checkpoints.

---

<sup>1</sup> Assessment Report, p. 37.

<sup>2</sup> Assessment Report, p. 42.

<sup>3</sup> Const. Art. I, sec. 7.

<sup>4</sup> “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated....” U.S. Const. Amend. IV.

<sup>5</sup> *State v. Gunwall*, 106 Wn.2d 54 (1986); *State v. Stroud*, 106 Wn.2d 144 (1986); *State v. Myrick*, 102 Wn.2d 506 (1984), and numerous other cases. When the state's Constitution was adopted by a convention in 1889, the delegates considered and rejected language identical to the Fourth Amendment, choosing instead the language that remains in the Constitution.

<sup>6</sup> *Seattle v. Mesiani*, 110 Wn.2d 454 (1988).

<sup>7</sup> *Mesiani*, 110 Wn.2d at 457.

<sup>8</sup> *Mesiani*, 110 Wn.2d at 458.

<sup>9</sup> Concurring opinion in *Mesiani*, 110 Wn.2d at 460.

<sup>10</sup> Concurring opinion in *Mesiani*, 110 Wn.2d at 463.

## Sobriety Checkpoints

Sobriety checkpoints provide an effective enforcement strategy against drunk driving. Checkpoints present a highly visible way to catch violators, but their greatest benefit may be deterring people from driving drunk by increasing the perceived risk of arrest.

Sobriety checkpoints are most effective when they are highly publicized and when the consequences of drinking with a BAC above the legal limit are highly publicized, too.

Checkpoints are particularly useful in pinpointing hardcore drunk drivers because the face-to-face contact allows the officer to spot drivers who have a higher alcohol tolerance and, despite high BAC levels, may have modified their driving behavior to avoid detection. Checkpoints are also a good way to apprehend people driving with a suspended or revoked license due to an alcohol related offense.

### Where Are Sobriety Checkpoints Used?

According to the National Hardcore Drunk Driver Project Survey, sobriety checkpoints are used in 38 states and the District of Columbia.

### How Effective Are Sobriety Checkpoints?

Publicized DWI enforcement that includes sobriety checkpoints can be effective in identifying the hardcore drinking driver and in reducing alcohol-involved driving and alcohol-related crashes (National Transportation Safety Board 2000). A recent review of 23 sobriety checkpoint studies (Shults et al. 2001) found:

- Crashes thought to involve alcohol dropped a median of 20 percent following implementation of sobriety checkpoints that used selective breath testing (where police administer a breath test only to drivers suspected to have been drinking).
- Fatal crashes thought to involve alcohol dropped a median of 23 percent following implementation of sobriety checkpoints.
- Crashes declined regardless of the follow-up time of the study, dropping a median of 18 percent for follow-up times of less than one year and 17 percent for follow-up times of more than one year.

Since then, the U.S. Supreme Court has upheld sobriety checkpoints.<sup>11</sup> It is therefore possible that a state statute or local ordinance consistent with the U.S. Supreme Court's decision would provide the "authority of law" that the Seattle checkpoint program clearly lacked when the state Supreme Court overturned it in 1988.

It is less than likely that the state Supreme Court would uphold even the most carefully designed state or local law authorizing sobriety checkpoints, because its decisions so far have required either a warrant or a specific exception unrelated to checkpoints.<sup>12</sup> But the Court has not considered a case involving a statute or ordinance authorizing checkpoints. No such law authorized Seattle's checkpoint program in 1988, and it can be argued, consistent with Justice

---

<sup>11</sup> *Michigan State Police v. Sitz*, 496 U.S. 444 (1990). The U.S. Supreme Court found that Michigan's checkpoint program met a three-part balancing test it had previously prescribed for "seizures" that fell short of arrest and were not based on individualized suspicion (*Brown v. Texas*, 443 U.S. 47 (1979)). The *Brown* test requires consideration of the importance of the state's interest in reducing impaired driving, the degree to which stopping motorists at checkpoints advances that interest, and the magnitude of the intrusion on individual motorists' privacy.

<sup>12</sup> The exceptions are searches incident to arrest, inventory searches after impoundment, evidence in plain view, suspicion-based investigative stops, consent, and exigent circumstances. None would apply to checkpoints where every vehicle is stopped, however briefly, to check the driver for signs of impairment. For a discussion of related issues in the context of ferry passenger screening, see Perkins, "Capsized by the Constitution," 79 *Washington Law Review* 725 (2004).

Dolliver's concurrence, that the *Mesiani* case does not preclude upholding such a law.<sup>13</sup> Checkpoints offer enough enforcement potential<sup>14</sup> to warrant considering carefully drafted legislation authorizing them.<sup>15</sup>

---

<sup>13</sup> Washington courts have addressed the statutory issue only obliquely. In *State v. White*, 97 Wn.2d 92 (1982), the Supreme Court invalidated (on vagueness grounds) a "stop and identify" statute requiring citizens to provide information "lawfully required" of an individual by a "public servant," and, under Article I, section 7, excluded a confession obtained under the statute's authority, even when the initial stop was based on reasonable suspicion. In *State v. Thorp*, 71 Wn.App. 175 (1993), the Court of Appeals invalidated a suspicionless stop to check a truck for a permit, under a county ordinance authorizing any peace officer to stop and search any vehicle carrying over five pounds of cedar. Citing both *Mesiani* and the Fourth Amendment, the appeals court invalidated the ordinance to the extent that it purported to authorize a roving stop not based on individualized suspicion. But that ordinance was much broader than any sobriety checkpoint law should be. In *State v. Ladson*, 138 Wn.2d 343 (1999), the Supreme Court invalidated a pretext-based traffic stop, citing *Mesiani* to mean that "the warrant requirement is especially important under...the Washington Constitution as it is the warrant which provides the 'authority of law' referenced therein." However, no language in the *Mesiani* opinion itself says that a warrant is the only possible "authority of law" for a seizure. In *State v. Walker*, No. 76743-2 (July 13, 2006), the Supreme Court upheld a statute authorizing warrantless arrests based on probable cause for certain misdemeanors, noting that "it is the probable cause requirement in such statutes that makes them constitutional." By its nature, a sobriety checkpoint stops all drivers, regardless of probable cause, however briefly.

<sup>14</sup> Although only a small percentage of drivers stopped at checkpoints may show evidence of impairment, a well-publicized checkpoint program can deter impaired driving. A year-long, statewide checkpoint program in Tennessee resulted in DUI arrests of about half of one percent of the 145,000 drivers stopped at 882 checkpoints, but an estimated 20% reduction in alcohol-related fatal crashes (Lacey, Jones, and Smith, *Evaluation of Checkpoint Tennessee*, National Highway Traffic Safety Administration, 1999, available at <http://www.nhtsa.dot.gov/people/injury/research/ChkTenn/ChkptTN.html>). Checkpoints may involve large commitments of police manpower, but can be run effectively with fewer officers (see *Low-Staffing Sobriety Checkpoints*, National Highway Traffic Safety Administration, [http://www.nhtsa.dot.gov/people/injury/enforce/LowStaffing\\_Checkpoints/index.htm](http://www.nhtsa.dot.gov/people/injury/enforce/LowStaffing_Checkpoints/index.htm)).

<sup>15</sup> Checkpoints appear to be constitutionally permitted in 39 states. Five of these states also authorize them by statute. Hawaii, Nevada, and North Carolina allow law enforcement agencies to conduct them on their own authority (Hawaii Rev. Stat. 291E-19 and 20; Nevada Rev. Stat. 484-359; North Carolina Gen. Stat. 20-16.3A). New Hampshire and Utah require prior approval of a magistrate (New Hampshire Rev. Stat. Ann. 265:1-a; Utah Code Ann. 77-23-101-105). The Insurance Institute for Highway Safety has compiled a summary of state checkpoint laws and court decisions, available at [http://www.iihs.org/laws/state\\_laws/pdf/checkpoints.pdf](http://www.iihs.org/laws/state_laws/pdf/checkpoints.pdf).