

Addendum to the Sobriety Checkpoints Synthesis

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Request for Report

Summary of the issue:

Steve Reinmuth, WSDOT Government Relations Director, 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. This is an addendum to the initial TSR, which was completed early last year. A recent search reveals two cases from New Hampshire and North Carolina in which the constitutionality of sobriety checkpoints were tried in court. Other sources continue to recommend such checkpoints, and other methods, to reduce impaired driving.

Key terms searched:

Sobriety checkpoints and liability issues

Recent case law:

Supreme Court rules Portsmouth DWI roadblocks were legal

New Hampshire Union Leader (Manchester, NH), May 28, 2007

By the Associated Press

This article describes how the New Hampshire Supreme Court ruled to uphold evidence obtained at a sobriety checkpoint, overturning the ruling of a lower court. Five defendants argued that the checkpoint was unconstitutional, because no aggressive advance notice occurred. The Supreme Court disagreed, noting that aggressive advanced notice of such a checkpoint was a state attorney general guideline, not law. Roadblocks organized by the Portsmouth police were advertised on the same day in a Dover-based newspaper. The court said that had more newspapers published the announcement, "it may have been better," but "one was enough."

The following article describes the same ruling.

Same-day notice of sobriety checkpoint is constitutional

By Lawyers USA

A public notice about a sobriety checkpoint published in the media the day before it was established did not violate the state constitution, the New Hampshire Supreme Court has ruled.

A local police chief petitioned the local court for a warrant and order authorizing a sobriety checkpoint beginning three days later. The petition included a press release dated the next day and a proposed order. It also described the signage that would notify approaching motorists of the checkpoint, the ongoing alcohol compliance program of the police department and the intended broad media campaign.

The judge granted the petition two days later, and the press release was distributed to several local media outlets that same day. However, the press release appeared in only one local paper. The police then operated the checkpoint as scheduled. The five defendants were arrested for allegedly driving under the influence.

They sought to suppress the evidence, arguing the checkpoint was unconstitutional because no aggressive advance notice occurred.

But the court disagreed.

"Aggressive notice ... is a worthwhile aspirational goal, not a constitutional requirement. ... [T]he [police department] did what it promised to do in its petition; it sent a detailed press release to many media outlets. Apparently, only one decided to print it. While more may have been better, we hold that in this case, one was enough. ...

"[W]e note that the sobriety checkpoints in this point were part of a broader, multi-faceted program for detecting and deterring impaired motorists and that [the police chief] stated ... that all of the ... initiatives in this area 'carry with them heightened media attention.' In light of that ... we hold that the timing and amount of advance notice in this case" did not violate the state constitution.

State v. Hunt (Lawyers USA No. 9936042) New Hampshire Supreme Court No. 2005-938. May 25, 2007.

http://www.lawyersweeklyusa.com/subscriber/archives_FTS.cfm?page=USA/07/7020732.htm&reclD=410007&QueryText=sobriety%20and%20checkpoints

North Carolina Court of Appeals Issues Opinion Regarding State of North Carolina v. Anthony Burroughs

US States News, August 21, 2007

In this report the North Carolina Court of Appeals reversed an order of a trial court to suppress evidence obtained at a DWI checkpoint. The defendant had argued that the checkpoint was unconstitutional. The Court of Appeals found that no evidence was brought forward to suggest that the stated purpose of the checkpoint (sobriety), which the court and the state Supreme Court declared constitutional, was a mask for another, unconstitutional purpose. Available evidence in fact showed that the purpose of the checkpoint was the same as its state purpose: to check for sobriety.

However, further evidence was requested to determine if the actual stop of the defendant was conducted in a constitutional manner. The Court of Appeals cited the state Supreme Court in *State v. Mitchell*, 358 N.C. 63, 592 S.E.2d 543 (2004), "checkpoint stops conform to the Fourth Amendment if they are reasonable. '[W]e must judge [the] reasonableness [of a checkpoint stop], hence, its constitutionality, on the basis of individual circumstances.'"

More information on reducing impaired driving:

Traffic “Checkpoints”: When can we use them?

Police Liability Beat 12 (2), March 2004

By John Makhholm, Esquire

This opinion article provides a summary of constitutional issues surrounding traffic checkpoints for the law enforcement sector. Important cases are noted, including Michigan Dept. of State Police v. Sitz (discussed in the initial Sobriety Checkpoint TSR). The article offers suggestions to law enforcement agencies operating traffic checkpoints, such as evaluating such operations in light of current case law and familiarizing officers with appropriate procedure and Fourth Amendment rights.

<http://www.policeattorneys.net/articles/policeliabilitybeat.html>

State of Safety in the Region: Report of the Regional Safety Council, 2007

By the Houston-Galveston Area Council, February 2, 2007

This report describes the traffic safety and provides solutions for a region that leads the state of Texas in virtually every type of crash and leads the nation in alcohol-related fatalities per capita. The Regional Safety Council focuses on four specific safety problems: (1) reducing DUI/DWI crashes, (2) reducing aggressive driving, (3) improving freight safety, and (4) improving safety information systems (p. v).

Sobriety checkpoints are one of seven recommendations to reduce impaired driving: (1) encourage interlock technology, (2) eliminate “intoxicants clause” in Texas insurance code, which allows insurers to avoid liability for DWI collisions, providing a legal shield for intoxicated patients, (3) modify Administrative License Revocation laws to allow offenders to retain licenses while enrolled in a DWI court, (4) forbid commercial servers to drink while on duty, (5) authorize sobriety checkpoints, (6) prevent underage drinking, and (7) identify problem alcohol establishments and locations with high concentrations of DWI offenders.

Most of the discussion on sobriety checkpoints focuses on their benefits in providing high visibility law enforcement (p. 13 and 22), not on their liability. Saturation patrols also provide visibility. Texas currently does not authorize sobriety checkpoints. Proper operation of a checkpoint is briefly described.

<http://www.bcm.edu/traumalink/?pmid=5941>

Drunk Driving

By the Insurance Information Institute

Here are some excerpts on current measures to control impaired driving, including liability for commercial servers of alcohol.

Recent Developments: Enacting administrative license revocation laws (which allow on-the-spot drivers license suspension if the driver’s BAC is over the legal limit or if the driver refuses to take a BAC test) and reducing the definition of drunk driving to 0.08 BAC have reduced crashes, according to research from the University of Minnesota and the University of New South Wales, Australia. By comparing monthly crash statistics for three years before and after these laws were put into effect, researchers found that administrative revocation laws reduced single-vehicle nighttime crashes by almost 11 percent. These crashes are often associated with alcohol impaired driving. Lowering the BAC level to 0.08 resulted in a 5 percent reduction in single-vehicle nighttime crashes.

The Safe, Accountable, Flexible and Efficient Transportation Equity Act — the 2005 federal highway funding bill signed by the President in August 2005 — includes funding incentives for states that pass laws that target three types of drunk drivers: repeat offenders, drivers with BACs over 0.15 (“higher-risk drunk drivers”), and drunk drivers whose licenses were previously revoked for drunk driving. It also withholds a certain percentage of funding from states that do not have an open container law (one that prohibits at least the driver of a car from having an open container of alcohol in the passenger compartment of a motor vehicle). Among the more serious penalties included for convicted higher-risk drunk drivers are license revocation, vehicle impoundment and use of ignition interlocks (devices that prevent a vehicle from starting if the breath of the driver contains any alcohol).

Repeat Offenders: Over half of drivers arrested for drunk driving in the nation are repeat offenders, according to a 2003 AAA Foundation for Traffic Safety study. Two thirds of drivers with suspended licenses still drive. To combat the problem, the foundation recommended laws that allow the impounding of vehicles, the removal of license plates on arrest, the mandating of ignition interlocks, the use of special plates to identify repeat offenders and the use of checkpoints to verify licenses. The foundation also recommended prohibiting vehicle registration by drivers without valid licenses. Forty-six states have passed ignition interlock laws, according to MADD. Interlocks are devices that measure a driver's blood alcohol and prevent a car from starting if alcohol is detected.

Liability Issues: Commercial servers: Forty-three states and the District of Columbia have laws on the books or case law (law that comes about through a court ruling rather than an act of the legislature) that hold commercial servers of alcohol liable for the harm caused by their intoxicated patrons. Some of the laws have limitations.

In August 2004 the Supreme Court of the State of Washington (which has case law holding commercial servers of alcohol liable) ruled that alcohol servers can be held liable if they serve “apparently” intoxicated patrons. In the past the standard was “obviously” intoxicated. At the same time, the Kansas Court of Appeals urged the state's Supreme Court to revisit a 19-year-old decision that protects tavern owners from the threat of liability. The appeals court was asked to review the decision in a case filed by a mother who lost a son in a drunk driving crash in 2002.

According to a hospitality industry insurance specialist, although hospitality establishments have instituted risk management techniques to mitigate liquor liability litigation, claims are still a problem. In 2003 two of the 50 largest verdicts were filed against establishments that serve liquor. In one case, in Indiana, a jury awarded \$60 million to two plaintiffs injured by a drunk driver who had been served free drinks at a grand opening. In the other case, heard in Georgia, the jury awarded \$36 million to the families of two of three teenagers who were killed by a driver who struck their vehicle after being served 10 beers. Among the recommendations made in the specialist's January 2005 market report were to strictly measure the amounts of alcohol served in drinks to discourage “regulars” from frequenting establishments where drinks are stronger, encouraging drinking establishment employees to report any accidents that may involve the establishment and conducting thorough post-accident investigation.

Social Hosts: Thirty-three states have enacted laws or have case law that permit social hosts who serve liquor to people who subsequently are involved in crashes to be held liable for any injury or death. These laws may have limited application, for example, many laws specify that the drinker must be obviously intoxicated. In some cases, the laws are only targeted at minors.

<http://www.iii.org/media/hottopics/insurance/drunk/>

Presentation to the Law Enforcement Leadership Conference, 2007

By Steve Lind, Washington Traffic Safety Commission Deputy Director

Lind states that reducing impaired driving is a primary goal of the traffic safety plan, with sobriety checkpoints being the top strategy for reduction.

[http://www.wtsc.wa.gov/business/conferences/leadership_presentations/stevelind/stevelind_le07.ppt#257,1,Law Enforcement Leadership Conference Steve Lind Traffic Safety Commission](http://www.wtsc.wa.gov/business/conferences/leadership_presentations/stevelind/stevelind_le07.ppt#257,1,Law%20Enforcement%20Leadership%20Conference%20Steve%20Lind%20Traffic%20Safety%20Commission)