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6/23/99
ABL 5332
626

The Bill Blackwood
Law Enforcement Management Institute of Texas

Driving While Intoxicated
Enforcement Policy

A Policy Research Project
Submitted in Partial Fulfillment
of the Requirements for the Professional Designation
Graduate, Management Institute

by
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Pflugerville Police Department
Pflugerville, Texas
June 1999

Abstract

Alcohol related crashes are one of the leading causes of death in the United States . It is very important that we do everything we can to minimize the chance that an innocent bystander is injured or killed by an intoxicated driver .

As a department , we have guidelines that ineffectively explain what should be done when it comes to handling intoxicated drivers . There is case law that determines what can be done when it comes to interviews and how chemical testing should be conducted .

This research will be accomplished through the use of other agency interviews , case law , and studies conducted by other agencies . There is an overwhelming amount of information on the topic of Driving While Intoxicated . There is information that is available on both sides of the issue concerning the pro's and cons of law enforcement ability to detect intoxicated drivers .

The results of this research will show there should be structured guidelines when it comes to how officers conduct driving while intoxicated investigations . Even more information will come to light about the importance of officer training in reference to the detection of suspect intoxicated drivers . After completing the research it will be sent to the Chief of Police for review of current department policies .

RESERVE

Table of Contents

Section	Page
Abstract	
Introduction	1
Historical , Legal or Theoretical Context	2
Review of Literature or Practice	4
Discussion of Relevant Issues	8
Conclusion/Recommendations	11
Bibliography	

RESERVE

Introduction

Alcohol related crashes constitute one of the leading health problems in the United States . Clearly , impaired driving constitutes a major threat to the safety and well being of the public . About 50 % of all fatalities in the United States involve intoxicated drivers. (Kappeler 1994)

The Pflugerville Police Department has a current driving while intoxicated policy in place that will need changes upon occupying a new police facility. Pflugerville Police Department has never been responsible for the operation of a jail , therefore we will have to implement a policy for video interview room investigations and intoxilizer operations . The department will need the policies in place prior to occupying the new facility.

A policy would explain the procedures that are to be followed during the video taped post arrest interviews , and use of the intoxilizer . The policy should also state what procedures are to be followed prior to and during chemical tests .

The purpose of this research is to establish clear guidelines for the implementation of a set of standardized tests and interview techniques for driving while intoxicated . These tests have been scientifically researched and proven to be reliable in determining whether an individual should be arrested for driving while intoxicated . After the individual has been arrested for driving while intoxicated there also needs to be guidelines as to what procedures should be followed during interview techniques .

It is important that every officer recognize the complexity of the DWI

enforcement process . A policy is needed to assist officers in carrying out all-important aspects of the enforcement process . There must be a standard method of investigating persons suspected of driving while intoxicated .

The research will be conducted using journals , textbooks , legal opinions , surveys , National Highway Traffic Safety Administration bulletins , case law , and instructional material used in the instruction of police officers for certification in standardized field sobriety testing workshops .

The intended outcome of this policy research paper is a presentation of the research material to the Chief of Police . It is hoped that he will utilize it to enact DWI enforcement policy .

Historical , Legal , or Theoretical Context

Driving while intoxicated has long been a social and economic burden on the citizens of the State of Texas . Figures show that in 1997 , 1,066 deaths were alcohol related in Texas. (Texas Department of Public Safety 1998). With the number of alcohol related fatalities growing every year , there is an ever-increasing need for tougher enforcement action from every law enforcement agency . Impaired driving results in more deaths each year than do the total number of homicides (National Highway Traffic Administration 1990).

It is imperative that law enforcement officers collect as much evidence as possible at the scene . This means that law enforcement officers must be trained properly to administer a set of standardized field sobriety tests .

There should be a policy in place that explains how to properly investigate persons suspected of driving while intoxicated. There should also be procedures in place that explain what should be done in the post arrest process. Defense attorneys know how the standardized field sobriety tests should be administered, and improper use may result in a lost conviction.

There is current case law that dictates the level of training of law enforcement officers in the use of standardized field sobriety tests. The most current case law is the State of Texas v's Ricky Ugene Kerr (1996). This case law states that in order for a witness's expert testimony to be admissible under Rule 702, the witness must qualify as an expert by knowledge, skill, experience, training, or education. The decision as to whether or not the witness is qualified as an expert must be made by the trial judge, or by being trained in a National Highway Traffic Safety Administration approved course.

It is very important that the individual who conducts the chemical tests, such as intoxilizer tests or blood tests, be properly trained and certified. In the event that an intoxilizer test has been administered, it is imperative that the technician be certified by the Texas Department of Public Safety. In the event that a blood test is administered the chemist (lab personnel), must be qualified and competent to administer the test.

In the State of Texas there is an Implied Consent law. The law states through a statutory warning that is administered at the time of arrest, and prior to any chemical tests being conducted that any person who operates a motor vehicle

on a public highway of this state shall be deemed to have given consent to chemical tests. If the person arrested refused to submit to the chemical tests, then no test shall be given. However the law provides that the person's driver's license may be suspended if the refusal is found to be unreasonable. The Implied Consent law is commonly enforced in Texas through the Driver Improvement Commission. The Implied Consent law was designed to require drivers to submit to chemical tests (Driver Improvement Control 1997).

In order to convict someone of driving while intoxicated it must be shown beyond a reasonable doubt that one must be intoxicated while driving or operating a motor vehicle in a public place (Penal Code 68). Law books have defined intoxicated as "not having normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, drug, a substance or its vapors that contain a volatile chemical, an abusable glue, or an aerosol paint, or a combination of two or more of those substances into the body; or having an alcohol concentration of 0.10 or more" (Penal Code 68).

An important legal issue is the failure to arrest suspected intoxicated motorists. There are several cases where government entities have been held liable for failure to arrest. An officer's breach of duty that results in injury leaves the officer and municipality liable for damages Landis v. Rockdale County 1982. Another case is the failure of officers to remove intoxicated motorists from the highway which results in injury to innocent third parties Irvin v. Ware 1984.

RESERVE

Review of Literature or Practice

For many years, law enforcement officers have utilized field sobriety tests to determine the impairment of a person's driving due to alcohol impairment. Officers also use the tests not only to aid in the removal of dangerously impaired drivers from the roadway, but they also to protect the driver who is not alcohol or drug impaired from being improperly detained (Burns 1997). The performance on the tests are used to determine whether probable cause exists for arrest of subjects suspected of driving while intoxicated. Prior to 1975, although a wide variety of field sobriety tests existed there was a need to develop a battery of standardized valid tests, because not all of them were effective. Beginning in 1975, extensive scientific research studies were sponsored by the National Highway Traffic Safety Administration (NHTSA). The purpose was to determine the most accurate roadside field sobriety tests. NHTSA contracted with the Southern California Research Institute to develop these tests (Standardized Field Sobriety Testing Certification 1997).

The research goal was to evaluate currently used physical coordination tests to determine their relationship to intoxication and driving impairment, to develop more sensitive tests that would provide more reliable evidence of impairment, and to standardize the tests and observations. The research concluded that the Horizontal Gaze Nystagmus, Walk and Turn, and the One Leg Stand were highly reliable. The test concluded that the Horizontal Gaze Nystagmus is 77 % reliable, the walk and turn is 68 % reliable, one leg stand is 65 % reliable (International

Association of Chiefs of Police 1987) .

After an officer has arrested a suspect for driving while intoxicated the officer will request some type of chemical test to determine the suspect's blood alcohol content . There are three scientific tests that are used and they are the intoxilizer (breath test), blood test , and urine test . Currently all three tests can be conducted at Travis County Central Booking in Austin . Soon the Pflugerville Police Department will have to initiate a process to have the ability to conduct all three tests at our booking facility .

I reviewed the only jail facility in Travis County . My main point of interest was the intoxilizer room and the video room . I reviewed the procedures used in the intoxilizer room . When an officer arrests a person for driving while intoxicated he contacts the sergeant in charge of the jail and requests an intoxilizer operator . The sergeant selects one of the operators and sends them to the intoxilizer room . Once inside the intoxilizer room the suspect is read their statutory warning and the arresting officer requests a breath specimen . The intoxilizer operator observes the suspect for fifteen minutes before administering the test . The intoxilizer operator administers two tests and the suspect is taken from the room . The intoxilizer room has to remain secure , and the only time it is open is if there is a certified operator is inside.

The video room is located near the intoxilizer room . Inside the video room there is lines painted on the floor . There is a video camera mounted in one corner of the room which points in the direction of the lines on the floor .

There are numerous questions painted on the wall . There are numbers by each question . All the officer has to do is read each question to the suspect . The suspect is asked to answer the question . During the interview process there are certain field sobriety tests that are performed using the lines . After the interview the videotape is removed from the machine and taken back to the department where it is tagged and placed in evidence .

In 1995 the Institute of Police Technology and Management , State of Florida Department of Transportation , Sheriffs Department of Pinellas County Florida , and the Southern California Research Institute conducted research concerning the validity of the three standardized field sobriety tests . The design of the study was dictated by the need to insure the standardization of field sobriety test's and interpretation's . The primary study objective was an assessment of the accuracy of officers 'arrests and release decisions based on the standardized field sobriety tests. The study was conducted primarily in Pinellas County , Florida . Overall , according to the study results , the roadside decisions made by the Pinellas County Sheriffs Office deputies during this study were highly accurate . More than 90 % of their decisions to arrest were correct . By the same standards 82 % of the release decisions were correct (Burns 1997).

I interviewed Trooper Bowie , of the Texas Department of Public Safety on the current policy of the Texas Department of Public Safety regarding the way they handle persons suspected of driving while intoxicated . Trooper Bowie told me that the department requires the three standardized field sobriety tests to be

administered , and the trooper has the option of conducting any other tests to determine intoxication . He said that every trooper is certified as an intoxilizer operator . He said that probationary troopers are not certified at the their time of graduation , but they are called back for further training as soon as possible and they will go through the intoxilizer certification school (Bowie 1999).

The research shows that standardized field sobriety testing is a valuable tool and asset to the officer as well as the department . There were very few studies conducted in actual field evaluations of the standardized field sobriety tests . Most of the research was conducted in ideal situations and inside a laboratory setting .

There is a sequence that needs to be followed by each officer to ensure prosecution of the case . The following sequence should be followed . First there should be probable cause for the stop of the vehicle . Second there should be a pre-arrest screening . Third if there is an arrest , than an implied consent warning should be given . Fourth there should be offered some type of chemical test . Fifth the suspect should be given their Miranda warning . Sixth there should be post arrest questioning (National Highway Traffic Safety Administration 1999) .

Discussion of Relevant Issues

Some of the issues that will be discussed below are officer training , the legal issues concerning (possibly) bad arrests , officers hesitation to arrest suspected intoxicated drivers , costs , and failure to arrest .

Driving while intoxicated is a serious problem and it must be solved .

Officers have to believe that many of the people who drive impaired will stop at least some of the time if they fear that they will be arrested . Citizens have to believe that there is some fear of arrest so it will be a deterrent (Annacappa Sciences 1980).

One of the leading issues is the lack of officer training and knowledge of how to conduct sobriety tests and understanding the importance of the test (National Highway Traffic Safety Administration 1999) . During the basic peace officer academy the cadet is put through a small block of training . There is an inability of the untrained officer to recognize impaired driver behavior . The untrained officer also fails to interpret the cues that are observed during the field sobriety tests . The officer also fails to conduct the field sobriety tests properly , resulting in bad arrests (National Highway Traffic Safety Administration 1/99) . The department should require all officers to be standardized field sobriety testing certified . Another reason that officers sometimes hesitate to arrest is the Administrative License Revocation case hearings . The hearing gives the defense attorneys an opportunity to gain information about the criminal case that the officer has built against their defendant . This may cause officers to hesitate when it comes to the enforcement of driving while intoxication (National Highway Traffic Safety Administration 1/99) . In several cases , courts have held that the duty to arrest an intoxicated motorist is a mandatory function (Kappeler 1994). An officer's breach of this duty , resulting in injury , leads the officer and municipality liable for damages (Landis v's Rockdale County 1984) .

Another case where the court concluded that a municipality may be held liable for the negligent failure of its police officers to remove from the highways intoxicated motorists who cause injuries to innocent third parties is Irwin v. Ware (1984).

According to Jim Kuboviak the county Attorney for Brazos County, his thoughts on Driving While Intoxicated cases are as follows: poor investigative techniques used by officers was one of the leading reasons convictions are so difficult to obtain.

Another issue that Jim Kuboviak mentioned that contribute to low conviction rates was the jurors' sympathy for the defendant. He said that some of the jurors themselves have driven intoxicated and are hesitant to convict others for the same thing. Mr. Kuboviak did credit mobile video as one of the leading resources of evidence that an officer can have. He explained that through the proper use of the mobile video system and proper articulation an officer's conviction rate should increase (Kuboviak 1999).

One of the major constraints placed upon agencies is the cost of equipment and supplies. The agency will have to purchase some type of scientific instrument for the purpose of determining blood alcohol concentrations of the suspect. The instrument will have to be one that is approved by the Texas Department of Public Safety. Once the department has purchased the equipment they will have to conform to Texas Department of public Safety standards. The department will also be required to send officers to school in order to certify the officers to use the equipment.

The majority of the costs come down to the purchase of the scientific equipment , according to Mark Callon , a chemist with the Texas Department of Public Safety . He told me that DPS dictates what type of intoxilizer can be used . They only accept the Intoxilizer 5000 made by CMI Industries (Callon 1999). After speaking with the Texas Department of Public Safety it is questionable as to whether the benefits outweigh the costs of having an intoxilizer.

There are other alternative scientific tests to the expensive intoxilizers , however According to Diana Kapolka of DPS Crime Laboratory one alternative is urine tests . Diana stated that any officer could take the urine specimen . She said that the Texas Department of Public Safety provides the specimen kits for three dollars and fifty cents each . She said that all the same rules of evidence would apply to the chain of custody on the specimen (Kapolka 1999) .

There is a need for quality video equipment to improve performance and efficiency . There needs to be quality equipment to record the suspect's performance as well as any type of cues of intoxication that the suspect might exhibit . The cost of the equipment is expensive and many times puts constraints on the agency . The agency will also be required to dedicate valuable space to single function items .

Currently the department equips every patrol unit with high quality video camera systems . The officers are put through a course on how to use the camera systems .

RESERVE

Conclusion/Recommendations

The purpose of this project was to come up with research to back up the need for standardized field sobriety tests, interview room investigations, intoxilizer room operations, and other types of chemical tests.

It is very important to have standardized field sobriety tests in place. The procedures that are to be followed have been tested in courtrooms across the United States. The courts have ruled as to what tests can be admitted into evidence, and what training is required in order perform the tests.

The relevancy of this research is everyday across the United States someone is injured or killed by an intoxicated driver. In the City of Pflugerville the last two-fatality collisions involved intoxicated drivers. This is not an isolated problem, it affects everyone around the United States. It is very important that officers are trained in the detection and apprehension of intoxicated drivers. I believe that this is a very important issue that must be faced. Almost every weekend someone is arrested for driving while intoxicated in the City of Pflugerville. Without the arrests, a fatality could have resulted.

The problem that is the issue is driving while intoxicated. A majority of the officers in our agency actively enforce driving while intoxicated. I feel that we are obligated as a department to apprehend these violators to make the streets safe. I feel that properly trained officers and a policy to fall back on when conducting their investigations is a key issue to successful enforcement.

RESERVE

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