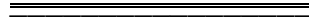
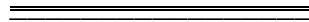


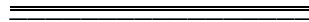
**The Bill Blackwood  
Law Enforcement Management Institute of Texas**



**Vehicle Sobriety Checkpoints in Texas**



**A Leadership White Paper  
Submitted in Partial Fulfillment  
Required for Graduation from the  
Leadership Command College**



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## **ABSTRACT**

Texas is consistently the leading state when it comes to traffic fatalities related to drunk driving. Texas leads the second highest state, California, by several hundred deaths in many years (Insurance Institute for Highway Safety, 1996-2018). The majority of other states (37) have implemented a system of driver checkpoints to assist police officers in identifying intoxicated drivers behind the wheel in vehicles (Governors Highway Safety Association, 2016). Texas, however, has not employed such a system. In order to reduce serious accidents and provide deterrence to driving while intoxicated (DWI) citations, the Texas Legislature should take action, and vehicle sobriety checkpoints should be implemented in Texas.

This author asserts that instigating checkpoints in Texas would reduce injury and fatality accidents by providing a system for officers to stop drunk drivers prior to being involved in accidents. The paper will also show how checkpoints provide deterrence to drunk driving by increasing visibility of DWI arrests, as well as through public notification of the checkpoints in the media. Finally, this paper will review several counter arguments to DWI checkpoints that include constitutional challenges and a history of their use by police agencies for racial profiling.

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## INTRODUCTION

Recently, it has become increasingly common to see something in the media about an intoxicated person driving the wrong way on a highway, being involved in a serious or fatal vehicle accident, or running over a pedestrian, bicyclist, or motorcycle rider. In a 2015 statistical survey of drunk driving fatalities by state, Texas ranked by far the highest of all the states at 1323 deaths, followed by California at 914 (National Highway Traffic Safety Administration, 2015) . Unfortunately, in Texas, law enforcement is often unable to identify intoxicated drivers until they arrive at the scene of one of these accidents, or accidents involving fatalities, that have already occurred. A tool that would help law enforcement identify intoxicated drivers prior to those drivers being involved in accidents is vehicle sobriety checkpoints. A compilation of government studies on sobriety checkpoints “show they can reduce alcohol-related crashes and fatalities by 18-24 percent” (Mothers Against Drunk Driving, 2012, p. 2). Texas is currently only one of 12 states that do not allow police to utilize sobriety checkpoints, at least as Texas law currently stands, without legislative action (Governors Highway Safety Administration, 2016).

As other states have been successful at reducing accidents resulting from impaired driving, Texas has struggled to implement a method where the probable cause for the stop would stand up to court scrutiny. According to Varghese (2014), the most recent organized attempt in Texas to use sobriety checkpoints was in 1991 by the Arlington Police Department. The city broadcasted the time, date, and location of the checkpoint in advance through the media. The roadblock stopped every vehicle passing through, and the officers checked drivers for signs of intoxication for 10-15

seconds. If the officer did not see signs of intoxication, the driver was allowed to continue with minimal delay, while drivers showing any signs of impairment were pulled out of the queue for further testing. In the end, 10 out of 341 drivers were arrested for DWI, potentially preventing accidents by these impaired drivers. In 1994, the Court of Criminal Appeals overturned the arrests and ruled that for checkpoints to be valid, statewide standards have to be established (Varghese, 2014). Following this ruling, all police departments in Texas have discontinued the use of checkpoints, awaiting legislative action to establish standards, which, to this day, has not happened. In order to reduce serious accidents and provide deterrence to DWIs, the Texas legislature should take action and vehicle sobriety checkpoints should be implemented in Texas.

## **POSITION**

As freeways are becoming more and more congested and people increasingly drive larger and larger vehicles, even non-impaired drivers have difficulty in safely navigating through traffic. Cell phones, navigation systems, and other internal vehicle devices can cause distractions resulting in accidents, but nothing has proven to be more distracting than driving while impaired by alcohol. The ability to drive is a complex skill, but one that most of people are used to and can do without thinking, but safe driving, in contrast, involves the interaction of coordination, reaction time, and perceptual ability (Fazzalano, 1998). All states use blood alcohol content (BAC) as a measure of determining when a driver is impaired by alcohol, and this measure of intoxication has varied throughout the years. In the past, anything over a .10% BAC was considered intoxicated. Currently, most states use .08% as the measure, and some states have recently reduced this amount further to .05% (Jenkins, 2017). The problem with using a

blood alcohol content as the only measure for intoxication is that many things influence the effect alcohol has on an individual, which include the person's gender, weight, prescription medications taken, as well as the person's state of mind at the time.

Alcohol is a depressant, and any experienced police officer knows how unpredictable a person's reactions can be while under the influence. But, as alcohol relates to vehicle accidents, much of the research shows that judgement and attention tend to be more important when driving than are vehicle control maneuvers, which is contrary to what the general public perception is (Fazzalano, 1998).

So it is generally accepted and shown through research points that alcohol impairment by drivers results in increased accidents. Currently in Texas, the only method a police officer has of identifying an intoxicated driver is through a traffic stop or a vehicle driver welfare check. For a traffic stop to occur, a police officer has to observe a violation (be it either a moving or equipment violation), catch up to the violator, initiate his emergency lights, and pull over the violator. The officer can then identify through sight and smell any signs of impairment and move on to further testing if warranted. The only other legal way to stop a vehicle in Texas currently is for a welfare check. In this case, an officer must clearly define the reason the vehicle was pulled over and must be stopping the vehicle for the sole purpose of identifying if the driver is having a medical emergency or some other factor that would cause the operator to be a danger to the public if allowed to continue. This burden of proof is very high for the officer on welfare check stops, and even if he ultimately identifies an intoxicated driver as a result of this type of stop, the court may well throw out the criminal case in trial due to the officer not being able to prove he had probable cause for the stop.

If a city or county in Texas identifies a problem alcohol related accident area, road, or intersection, through statistical modeling, current police response methods would call for increased patrols, assignment of specialized traffic patrol officers, or changing of traffic signs or signals in the area. None of these methods significantly reduce accidents caused by intoxicated drivers because they do not greatly increase officer to driver face to face contact like a sobriety checkpoint would. Numerous research studies have shown how effective sobriety checkpoints are in reducing accidents. A non-profit organization study studying sobriety checkpoints found an average of a 20% reduction in traffic fatalities when checkpoints are utilized (The Issue, 2014). Checkpoint Tennessee, a sound and rigorous study, found a 20.4% reduction in alcohol related vehicle crash fatalities, and they reported that the deterrent effect lasted for almost two years following the conclusion of their program (Texas Transportation Institute, n.d.). Additionally, "The Centers for Disease Control (CDC) recommends sobriety checkpoints as an effective countermeasure for motor-vehicle injury prevention based on strong evidence presented in peer reviewed research" (Texas Transportation Institute, n.d., para. 2). So, as observed through reviewed peer research and through the recommendation of groups compiling information on alcohol related accidents such as AAA, the CDC, and Mothers Against Drunk Driving (MADD), sobriety checkpoints are a studied and proven method to reduce alcohol related accidents by an average of around 20% overall.

Another positive effect of vehicle sobriety checkpoints is the deterrence value they have on drivers when they are considering "a night of drinking" but haven't made any advance plans for transportation. States which have implemented checkpoints are

required to post, broadcast, or publish pending checkpoint locations, through media outlets, where the general public has access to the information. This not only meets a legislative requirement but also has strong deterrent value. In many cities now, when drivers do plan ahead, they can access alternative transportation or ridesharing services, such as Uber and Lyft, using smartphone applications to get to establishments where they may be drinking. This counters the argument that many drinkers have that there was no alternative options to driving themselves home.

Research done by MADD (2017) reflects that the primary goal of checkpoints, despite popular belief, is not to arrest people but is actually to deter people from driving while intoxicated. MADD's research also shows that the publicity surrounding checkpoints can act as an effective deterrence, even when people do not observe the checkpoint directly. Unfortunately, deterrence value can be something that is difficult to accurately measure. The Insurance Institute for Highway Safety (1984) conducted one such study, which attempted to effectively measure deterrence value. In this study, conducted in two states utilizing checkpoints, (Maryland and Virginia) 2300 drivers were contacted by phone in a survey. When people were asked about police efforts to deal with the problem of drunk driving, roadblocks (checkpoints) were the most frequently mentioned police activity reported, even in locations where checkpoints were infrequently conducted or well publicized (Insurance Institute for Highway Safety, 1984). In a more recent study, also conducted by the Insurance Institute (2003), researchers found that "checkpoints are primarily about deterrence and checkpoints increase the perception among drivers that arrest is likely if they drive while impaired. The result is that drivers aren't as likely to drink and drive in the first place" (para. 4). The Institute's



chief scientist, Allan Williams, pointed out that “checkpoints counter a driver’s belief that they can drive well enough after drinking to avoid being apprehended (Insurance Institute for Highway Safety, 2003, para. 4). Williams notes that the visual aspect of checkpoints indicates to drivers increased enforcement by police and they may be arrested if driving impaired. He further indicated that the main purpose of checkpoints is to deter alcohol-impaired drivers and stated, “Checkpoints do this very well” (Insurance Institute for Highway Safety, 2003, para. 5). So public perception towards the deterrence value of checkpoints is, one, they are effective because the media publicizes the enforcement, two, drivers visibly see the enforcement taking place, and three, the arrest numbers for intoxicated drivers is increased, resulting from increased enforcement.

### **COUNTER POSITION**

As with many law enforcement tools, sobriety checkpoints can have criticisms by citizens who feel that checkpoints can be used improperly and violate civil rights. One noted issue is that checkpoints may be used to target and racially profile minorities. An example of this was in the city of Chicago, Illinois. The Caputo (2017) found during an investigation that 84% of the checkpoints in their city were conducted in areas predominantly populated by blacks or Latinos, despite the fact that these areas were not among those higher in incidents of alcohol related crashes. The study also reviewed police districts that had no sobriety checkpoints conducted. Seventy-five percent of those observed without checkpoints were predominantly white districts (Caputo, 2017).

In Texas, if sobriety checkpoints were allowed, racial profiling would be a particularly problematic issue as a result of the state having a large border area and being home to a large number of Hispanic immigrants. Per Texas law, the state will not

issue a driver's license to any undocumented immigrant who is unable to prove legal United States residency. As a result, many municipalities, when encountering a Hispanic driver, will tow the person's car because an unlicensed driver is operating the vehicle. This same scenario has become an issue in the state of California, which does allow sobriety checkpoints. A study conducted by a University of California Berkley journalist reported how checkpoints in California were disproportionately targeting Latino immigrants. Rather than increasing DWI arrests and keeping drunk drivers off the road, checkpoints were being used as a method of revenue for municipalities who were impounding the vehicles of undocumented immigrants and selling the vehicles at auction. The study also found that the impound rate in cities with predominately Latino populations was three times the rate of other cities, for an average of 34 cars at each checkpoint (Shanfield, 2011).

Therefore, if the state of Texas did decide to implement checkpoints, to counteract any occurrence of racial profiling, the legislature should put in a provision requiring police departments to link the checkpoint location to a roadway or area where there have been a number of intoxicated driver related crashes backed up by crash report data. Also, just as the state does with traffic stops, it should require that officers fill out racial profiling data on each subject detained as a result of a checkpoint stop and that information must be retained, should it be needed for auditing purposes. On the departmental level, officers operating the checkpoints should be required to predetermine a sequence number of vehicles to be stopped (every 10<sup>th</sup> vehicle for example). A previous court case in California, ruled that a "neutral mathematical formula" used to determine which drivers were stopped, prevents racial profiling (DUI

Checkpoints in California, n.d.). Lastly, the officer keeping count of vehicles to ensure compliance would use an in-car camera or a body camera. This would reduce the chances an officer would be able to stop a vehicle based on the race or ethnicity of the driver and would promote public confidence that the checkpoint stops are conducted fairly.

Another area where opponents of sobriety checkpoints highlight is in asserting that checkpoints violate a driver's constitutional rights. Applicable amendments where constitutional challenges have occurred include the IV, V, XIV amendments. The IV amendment to the U.S. Constitution protects citizens against unreasonable searches and seizures, and the V amendment safeguards a person against self-incrimination. The XIV amendment protects citizens' right to due process and the right to equal protection under the constitution. Opponents have argued that being detained at sobriety checkpoints constitutes a "search and seizure" under the IV amendment and that simply driving one's vehicle in a certain location through a checkpoint does not give law enforcement probable cause for a search if the driver has not broken any law or committed any traffic violation (Dane, 2014). The V amendment alleged violation is reported to occur when the law enforcement officer at the checkpoint asks people whether they "have been drinking tonight?" If they do not answer, in some states, officers will ask them to step out of the vehicle for field sobriety tests. If they refuse to submit, they may be allowed to leave or (if there is a strong reason to believe they are intoxicated), they may be arrested (Dane, 2014). Both the V and XIV amendments contain a "due process" clause which has also been brought as a court challenge to sobriety checkpoints on the state and federal level as well (Dane, 2014). The due

process clause, as is meant to apply to laws on all level of government, simply means that any laws enforced must provide fair procedures when the state acts against individuals (Strauss, n.d.). Due process has been more specifically defined as depriving an individual of “life, liberty, or property” (Strauss, n.d.). The argument being that the checkpoints, by stopping someone without probable cause and arresting them, and depriving them of their liberty, that due process of law is violated.

According to a *New York Times* article, on June 4<sup>th</sup>, 1990, the Supreme Court of the United States ruled to upheld sobriety checkpoints in a 6-3 decision as being constitutional (“Excerpts from Supreme,” 1990). This case overturned a lower court ruling, the Court of Appeals from the state of Michigan, and reviewed specifically the IV and XIV amendment challenges to sobriety checkpoints. In this decision, the court looked at the average stop time of approximately 25 seconds per vehicle and, if this delay met the definition under the constitution of a “seizure”. Justice Rehnquist, writing for the majority, ruled that the intrusion on motorists stopped briefly at sobriety checkpoints is slight. He summarized the majority’s findings, indicating, “the state's interest in preventing drunken driving, the extent to which this system can reasonably be said to advance that interest, and the degree of intrusion upon individual motorists who are briefly stopped, weighs in favor of the state program” (“Excerpts from Supreme,” 1990, para. 12). Although the ruling of the court was limited to a specific area of sobriety checkpoints, it appears from the courts decision that any future challenge to the constitutionality of checkpoints will continue to weigh the public safety aspect against the protection of the individuals rights and that, as long as the states define fair standards for the stops, the court will continue to uphold them.

## RECOMMENDATION

Research on sobriety checkpoints, as utilized in other states, has proven that checkpoints are effective in reducing alcohol related accidents and, as a result, would be effective in reducing accidents and saving lives in Texas. As previously mentioned, Varghese (2014) stated the current barrier to a police agency implementing a sobriety checkpoint stems from the 90's when the Arlington Police Department conducted them. The resulting case, *Holt v. State* 887 S.W.2d 16 (1994), resulted in a Texas Court of Criminal Appeals ruling that, in order for sobriety checkpoints to be legal in Texas, they must at minimum be authorized by a statewide policy (Varghese, 2014). What is needed is an action of the Texas Legislature, not only to authorize checkpoints, but also to set up standards that departments would have to abide by to make the checkpoints stand up in criminal court. At a minimum, the legislature needs to require the following:

- 1) checkpoints be conducted on roadways or areas where verified alcohol related crashes have occurred.
- 2) Departments conducting checkpoints keep racial profiling statistics.
- 3) A standard is set for the maximum amount of time a driver could be detained without further proof of intoxication.
- 4) Departments be required to publish the checkpoint locations in advance using city websites, social media, and hard signage.
- 5) Only allow officers certified in field sobriety testing to man checkpoints.
- 6) The officers working checkpoints be required to have active video monitoring of each motorist contacted (through a body camera or patrol vehicle mounted camera). Standards like this would ensure that Texas surpasses the oversight requirements of other states that currently allow checkpoints. Video and racial profiling data would show transparency on

the part of departments and crash report data would verify that the checkpoint locations were conducted in appropriate locations.

The benefits gained from enacting checkpoints in Texas would be a reduction in alcohol related crashes and fatal accidents and a strong deterrence through media broadcasts of the checkpoints as well as motorists observing them directly. The racial profiling argument against checkpoints would be prevented by implementing standards on what vehicle were stopped, data collection, and legal review of criminal cases arising from the checkpoints. Although the constitutionality of checkpoints, if implemented, may be challenged, strict standards enacted by the legislature would make this difficult, as the Supreme Court has indicated that the public safety benefits outweigh the inconvenience they cause motorists. With the increase in traffic congestion as the population of the state continues to rise, Texas police officers are more frequently placing themselves at risk on state highways responding to and working accidents. By the legislature enacting sobriety checkpoints, officers would have a proven tool to reduce accidents and reduce the number of intoxicated drivers on Texas roadways. In order to reduce serious accidents and provide deterrence to DWIs, the Texas legislature should take action and vehicle sobriety checkpoints should be implemented in Texas.

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