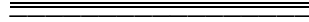
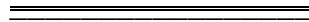


**The Bill Blackwood  
Law Enforcement Management Institute of Texas**



**The Case for 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**

Driving while intoxicated (DWI) is a very serious problem. Across the nation, thousands of people are injured or killed every year in crashes directly related to alcohol use. Texas has the highest rate of death and injury from impaired drivers by a wide margin. In the early 1980s, law enforcement, in an attempt to reduce the devastation, began using a new method of enforcement called sobriety checkpoints. Over the past 27 years, states using checkpoints have seen significant reductions in driver impaired injuries and deaths (Lacey, Jones, & Smith, 1999; Voas, Rhodenizer, & Lynn, 1985). Checkpoints have survived challenges from many fronts, and currently 39 states and the District of Columbia utilize checkpoints. Texas is one of the remaining states that does not allow sobriety checkpoints. This position continues to allow for unneeded injuries and deaths on Texas roadways. To protect the citizens of Texas, local and state agencies should be allowed to use sobriety checkpoints as an enforcement tool.

The types of information used to support the researcher's position are electronic newspapers, web sites, magazines articles, newspaper stories, and articles from periodicals. Additionally, research documents from local, state, and federal governmental agencies were used. The conclusion drawn from this position paper is that sobriety checkpoints should be legalized in Texas because they save lives and prevent injuries from impaired drivers.

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## INTRODUCTION

Driving while intoxicated (DWI) is an extremely serious issue, particularly in Texas. In 2008, 11,773 people were killed nationally in impaired driver crashes (Hayes, 2010). In Texas, during that same period, 3,382 people were killed in crashes. Of those deaths, 1,544, or 45%, were attributed to impaired drivers (Hayes, 2010). These figures give Texas the dubious honor of leading the nation in impaired driver deaths (Hayes, 2010). Police agencies, for years, have attempted to reduce these statistics through a variety of enforcement methods, such as standard patrol and specialized traffic enforcement, where officers look for drivers that exhibit indicators of intoxication. Results from these methods are limited due to the inconsistent aspects of developing probable cause to stop a vehicle. According to the National Highway Traffic Safety Administration (NHTSA), even with the extra patrols, across the United States of America (USA), there is one injury every 15 seconds and one alcohol related crash every 33 minutes (Mothers Against Drunk Driving, 1999).

Agencies struggling with increasing injuries and deaths from impaired drivers began using a new method of enforcement called a sobriety checkpoint. Police would partition off a portion of a roadway and have vehicles stop at the checkpoint. While stopped, officers would look for indicators of impairment such as the odor of an alcoholic beverage, slurred speech, or bloodshot eyes. If impairment was noted, additional and more conclusive tests were performed. Testing usually consisted of three procedures as outlined in the NHTSA Standardized Field Sobriety tests (National Highway Traffic Safety Administration, 2001). Drivers who were not impaired were released with minimal delays or invasions of privacy. Participating states began to

notice an increase in the arrests of impaired drivers and a reduction in injuries and deaths. In the state of New Jersey, after the implementation of checkpoints, a 10% to 15% reduction in alcohol related crashes was noted (Levy, Levy, Shea, & Asch, 1988). During initial sobriety checkpoints in Charlottesville, Virginia, a 13% reduction in alcohol related deaths was noted (Voas, Rhodenizer, & Lynn, 1985). Clearwater and Largo, Florida experienced a 20% decrease in deaths and injuries during a year-long checkpoint program (Lacey, Stewart, Marchetti, Popkin, Murphey, Ludke, et al., 1986). Sobriety checkpoints were a relatively successful program. There were indicators that continued use would clearly save lives.

Although it was apparent that checkpoints saved lives, not everyone was convinced. There were questions as to their constitutionality, and many states ruled through court decisions whether or not to allow sobriety checkpoints. Ultimately, 39 states and the District of Columbia allow sobriety checkpoints. Texas is one of the remaining 11 states that does not utilize checkpoints. Considering Texas leads the country in alcohol related deaths and injuries, it is clear that state and local agencies within Texas should be allowed to use sobriety checkpoints as an enforcement tool for preventing DWI's.

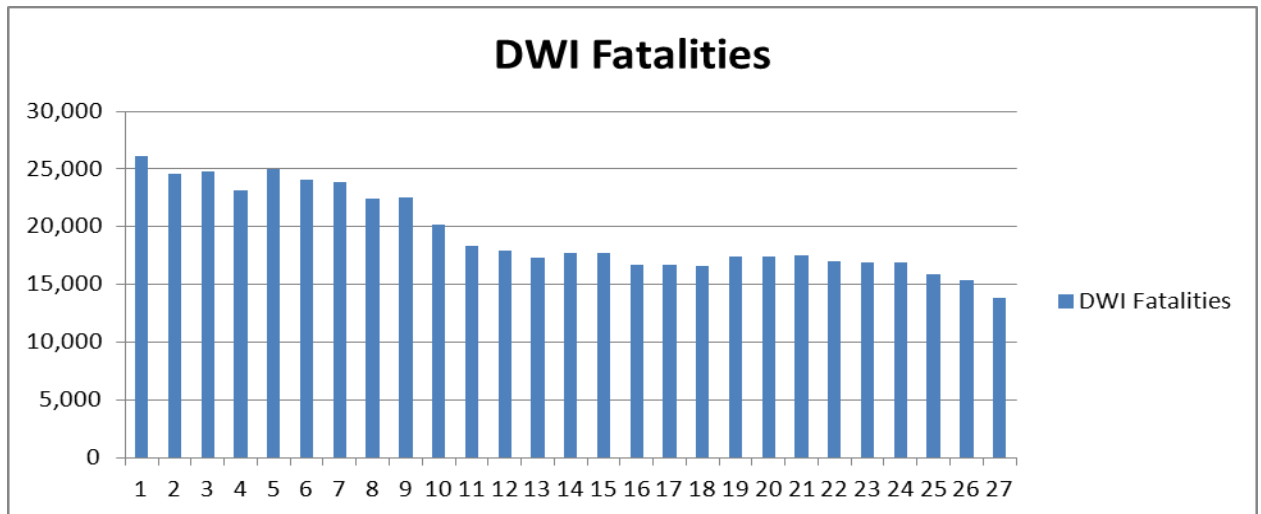
## **POSITION**

Simply stated, sobriety checkpoints save lives. The results of impaired driver crashes across the country continue to have devastating results: thousands of people are still injured and killed every year. Studies have shown that in 2008, 32 people died every day in crashes where the driver had a blood alcohol concentration (BAC) level of .08 g/dL or greater (Hayes, 2010). Traditional enforcement works, but it has been

shown that sobriety checkpoints added to a police department's available tools significantly decreases deaths and injuries. Tennessee was one of the first to implement a statewide program that not only instituted checkpoints, but it also advertised the program through the media and surveys. In one year, over 900 checkpoints were performed during the program. Not only did the program reduce alcohol related deaths by 20%, but the resulting reductions lasted for 21 months after the completion of the program. There was an average of at least nine fewer alcohol related fatalities per month (Lacey, Jones, & Smith, 1999).

In a 2008 study, it was shown that after the implementation of sobriety checkpoints, the death rate across the 39 states and the District of Columbia dropped more than 10%. Several of these states showed a significant reduction in deaths. Vermont led with a 44.8% reduction, followed by the District of Columbia, 43.2%, and Wisconsin with a 32.1% reduction (Hayes, 2010). These numbers are significant when considering the overall simplicity of sobriety checkpoints.

Additional agencies have stepped forward and have continued to validate sobriety checkpoints save lives. The Centers for Disease Control Prevention (CDC) came to the conclusion that there is a reduction in impaired driver deaths when sobriety checkpoints are used. Performed by CDC scientists, using the results from over 20 worldwide studies, the studies found that sobriety checkpoints typically reduce deaths and injuries by about 20%. They also noted that regardless of how the checkpoints were implemented, the results remained constant (Centers for Disease Control and Prevention, 2009). As indicated by the graph below, the death toll over a 27-year period dropped by close to 50% (AlcoholAlert!, 2010).



**Figure 1.** DWI Fatalities 1982 – 2008 (Data provided by AlcoholAlert!)

Even small towns with limited manpower have been able to produce results.

Two towns in West Virginia, using just a couple officers, reduced drivers on the road with a BAC of 0.08% or more by 64% (McDonald & Dewey-Kollen, 2006). The success stories from sobriety checkpoints continue to be reported. As police officers perform their duties, they are placed in harm's way just by being on the roadway. The simple fact that checkpoints take drunk drivers off the road will save lives of officers.

Sobriety checkpoints are easy to implement, low in cost, and easy to control. Checkpoints can be accomplished using the "low manpower" method. This method significantly reduces the resources needed to operate a checkpoint. As few as three to five officers can successfully operate a sobriety checkpoint (McDonald & Dewey-Kollen, 2006). Several resources are available to police departments to assist them in preparing to run checkpoints. The NHTSA offers a guide released in 2006 called "Low Staffing Sobriety Checkpoints." Additionally, volunteers can be used to staff non-law enforcement posts, allowing sworn officers to concentrate on the testing process.

Simple reflective cones can be used to create the checkpoint, allowing for a high level of portability.

Once a checkpoint is set up, officers can use a random pattern to stop vehicles. With random selection, there is ample time between vehicle stops to prevent the officers from becoming overloaded. Officers can utilize their training in impaired driver detection as well as the use of technological advances like passive alcohol sensors. These devices “sniff” the air inside vehicles and detect alcohol molecules. Coupled with visual clues, it makes it easy to identify a possibly impaired driver. The process of setting up a checkpoint is fast and easy, and it can be moved to several locations throughout an evening to allow for the greatest impact.

Sobriety checkpoints can also provide an unexpected benefit to law enforcement. Once a vehicle has been stopped at a checkpoint, and the officer is conducting his assessment, anything in plain sight that is illegal or contraband can be seized (*Texas v. Brown*, 1983). Additionally, drivers without a valid driver’s license, without liability insurance, or impaired from a substance other than alcohol can be identified.

During Tennessee’s sobriety checkpoint program, 144,299 drivers were stopped at the checkpoints. While 773 drivers were ultimately arrested for DWI, 209 drivers were also arrested for drug violations, and a total of 49 weapons were seized. Additionally over 8,000 traffic citations were issued to drivers for various violations (*Lacey, Jones, & Smith*, 1999). A 2009 study by the University of California, Berkeley found that sobriety checkpoints in California generated forty million dollars in towing fees due to unlicensed drivers being discovered at the checkpoints. This provides a



safe and economic benefit to cities and states utilizing sobriety checkpoints (Gabrielson, 2010).

Sobriety checkpoints are also of great value in improving DWI awareness. If drivers believe there is a possibility they will be stopped to check their sobriety, it is safe to assume they may think twice before drinking and driving. Additionally, since current sobriety checkpoint implementations are, in most cases, the “low manpower model,” they can be moved to several sites during an evening. This helps reduce the ability for the impaired driver to be able to steer clear of checkpoints. Agencies, such as Mothers Against Drunk Driving (MADD) and the International Association of Chiefs of Police (IACP), provide training documents, coordinate media events, and assist law enforcement agencies. They are very active in DWI awareness and believe checkpoints are valuable as a deterrent.

### **COUNTER POSITION**

While law enforcement agencies were happy with using sobriety checkpoints, a growing voice was heard from those who felt that a suspicionless vehicle stop was a violation of the Fourth and Fourteenth Amendment to the Constitution of the United States. The Fourth Amendment provides protection against unreasonable search and seizures (U.S. Const. Amend. IV), while the Fourteenth Amendment protects against individual states enacting laws that would infringe on life, liberty, or property (U.S. Const. Amend. XIV).

In 1990, the state of Michigan was preparing to start a sobriety checkpoint program statewide. A group of citizens sued, stating any enforcement action at a sobriety checkpoint would be unconstitutional as it would violate the Fourth and

Fourteenth amendments. The group demanded an injunction to prevent the implementation of sobriety checkpoints. The original trial court ruled in favor of the group, stating that sobriety checkpoints were, in fact, a violation of the Fourth Amendment and granted the injunction. The state appealed to the Appellate court, which upheld the lower court decision. The state then appealed to the Michigan Supreme Court, and the lower court decisions were again upheld. The future of sobriety checkpoints appeared grim.

Finally, Michigan appealed to the United States Supreme Court and was granted a hearing. The Supreme Court, in a 6-3 decision, overturned the state of Michigan's lower court decisions. Chief Justice Rehnquist stated in his majority decision that while being stopped at a sobriety checkpoint was technically a seizure as defined by the Fourth Amendment, the limited time a vehicle was stopped at a checkpoint (25 seconds) and the serious problem across the country regarding to drunk driving did not constitute a serious enough violation of the Fourth Amendment to be considered unconstitutional (*Michigan Department of State Police v. Sitz*, 1990). The injunction was overruled and checkpoints would be allowed in Michigan.

Other states began to formulate plans for sobriety checkpoint programs. Ultimately, 39 states and the District of Columbia legalized sobriety checkpoints. In most cases, a court decision was the determining factor. The California Supreme Court held that advanced publicity is not necessary for a checkpoint to be valid (*People v. Banks*, 1993). It is important to note that one of the values of a sobriety checkpoint is that it can be used without pre-announcement, preventing impaired drivers from driving around the location. This was one of the arguments used in an attempt to prevent

checkpoints. In the minds of some, not pre-announcing a checkpoint was “unfair.” In Florida, it was determined to not be a Fourth Amendment violation if the delay, prior to asking a driver to exit from a vehicle, was less than five minutes (Cahill v. State, 1992). In this very important case, the courts decided a short delay at a checkpoint was not unreasonable. The concept of delaying or inconveniencing a driver was a cornerstone argument with those against checkpoints. In Kentucky, simply making an attempt to avoid a checkpoint is sufficient to justify a stop (Steinbeck v. Commonwealth, 1993). With these decisions, the primary reasons asserted by those against sobriety checkpoints had been rebutted.

Those who remain firmly against sobriety checkpoints contend that even if checkpoints are allowed, they do little in the way of preventing impaired drivers. One argument is that a routine patrol does a better job. While on the surface, it looks like routine patrol may arrest more impaired drivers, it is needed to take in consideration the scope. Patrol duties are the largest portion of a police officer’s daily work, and it is only reasonable to assume that more traffic stops occur during patrol than during checkpoints. However, it is the concentration of arrests per checkpoint that puts them way ahead of patrol. If, for example, officers at a checkpoint that lasts three hours arrest three impaired drivers, this produces a 60:1 ratio of 60 minutes of work for each arrest. If a patrol officer working an eight hour shift arrests the same three impaired drivers, the ratio is 160:1, or 160 minutes of work per arrest. However, the average patrol officer cannot maintain constant surveillance for impaired drivers due to other patrol duties and responsibilities. Therefore, a sobriety checkpoint will provide better results than routine patrol due to the concentrated nature of enforcement.

Unfortunately, Texas is one of the few remaining states that has not legalized sobriety checkpoints. Bills have been presented, as recently as 2009, to the Texas State Legislature, requesting that checkpoints be legalized. The Texas Court of Appeals has maintained that without legislative authorization, sobriety checkpoints are a violation of the Fourth Amendment (*State v. Holt*, 1994). This is in direct opposition of the *Michigan v. Sitz* Supreme court decision, which does not require such an interpretation (*Michigan Department of State Police v. Sitz*, 1990). In reality, legislative authorization is the entire reason a bill is sent to the legislature. Once the bill clears both houses and is signed into law, legislative authorization is on the books. It is uncertain as to the reason that bills introduced up to this point do not clear both houses. There is speculation that there is lobbying by large beverage corporations against such bills (Meyers, 2008). The lack of sobriety checkpoints is clearly not due to lack of general interest by the public. There are studies that indicate that 87% of the citizens of the United States favor sobriety checkpoints (Mothers Against Drunk Driving, 2010). The police chief of Austin, Texas, Art Acevedo, stated, "We are waiting way too long to intervene. If we can't intervene in people's lives, we can't change their behavior. It has to start with the first arrest" (El Paso Times Editorial Board, 2010, p.17).

One of the remaining questions in regards to sobriety checkpoints in Texas is the concept of a suspicionless traffic stop. A traffic stop initiated by a police officer on a vehicle usually requires some sort of probable cause to prevent Fourth Amendment seizure issues. While standard patrol vehicle stops can identify impaired drivers, the officer has to be fortunate enough to actually be in the vicinity of an impaired driver at the same time the driver is operating his vehicle. Furthermore, the impaired driver has

to be exhibiting signs of impairment at the exact time the officer looks at that vehicle. Sobriety checkpoints help identify those drivers that are less visibly impaired.

However, Texas already allows for suspicionless vehicle stops absent any probable cause. Texas Transportation Code Section 521.025 (b) states, “A peace officer may stop and detain a person operating a motor vehicle to determine if the person has a driver's license as required by this section” (LexisNexis, 2010, p. 853). This specific section allows for driver’s license checkpoints to be set up without legislative guidelines or authorization. This type of checkpoint is commonly used to check for licensed drivers and verification of insurance. Drivers must stop at these checkpoints, and attempting to drive around one is a valid reason to stop a vehicle. It is a simple assumption that if this type of stop is already valid and Driver’s License Checkpoints are already being implemented, then there would be no reason, in Texas, not to add the act of checking for signs of impairment. It has been previously proven and addressed that this sort of intrusion as an addition to an already legal vehicle stop would be minimal. In *U.S. v. McFayden*, the court ruled that even if the principal reason for a checkpoint is driver’s license and registration checks, an additional benefit, such as identifying another offense, does not make a legal checkpoint invalid (*U.S. v. McFayden*, 1989).

## **CONCLUSION**

As has been clearly outlined, impaired drivers are a serious problem that must be addressed. The state of Texas continues to lead the nation in alcohol related deaths and injuries. Traditional patrol methods, along with sobriety checkpoints, could finally reduce the personal devastation seen on Texas roadways. This paper presents

research that shows not only are sobriety checkpoints legal, but they save lives.

Sobriety checkpoints have been implemented since the early 1980s and have demonstrated that they reduce alcohol related deaths and injuries. Currently, 39 states and the District of Columbia employ checkpoints and have shown an average reduction of over 10%. The state of Vermont showed a 44.8% reduction (Hayes, 2010).

Tennessee implemented a year long program that not only reduced injuries and deaths by 20.4%, but the positive results of the checkpoints lasted for 21 months after the program ended (Lacey, Jones, & Smith, 1999).

Even with the documented results of lives saved, there are still groups that believe sobriety checkpoints are unconstitutional and violate the Fourth Amendment. In 1990, a landmark U.S. Supreme Court decision ruled that sobriety checkpoints were indeed legal, based on the urgent need to reduce the devastation from impaired drivers and that the intrusion was minimal (*Michigan Department of State Police v. Sitz*, 1990). With the legality of checkpoints resolved, states began to move forward with the implementation of checkpoints.

Texas still did not allow checkpoints based on the belief that legislative authorization was needed. This decision by the Texas Court of Appeals was flawed as *Michigan v. Sitz* (1990) did not require this. This requirement could be addressed simply by the passage of a sobriety checkpoint bill. Bills have been introduced on a regular basis, only to be stalled during legislative session. Texas, by statute, already allows suspicionless vehicle stops to check for driver's licenses (Texas Transportation Code section 521.025 (b), LexisNexis, (009-2010, p. 853). Since the very concept of a checkpoint to identify impaired drivers has already been validated and could simply be

added to existing driver's license checkpoints there is no single compelling reason that Texas should not allow sobriety checkpoints, based on the proven savings to lives and property. As shown in this paper, a city of 100,000 could estimate a savings of eight million dollars from the usage of checkpoints (Viverette, 2005).

Finally, it has been shown that sobriety checkpoints will increase DWI awareness. Once checkpoints are implemented in Texas, those who have been drinking will reconsider their options before driving. Checkpoints are easy to set up and can be made very portable. This will help prevent impaired drivers from driving around checkpoints as they would not know where they may be set up. If legalized, the end result of sobriety checkpoints in Texas will increase the quality of life, make highways safer, and significantly reduce deaths and injuries from alcohol related crashes.

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