

NORTH DAKOTA IMPAIRED DRIVING

Newsletter

from the desk of the **TSRP** Kristi Pettit Venhuizen
Traffic Safety Resource Prosecutor

TSRP Goodbye

Goodbye, my friends. My time as the Traffic Safety Resource Prosecutor (TSRP) has come to an end. For those of you who do not know, I was appointed to be a judge in the Northeast Central Judicial District (NECJD). While I am excited about the challenges and responsibilities of my new role in the judicial system, I cannot help but be sad about what I am leaving behind.

I was the Grand Forks City Prosecutor for 25 years. During that time, I worked with more officers than I can remember as we learned together what is needed to successfully prosecute impaired-driving cases. Every case was a learning opportunity – a chance to grow and improve my skills as a prosecutor. A chance to educate officers about how to do things differently and why. I also learned what not to do. I remember the losses much more than the wins. At the end of the day, it is the losses that helped me grow.

Impaired driving cases have it all – excitement, frustration, irritation, and intensity. The cases are technical and fact-specific, testing our resolve and backbone. It is all too simple to take the easy way out in an impaired driving case – whether you are an officer who convinces yourself it is too time-consuming to thoroughly investigate a DUI case, or a prosecutor who tells herself the facts just aren't there. I challenge you all to remember why we do this job, and why the decisions we make matter. Don't be afraid to make mistakes. Don't be afraid to lose. Don't be afraid to have conviction. Remember your charge – to keep our roadways and citizens safe. Stopping and prosecuting impaired drivers is our responsibility and every loss is an opportunity to be better, to do better.

I am passionate about impaired driving. The TSRP position was an unimagined opportunity to share that passion with others. While I had many goals as a TSRP, a primary one was to provide law enforcement and prosecutors with the knowledge and skills needed to feel confident in handling impaired driving cases. I had some success but also realized this goal is ongoing with the finish line constantly moving. Impaired driving is constantly evolving. The law changes, new impairing substances are developed and used, technology improves, science lags, and law enforcement and prosecutors come and go. But the passion remains. The cases continue to be exciting, frustrating, irritating, and intense. I loved it! I hope that passion was evident in the guidance I provided as the TSRP.

I am thankful for the opportunity to work with and meet so many of you in my role as TSRP. While I hope you learned from me, I am truly grateful for what I learned from you. From the North Dakota Department of Transportation to the law enforcement agencies and prosecutor offices, from the Department of Corrections to the Department of Health and Human Services and treatment providers, from the Vision Zero team to the State Crime Lab, from the State Judicial Outreach Liaison (SJOL) to the Upper Great Plains Transportation Institute (UGPTI), from my cohorts in the TSRP world to the national organizations that support us, we are blessed to have so many people and agencies dedicated to preventing death on our roadways and stopping impaired driving.

Thank you for the opportunity to serve North Dakota as your Traffic Safety Resource Prosecutor. I'm going to miss it!

Volume 2, Issue 3

Welcome to the Quarterly North Dakota Impaired Driving Newsletter.

This resource will provide training information, drug and alcohol trends, legal updates, toxicology, and more to keep you informed.

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What is SBIRT?

Screening, Brief Intervention, and Referral to Treatment (SBIRT) is an early intervention designed to screen individuals for problematic substance use. It identifies people at risk for developing substance use disorders (SUDs), providing brief intervention to those at-risk people. It is designed to raise awareness of the risks and consequences associated with use, providing motivation for change, and to help set healthier goals. Finally, the process aides in access and coordination to treatment services.

What are the goals?

The assumption is, based on evidence in the primary care setting, that screening and brief behavioral counseling would reduce unhealthy and unsafe alcohol and drug use to reduce future risks (legal, social, medical) associated with substance use. The goals of SBIRT with impaired drivers are to alter risky behavior, help understand the paradigm shift (reinforce self-determination to reduce risky behavior), and find opportunities for intervention, using motivational interviewing techniques in a structured conversation.

How does it work?

With funding from the Minnesota Department of Public Safety's Office of Traffic Safety, a collaborative group of justice and public health officials in Duluth led by the Honorable Shaun Floerke (ret.), Minnesota's Sixth District Chief Judge worked to integrate the delivery of SBIRT for first-time Driving-While-Intoxicated (DWI) clients in a streamlined, expedited court process. The clients go through the SBIRT process within a few weeks of their arrest, as part of their scheduled time in court. This process is speeding up case processing time and helping clients address their risky behavior.

Clients are screened using a three-step process:

- **Step I.** Three Questions: Clients are asked the first three questions from the AUDIT screening tool. If clients score five or more, they move on to Step II.
- **Step II.** Administer Screening Tools (AUDIT & DAST): Clients undergo the full screening tools to aid in feedback.
- **Step III.** Feedback on Results: Clients engage in a collaborative conversation about the results of the screens utilizing motivational interviewing techniques and when indicated, a referral for additional services.

The primary screening tools currently being used in the Sixth District's SBIRT pilot program include the Alcohol Use Disorders Identification Test (AUDIT) and the Drug Abuse Screen Test-10 (DAST-10). Both are 10-item screening tools developed as a method of screening alcohol and drug use, risky behaviors, and substance-related problems. Both a clinician-administered version and a self-report version of the tools are available. Although frequently used in healthcare settings, the tools have been validated across genders and in a wide range of racial/ethnic groups and is well-suited for use in court settings.

This demonstration pilot project resulted in: court system changes and improvements, such as faster case processing time and community benefits due to enhanced relationships among participating organizations. Most importantly, the DWI client benefits from this project. Clients receive valuable information about their substance use behavior and its potential impact, are guided in addressing their risky behaviors, and are referred to services when appropriate. Several clients expressed appreciation for the intervention, and most who have completed the follow-up interview report positive behavior changes. Per the initial research on the pilot project, none have received a second DWI. Read that last sentence again.

The statistics tell us that one-third of first-time impaired drivers become repeaters. We don't need to wait for them to become such. We can use SBIRT to help identify, intervene, and address behaviors before they get there. Could we start a project like this in North Dakota? Do you know someone (municipal or district judge) who would champion/lead the project? Have you identified community partners who will do the work? Is there access to funding? While I can't answer the first three questions with certainty (although it is my belief that we can), I can answer the last, which is often the barrier for a project like this, SAMHSA has SBIRT grants!

In addition, the [Impaired Driving Solutions - All Rise](#) (formerly NADCP) stands ready to assist in the implementation. Should you wish to visit further, please reach out to me via email john.grinsteiner@ndsu.edu or we can set up a call. You can also reach the All Rise contingent directly as follows: James Eberspacher, Division Director JEberspacher@allrise.org; Julie Seitz, Project Director jseitz@allrise.org; or Jessica Lange, Project Director jlange@allrise.org.

Until next time, be safe out there!

Letter from the New IACP West Region Project Manager for the DEC Program



My name is Robert Hayes and I wanted to introduce myself. I was recently hired by the International Association of Chiefs of Police (IACP). I will replace Chuck Hayes (no relation) as the West Region Project Manager for the Drug Evaluation and Classification (DEC) Program. He will be retiring at the end of the month, and I have so much to learn from this great man!

I was in law enforcement for 32 years and recently retired as a Patrol Lieutenant for the Albany Police Department in Oregon. I have always had a passion for traffic safety enforcement, especially for the detection of impaired drivers. Because of this, I became involved in the DEC Program early in my career by attending Oregon's DRE school in 1998. I used my experiences in DUI enforcement and in the DEC Program to become a DRE instructor to motivate more law enforcement officers to focus on traffic safety both in Oregon and across the nation. I am also currently certified Crash Reconstructionist. In 2006, I became a part-time instructor with the Oregon police academy, Department of Public Safety Standards and Training (DPSST). After training these new officers I encourage them to attend ARIDE to become more proficient DUI investigators. I truly enjoy teaching others so they can find their own passion for DUI enforcement and also enhance their ability to network and learn from others.

In addition, I held the position of Chair for the Oregon DUI Multi-Disciplinary Training Task Force for 15 years. My primary responsibility as the Chair was facilitating a statewide conference for 350-450 people that provides content material for various disciplines that touch on impaired driving. In that leadership role, I developed relationships with key partners in traffic safety including the Oregon Department of Transportation (ODOT), the Office of Administrative Hearings (OHA), the Oregon Department of Justice (DOJ), treatment and prevention representatives, the Oregon District Attorney's Association (ODAA), Mothers Against Drunk Drivers (MADD), and several others.

I also have been involved with legislative work including discussing traffic safety legislation with various Oregon legislators and testifying at the Oregon State Capital. I worked with the Oregon Association Chiefs of Police, DOJ, ODAA, and the Oregon State Sheriff's Association to collaborate on education efforts. Oregon has faced very complicated legal issues in the area of DUI, and I am regularly involved in brainstorming ways to navigate how those issues translate to law enforcement.

I am excited about this new journey. I have some big shoes to fill but Chuck has been mentoring me along the way. If you have any questions or needs, I am here for you. I look forward to working with you to help make our roadways safer for all citizens. Hope to see some of you next week at the conference!

Respectfully,

Robert Hayes

Project Manager, DECP Western Region

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Janelle Portscheller, B.S., D-ABFT-FT

Please explain your position and work history.

I am a North Dakota native, and I was born and raised in Dickinson, ND. I have a Bachelor of Science degree in Chemistry from Dickinson State University. Upon finishing my degree, I felt like I didn't know enough about chemistry yet. I wanted to learn more. So, I began a PhD program in Organic Chemistry at the University of Kansas. Typically, a master's degree is skipped for chemistry programs because the research part of the degree is very intense.

I did well in the program and some of my research work was published quickly. The further I got in the program, the more I realized I was not in the right program. I also missed my family in ND. If I finished my degree, my job opportunities in ND would be very limited. Possibly limited to teaching at a university level and I just wanted to work in a laboratory setting. I made the hard decision to leave the program, moved back to ND and began to look for any job to utilize my chemistry degree.

Upon returning to ND, I found the State Crime Laboratory had a temporary position open. It was a shared position in the Seized Drug and Toxicology Units. The extent of my knowledge of forensics at that time was from the popular television show CSI. I knew enough about science to know the show was ridiculous on how they portrayed laboratory analysis. I also knew it wasn't going to be a glamorous position as CSI portrayed. I took the position and within a short time a full-time position opened in the Toxicology Unit. Eighteen years later I now serve as the Technical Leader for the Toxicology Unit and the State Toxicologist.

What is your favorite book or podcast?

I don't have a favorite book or listen to podcasts. However, during the summer months I enjoy walking outside and listening to audiobooks. I'm currently listening to *The Psychology of Money* by Morgan Housel.

What are the values that drive you?

Integrity is one of the core values that drives me most and is extremely important in the field of forensic science. I also strive to be dependable, accountable, and to do everything to the best of my ability. Kindness and caring for others, while simple, really does make a difference in the lives of others.

What do you enjoy doing when you are not working?

When I'm not working you will find me at the gym. I enjoy group fitness classes. Some of my favorites are Step Aerobics (yes, the 1980s fitness class but it's a little more complex because we use multiple steps), Les Mills Bodyattack, and Les Mills Bodycombat. If I'm not in the gym you will find me in my kitchen. I enjoy cooking and baking. After all, cooking and baking is a chemistry experiment you get to eat.

Perplexing Pedal Pubs

This recent video shows the Indiana State Police arresting a man for felony DUI while driving a Power Wheels Jeep children's toy.

<https://www.instagram.com/reel/CxVoUnoLI9U/?igshid=Mtc4MmM1Yml2Ng==>

The quick video is entertaining but, more importantly, illustrates the dangers of impaired driving. The 51-year-old man was driving on the roadway in a children's toy with no lights to protect him from other motorists, he was impeding traffic, and the behavior posed a safety risk to others. This action demonstrates the absence of the clearness of intellect we expect from people using the roadways. Props to the Indiana State Police.

This story supports a review of the recent changes to our DUI statute. Previously, under [City of Lincoln v. Johnston](#), 2012 ND 139, the North Dakota Supreme Court determined that a bicycle met the definition of vehicle under N.D.C.C. § 39-07-01. That all changed with the 2023 Legislative Session when Representative Mock proposed changes to the motor vehicle code for the sole purpose of allowing pedal pubs to operate in the state. The desire to support the pedal pub industry in North Dakota required statutory changes to remove bicycles from the definition of vehicle in our statutes. Now, under [N.D.C.C. § 39-07-01\(2\)](#), a person cannot get a DUI on a bicycle or ridden animal. Bicycle is defined as "every device propelled solely by human power upon which any person may ride, having two tandem wheels or two parallel wheels and one forward or rearward wheel. The term includes an electric bicycle and a multipassenger bicycle." [N.D.C.C. § 39-01-01\(3\)](#). Multipassenger bicycles have a number of requirements including a minimum of four wheels, the ability to operate under human power using pedals, at least five seats, and can also be operated using a motor. See [N.D.C.C. § 39-01-01\(51\)](#). Multipassenger bicycles are the thing bachelorette party dreams are made of.

The DUI statute now includes the following exception, "The driver of a multipassenger bicycle is subject to a violation of this section but a multipassenger bicycle passenger may not be charged with a violation of this section." [N.D.C.C. § 39-08-01\(1\)\(c\)](#) (emphasis added). So, the "driver" of the multipassenger vehicle must not be impaired. They are responsible for operating the pedal pub to make sure it follows the rules of the road. The driver must have the clearness of intellect necessary to safely operate a vehicle on the roadways. The passengers, however, are free to be as drunk as a skunk with no consequences.

Not all is lost, though, as the legislature also created [N.D.C.C. § 39-10.1-10](#) which states "An individual operating a bicycle or riding an animal on a roadway, or an area the public has access to, may not be under the influence of alcohol or any drug to a degree which renders the individual a hazard to themselves or the general public. An individual who violates this section must be assessed a fee of two hundred dollars." This provides the ability to cite someone who is operating a bike on a roadway, bike path, or sidewalk if they are a hazard to themselves or the general public due to impairment.

If you are wondering about conveyances like children's toys and e-scooters, most likely you can still be charged with DUI under North Dakota law if using such a "vehicle" on "a highway of upon public or private areas to which the public has a right of access for vehicular use in this state. . . ." [N.D.C.C. § 39-08-01\(1\)\(a\)](#). Vehicles "include every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by human power or exclusively upon stationary rails or tracks. The term does not include an electric bicycle." [N.D.C.C. § 39-01-01\(104\)](#). An electric bicycle "means a bicycle equipped with fully operable pedals, a saddle or seat for the rider, and an electric motor of seven hundred fifty or fewer watts . . ." [N.D.C.C. § 39-01-01\(19\)](#). A deep dive into the definitions outlined in N.D.C.C. § 39-01-01 supports the argument that Power Wheels and e-scooters are vehicles under North Dakota law. ■



The Lighter Side

So the cop says, "Pull Over!"

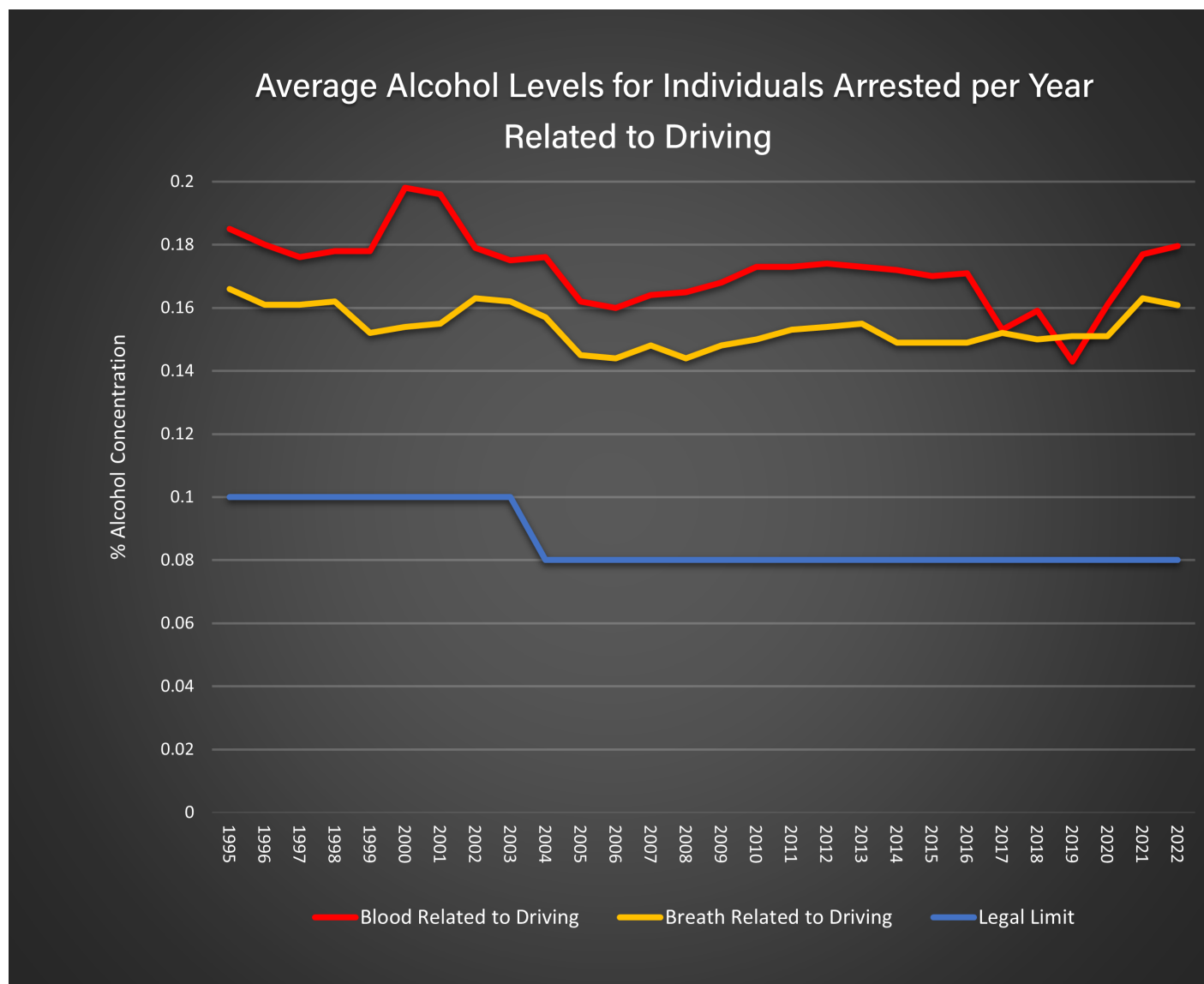
And I said, "No, it's a cardigan but thanks for noticing!"

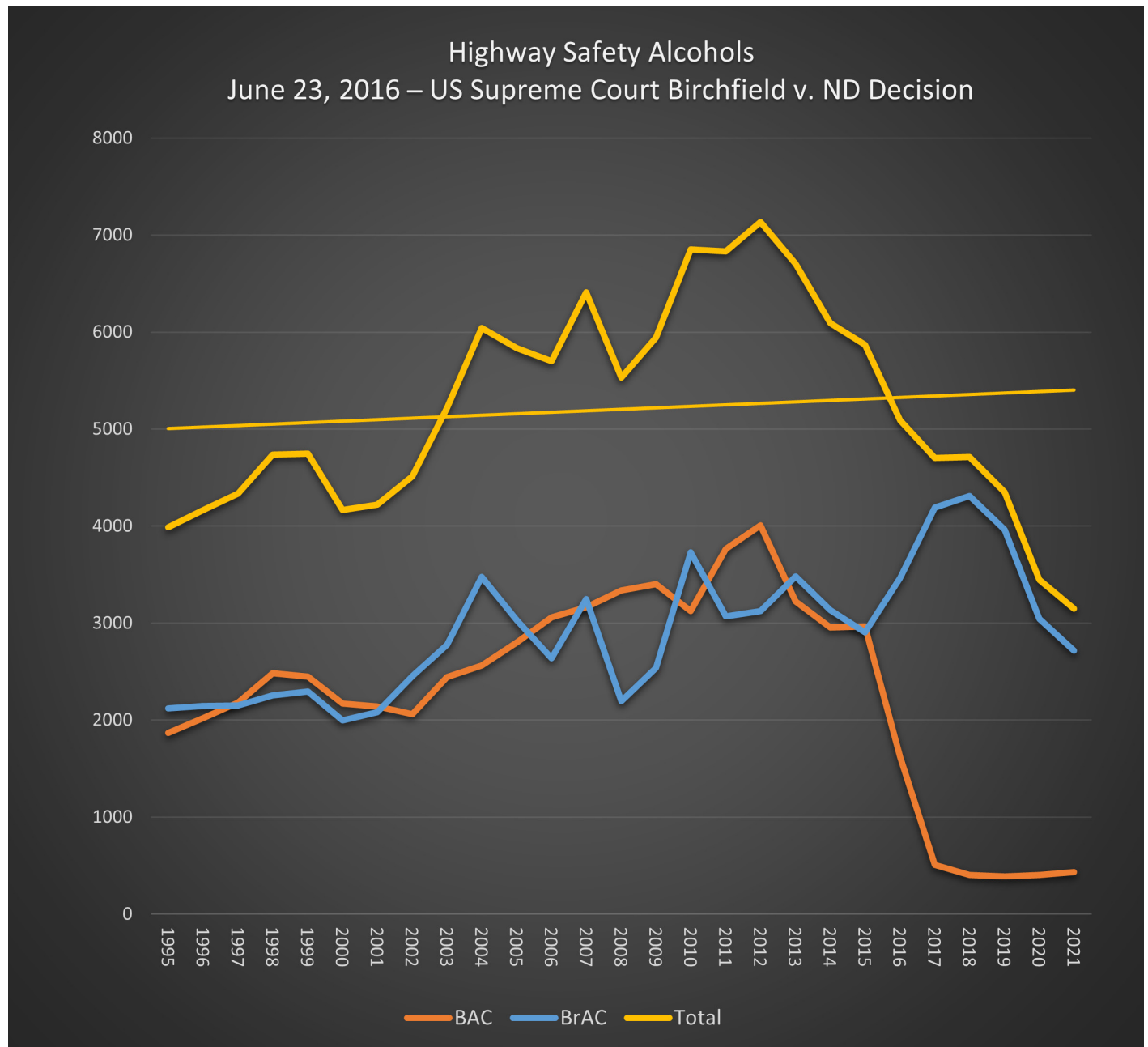
I told the man: It's not how many times you fall down, but how many times you get back up that matters.

He said: That's not how DUI tests work, sir.

2022 Toxicology Data

The State Crime Lab released data regarding the number of DUI arrests and average alcohol concentrations dating back to 1995. The data is organized by breath test results versus blood test results. In 2022, the average blood alcohol concentration was .180 and the average breath alcohol concentration was .161. This was based on 398 blood tests and 3,401 Intoxilyzer tests for a total of 3,799 DUI cases with evidentiary chemical tests submitted. This is a 20.5% increase in DUI cases processed by the State Crime Lab since 2021. ➤





Upcoming Training and Events

ARIDE Classes

- Bismarck: October 2–3, 2023
- Watford City: October 16–17, 2023
- Grand Forks: October 24–25, 2023

Contact Trp. Tarek Chase with questions

Intoxilyzer Trainings

- October 2–3, 2023
- October 19–20, 2023
- November 2–3, 2023
- November 13–14, 2023
- December 7–8, 2023
- December 18–19, 2023
- January 11–12, 2024
- January 22–23, 2024
- February 1–2, 2024
- February 12–13, 2024

Contact Anna Narehood at the State Crime Lab with questions

DRE/SFST Instructor In-service

December 18–19, 2023
Holiday Inn, Bismarck, ND

Midwest Impaired Driving Conference

November 2–3, 2023

Chicago, Illinois

<https://www.midwesttrafficsafety.org/midc>

Lifesavers Conference

April 7–9, 2024

Denver, Colorado

<https://lifesaversconference.org/future-conferences/>

All Rise

May 22–25, 2024

Anaheim, California

<https://allriseconference.org/about-rise/>

IACP Impaired Driving and Traffic Safety (IDTS) Conference

August 16–18, 2024

Washington, D.C.

<https://www.theiacp.org/IDTSconference>

Governors Highway Safety Association (GHSA)

September 7–11, 2024

Indianapolis, Indiana

<https://www.ghsa.org/events/Annual-Meetings/2024>

Training Resources

TSRP Webpage • www.ndsaa.org

User Name: tsrp • Password: tsrp

This website was developed to provide those invested in traffic safety with a warehouse for current information, training opportunities, case law updates, related resources, interesting and relevant news articles, etc., so we can continue to focus on our goal of making North Dakota's roadways safe. Following is a list of items available.

- Impaired Driving Training Materials & Manuals
- Memo Library
- Impaired Driving Training Video Library
- SFST Training Videos
- The Two Beer Manual and latest case law updates
- Webinars



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