

# NORTH DAKOTA IMPAIRED DRIVING Newsletter

*from the desk of the* **TSRP** Peter Halbach

## Welcome to the Impaired Driving Newsletter for North Dakota 2024, Volume 3; Issue 3

A year ago, Traffic Safety Resource Prosecutor (TSRP) Kristi Pettit Venhuizen said goodbye, having been appointed as District Court Judge by Governor Doug Burgum for the Northeast Central Judicial District in Grand Forks, ND. To say her departure left a void in the Traffic Safety team is an understatement. While she assisted in making the transition period as smooth as possible, other partners also stepped in to fill the void.

For example, North Dakota's own Judicial Outreach Liaison (JOL), retired Judge John Grinsteiner, took the lead on the June Impaired Driving newsletter, as my start date as TSRP was not until June 1. He also helped with the Impaired Driving Task Force meeting early this year as well as the Impaired Driving Conference held in June, serving as emcee for that event. The state's DRE/SFST coordinator, Trooper Tarek Chase of the North Dakota Highway Patrol, worked diligently to pull together that valuable June conference, a review of which is included in this edition. Thanks to NDDOT Traffic Safety's Sandy Wilson for that article and keeping the team organized.

In addition to continuing to guide and encourage me as a new TSRP, Judge Grinsteiner has contributed another article to this issue, part II of his discussion of plea agreements. James Knopik from North Dakota Health & Human Services has contributed to this issue as well, providing insights into how early intervention can reduce addiction and reduce the risk of impaired driving. This issue also recognizes law enforcement officers in eastern North Dakota who were recently honored by the Vision Zero program for their efforts in enforcing DUI laws. Reaching the vision of zero fatal crashes will take a holistic approach to prevention and enforcement, with the involvement of all traffic safety partners and the public.

Though I only started as TSRP in June, I have already had an opportunity to meet with states attorneys at their June meeting, with law enforcement officers at the Impaired Driving conference in June, with the current class at the Law Enforcement Training Academy (LETA) in Bismarck, and with law enforcement in Watford City. I have also had numerous conversations with state troopers, police officers, deputies, and prosecutors, trying to understand their challenges and connecting them to information. Various working groups have welcomed my thoughts and ideas as they work together to address the traffic safety challenges we face. I'm grateful for those who support our efforts.

## Volume 3, 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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- Deputy Ryan Hutton | Cass County Sheriff's Office
- Sergeant Thomas Inocencio | Grand Forks Sheriff's Office
- Deputy Craig Keller | Cass County Sheriff's Office
- Officer Josh Marlow | Fargo Police Department
- Sergeant Cory Mortensen | Pembina County Sheriff's Department

## Eastern North Dakota DUI Enforcement All-Stars

The top DUI enforcers in Eastern North Dakota were honored at the DUI Enforcement All-Star Night at the FM RedHawks game on August 13th at Newman Outdoor Field in Fargo. The event recognized the outstanding efforts of law enforcement officers and prosecutors for keeping North Dakota's roadways safe from impaired drivers. The 2024 Eastern North Dakota DUI Enforcement All-Star team included:

- Officer Russell Anthony | Devils Lake Police Department
- Chief Deputy Travis Carlson | Benson County Sheriff's Office
- Officer Adam Cole | Grand Forks Police Department
- Deputy Tyler Denning | Benson County Sheriff's Office
- Sergeant William Earl | Ramsey County Sheriff's Department
- Deputy Jonathan Folena | Traill County Sheriff's Office
- Sergeant Ryan Haskell | West Fargo Police Department

- Corporal James Opp | Grand Forks Police Department
- Sergeant Jason Pohlkamp | Traill County Sheriff's Office
- Deputy Sam Potter | Stutsman County Sheriff's Office
- Deputy Carson Quam | Cass County Sheriff's Office
- Officer Jacob Stewart | West Fargo Police Department
- Officer Timothy Sul | UND Police Department
- Officer Carston Toedter | Jamestown Police Department
- Sergeant John Vetsch | Walsh County Sheriff's Office
- Trooper Austin Yancy | North Dakota Highway Patrol

"We are incredibly proud of these dedicated officers who work tirelessly to ensure the safety of our community," Vision Zero Outreach Program Director Ryan Gellner said. "Their commitment to removing impaired drivers from our roads is commendable and deserves this special recognition."



## Plea Agreements: Should the Judge Accept? (Part 2)

Last quarter I brought you the first part of this article, (it can be found at <https://www.ugpti.org/rtssc/resources/tsrp.php> in ND Impaired Driving Newsletter | Volume 3, Issue 2 on page 5). I wrote about getting complete information before the court so the judicial officer can make the best decision based on the most complete picture available and admissible. Remember that some evidence or information is barred by the rules (inadmissible), but that is a subject for a different day. This quarter's continuation of the previous article, hopefully sheds additional light and increases the understanding of plea agreements. In other words, let's pull back the curtain a little further.

Did you know that according to the Bureau of Justice statistics, 90-95% of all state and federal criminal cases are resolved by plea agreement? That number may seem high, especially when the high-profile trials seem to draw all the attention. But it is accurate. It should follow then that extra care would be taken to make sure these resolutions are accomplishing justice.

As you might suspect, there are many working parts to a plea agreement, with many people affected by them, including victims and law enforcement. Marcy's Law took dead aim at how victims are affected and law enforcement can't help but wonder sometimes if the end result justifies the effort and risk. Even the general public can be affected by plea agreements, especially when it comes to impaired driving cases. Good plea agreements can help with that. While plea agreements can be an effective tool in bringing cases to conclusion, great care should be taken by the lawyers and especially judges, to make sure justice is being done.

Let's remember our fact scenario. Again, the story sounds hauntingly familiar. The prosecutor announces a plea agreement where the defendant will plead as charged to DUI. The defendant has two prior DUI arrests that resulted in reckless driving convictions. The prosecutor recommends a fine, court fees, and unsupervised probation, because technically this is the defendant's first DUI conviction and she is already attending a 6-week alcohol education program recommended from an already-completed drug and alcohol evaluation.

Is the judge required to accept the plea deal or the sentencing recommendation in it?

The short answer is no and most judges will reject plea deals when the terms are out of whack or wonky (not legal terms, in case you were wondering). Some judges reject plea deals more than others and some judges accept any and all plea deals. There is obvious discretion. In addition, sentencing lies solely within the power of the court, so sentencing recommendations are just that, recommendations.

The court can accept them, reject them, or modify them. Doing anything but accepting them, will likely change the status of the plea. There are binding plea agreements and non-binding plea agreements and Rule 11 of the North Dakota Rules of Criminal Procedure sets out how they are to be handled. North Dakota Court System - RULE 11. PLEAS ([ndcourts.gov](http://ndcourts.gov)) Specifically, Rule 11(c)(3) sets out the process for judicial consideration of a plea agreement. Defendants should know and understand what they are pleading to and it is up to the judge to make sure that they do.

If prosecutors have discretion and judges have discretion and we acknowledge there are good reasons for both (a system of checks and balances within the system), where can the focus be concentrated to ensure justice is being done? Good plea agreements can help with that!

### Where should we focus?

It starts roadside (law enforcement). Be as detailed with your reporting as possible. Even small details matter when you are considering the totality of the circumstances. Factors like speed, weaving, or other dangerous driving behaviors are important. Be sure to detail the behaviors, conduct, words, and your observations after the stop at the scene. Your report should include case-specific details, information on any testing limitations, and traffic history.

The work continues with proper case preparation and presentation (prosecution). That traffic history should include any speeding, distracted driving, reckless driving, and criminal history with emphasis on impaired driving

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history, including any dismissals, reductions, and deferrals. The court should be made aware of substance use/abuse history and any diagnosis and/or recommendations from a screening and any evaluations. Finally, the court should be made aware of any past pre-trial and post-sentencing supervision compliance issues and whether the defendant has been successful or not in previous treatment. The best way to predict the future is to look at the immediate past. In that same vein, having the right information to form a good plea agreement can change the trajectory of the case.

### **What about the lawyers?**

Prosecutors should make sure there is a solid basis for the plea bargain and be prepared to explain that on the record. The plea agreement should be based on a complete case assessment, including all of the information listed above. While this may seem like more work up front, it will almost certainly give time back in the form of fewer trials. Establishing early how you handle cases will allow the defense to have certainty and clarity with their clients and you. In addition to prior record (including dismissals and reductions), traffic history, substance use/abuse history and any diagnosis and/or recommendations from screenings and assessments, the prosecutor should ask, why this case, and why this defendant, when considering a plea. Is the public safety served by the plea bargain or case disposition? If not, how can it be?

Let's not forget that the defense has a duty to protect, not only this particular defendant's rights, but all of our rights. Defense attorneys should identify any credible problems with the prosecution's case and/or the ability to prove the case. Honest discussions should be had about this early on. A defense attorney should seek specific information about their client's substance use history and treatment compliance. They should seek an impaired driving risk assessment and highlight their client's protective factors. All of that information should be considered as part of any plea agreement and disposition. This will only benefit the client in the long run. Good plea agreements help everyone.

### **Where does that leave us?**

There may be some old habits that need breaking. "We have always done it that way," should make you cringe. "I didn't know I could do that," should make you hopeful. Don't be afraid to see if there is a better way. There are many barriers, challenges and obstacles in our courts and system. Heavy caseloads are not new. Everyone is dealing with limited resources. It's old news. Instead, talk about how you have overcome those challenges. Good plea agreements can help with that.

If you are an attorney, be prepared to explain the plea agreement (considerations, effects, and goals) to your client and the court, but also think of others that may be affected by the case disposition. Give those same explanations to victims, law enforcement, and even the general public if appropriate. This should be easy to do when good plea agreements are reached. If explaining the details is stressful or uncomfortable, maybe it is not a good plea deal. If you are law enforcement and the plea agreement doesn't seem to make sense, ask questions. Don't be afraid to communicate with others up or down the system from you. There is much to be learned from each other. The single biggest problem with communication is the illusion that it has taken place. Communication leads to relationships and relationships almost always lead to better results.

# North Dakota Impaired Driving Conference in Review

Sandy Wilson  
Program Manager  
Highway Safety Division, NDDOT

The NDDOT Highway Safety Division hosted an Impaired Driving Conference June 19-21, 2024, at the Radisson Hotel in Bismarck. This event marked the first conference focused on impaired driving in several years. It garnered enthusiastic participation from law enforcement, with approximately 78 attendees, including officers from across the state. Numerous other stakeholders also attended.

The conference planning committee curated a comprehensive agenda featuring several key presentations:

- Shannon Wellen and Keenan Zundel discussed Standardized Field Sobriety Tests and Actual Physical Control.
- State Toxicologist Janelle Portscheller provided updates from the State Toxicology Laboratory.
- Jason Wahl gave a presentation on the ND medical marijuana program.
- Ryan Haskell discussed the use of non-standardized field sobriety tests and their validity.

- A panel including Janelle Portscheller, Brian Larson, Dr. Kim Vachal, and DRE/SFST Coordinator Tarek Chase presented information on the oral fluid pilot program and its future in North Dakota. Please watch for additional information about deploying the SoToxa oral fluid screening devices to select agencies in late 2024 or early 2025.
- Traffic Safety Resource Prosecutor Honorable Peter Halbach offered insights on testifying at Administrative Hearings and updates on case law.

The conference also featured three keynote speakers:

- Ryan Hutton from Extract-ED presented Cop Out
- Rob Duckworth of Abbott Laboratories and Chuck DeWeese of Connecting Clients Consulting, LLC, presented "What an Oral Fluid Roadside Screening Program Is and What It Isn't."
- North Dakota Attorney General Drew Wrigley addressed law enforcement regarding his support for law enforcement and upcoming changes the Attorney General will incorporate into his office.

Judge John Grinsteiner (ret.), North Dakota's State Judicial Outreach Liaison, was the emcee for the conference.

Looking ahead, the conference committee is already planning the 2025 Impaired Driving Conference, aiming to incorporate feedback from the 2024 event to develop a selection of topics and speakers.

Thank you to all who assisted in planning and presenting. And a special thank you to all who attended the conference.

## North Dakota 2024 Fatal Crash Statistics as of 8/17/2024

### Fatalities: 55

Crashes: 51  
Operators Tested Positive BAC: 9  
Operators Tested Negative BAC: 10  
Operators Not Tested: 1  
Fatalities from Alcohol Crashes: 9  
No Seat belt (for seat belt eligible vehicles) 13  
Speed-related fatalities: 10

Pedestrian fatalities: 2  
Motorcycle fatalities: 13  
Fatal Crash Involved Lane Departure: 34  
Fatal Crash Involved a Younger Driver(s) 14-20 years old: 6  
Fatal Crash Involved an Older Driver(s) 65+ years old: 18  
Fatal Crash Involved a Train: 0  
Fatal Crash Involved a Commercial Motor Vehicle(s): 13  
Holiday Fatalities: 2

For a full look at the Fatal Crash Stat Board and how the numbers compare to 2023 and 2022, visit: [2024 Fatality Spreadsheet.xlsx \(nd.gov\)](#). It should be noted that there are currently 32 crashes that are under investigation and not yet categorized. Click to view the [NDDOT 2022 Crash Summary](#).





## Preventing Addiction Before It Starts: Research Points to Early Intervention

James Knopik

Manager, Addiction and Prevention Program and Policy

North Dakota Health & Human Services, Behavioral Health Highway Safety Division, NDDOT

Early intervention strategies target individuals who show signs of risk for a substance use disorder, but have not developed a diagnosable condition. As with any disease, identifying individuals who are at risk and intervening as early as possible to prevent a disease from occurring is the best course of action, but how does this look with addiction?

One sign that an individual is at risk for substance use disorder is legal consequences related to use. This would include an individual driving under the influence (DUI) of alcohol or a minor consuming alcohol underage. North Dakota has developed early intervention classes geared for at-risk individuals by certifying minor in possession instructors and DUI seminar instructors who provide evidence-based early intervention classes by utilizing a curriculum called Prime for Life.

A 2015 impaired driving report analyzed results from individuals that participated in early intervention classes vs. individuals who only received legal consequences. This study demonstrated that 37% of individuals who experienced an impaired driving offense were re-arrested for the same offense later, whereas only 16% of individuals who completed the Prime for Life Class were re-arrested<sup>1</sup>.

Additional studies on the program have demonstrated that court-mandated offenders that participate in Prime for Life classes develop changes in their attitudes and beliefs, risk perception of drinking, and motivation to reduce alcohol use<sup>2</sup>. Further studies have discovered that these classes were effective in adolescents as well, showing up to a 21% increase in the number of youths who abstain from alcohol consumption in the six months post completion of an early intervention class<sup>3</sup>.

Studies show that intervening at the first risk signs helps prevent further alcohol consequences from occurring, even when an individual is mandated to attend the class.

A list of North Dakota certified DUI seminar instructors can be found here: <https://www.hhs.nd.gov/behavioral-health/find-services>

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<sup>1</sup>Decreased Recidivism Following Prime For Life Attendance: 2015 Report, Full

<sup>2</sup>Empirical Support for PFL Report 4.1 FINAL02.07.13. ([primeforlife.org](http://primeforlife.org))

<sup>3</sup>Id.

## Upcoming Training and Events

### National Interdisciplinary Cannabis Symposium

September 27–29, 2024

New York Law School, New York, New York

[2024 National Interdisciplinary Cannabis Symposium](#)

### National Alliance to Stop Impaired Driving (NASID)

November 18–20, 2024

Arlington, Virginia

[Summary–NASID Conference 2024 \(cvent.com\)](#)

### DRE/SFST Instructors Inservice

December 10–11, 2024

Holiday Inn

Bismarck, North Dakota

\*more info will be available in Fall 2024

### Lifesavers Conference on Roadway Safety

March 9–11, 2025

Long Beach Convention Center

Long Beach, California

<https://lifesavers25.eventscribe.net/>

## Training Resources

TSRP Webpage • [www.ndsaa.org](http://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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