

## St. Albans Messenger (VT)

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### **Improvements, flaws in DUI enforcement**

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ST. ALBANS - According to the Governor's Highway Safety Program, a total of 77 people died in car crashes in Vermont in 2012.

Of those 77, 21 operators were suspected of driving under the influence of alcohol, 20 operators were suspected of driving under the influence of other drugs, 21 people died in crashes that were speed related, and 34 people who died were not buckled.

Thirty percent of all fatalities are alcohol related. Though drunk-driving fatality rates have decreased consistently, the problem persists.

Police and a defense attorney recently discussed the logistics of DUI investigations, flaws with the system and the need for law-makers to better address impairment laws while still preserving justice.

Impairment Lt. Ron Hoague of the St. Albans Police Department noted there are about 20 clues that might lead police to believe someone is driving while impaired.

Staying on one side of the road, making controlled turns and controlling one's speed - all tasks that require concentration while driving - can change when someone is under the influence.

When trying to drive while intoxicated, he said, "Your brain can no longer keep up."

Captain Jay Sweeny of the Franklin County Sheriff's Office agreed.

Countywide 240 cases were reported. That number does not include those who drove while under the influence but were not stopped by police.

Being impaired does not necessarily mean someone has a blood alcohol content of higher than .08 percent, the current legal driving limit. Someone could be below that limit but still be unable to drive and according to state statute, and can be arrested for DUI without blowing a .08 percent alcohol content.

Attempts to rid the body of alcohol simply do not work, Hoague said. Coffee or a shower won't make someone sober up; the only thing that works is time.

He noted that some people carry a "pro kit," containing things like Visine eye drops or air fresheners. Mouthwash seems like a common quick fix, but most actually contain alcohol, which only raises the BAC.

Hoague said he has seen extremely high BACs, upwards of .38 percent, which is more than four times the legal limit.

Vermont State Police St. Albans Barracks Commander Lt. John Flannigan noted too that all DUI cases are different. He is a proponent of the Drug Recognition Expert (DRE) program and the Advanced Roadside Impaired Driving Enforcement (ARIDE) System; it allows for officers to better understand impaired driving.

Sweeny and Franklin County Sheriff Robert Norris noted, too, the dangers of other types of impairment, such as distracted driving or texting while driving.

With GPS devices in most cars, sophisticated radios and communications systems, there is plenty to distract drivers every day. Even hands-free phone conversations take drivers' minds away from the road.

Sweeny challenged any driver to recall three things they saw while driving home from work. Many people just don't pay attention, he said.

While investigating the scene following the April 26 crash in Enosburg that killed a high school senior, he saw a driver, moving down the road, with a book propped against his steering wheel. There is technically no law prohibiting books from steering wheels, he said, but it shows the extent to which drivers often fail to pay attention to the road.

Flaws?

Defense attorney **Bill Cristman** noted that alcohol levels change through a process of absorption and elimination; the body takes alcohol in and eventually rids itself of the chemicals. Measuring alcohol levels poses a problem, he said, because doing so leaves room for error.

The more samples taken from a person, the likelier it is to receive an accurate measurement of how much alcohol is in someone's system. However, suspicion of DUI is usually tested with just one breath sample, though sometimes a second breath test or a blood test is used. Blood tests requested by the accused are done at a hospital and at one's own expense.

The state has a formula for estimating the BAC of someone suspected of intoxication, trying to pinpoint their content level back to the time they actually drove from the time they were processed. That opens the door to miscalculation and inaccuracy, **Cristman** explained, considering that every body eliminates alcohol at a different rate.

In short, **Cristman** said, "You want to know what it is you don't know." Vermont, he claimed, doesn't know. In addition to statistical problems, there are medical issues and biological factors that could play a role in roadside testing, he said, and the machines used for BAC testing can be unreliable. He advises potential accused drivers against performing roadside sobriety tests, which he said are subjective. If a death occurs in a crash, **Cristman** said the stakes are raised for defendants, who are likely to face the same sentence as involuntary manslaughter. He encourages people to have their own crash reconstruction performed.

Preliminary Breath Test (PBT) evidence, he pointed out, is not admissible in court. He said people who cannot physically blow into a Breathalyzer could be charged with actively refusing to do so.

**Cristman** and other defense attorneys have worked to disprove the reliability of Datamaster testing devices, machines that are known to give fatal error messages and are widely used by police in Vermont.

Additionally, he said, Vermont's forensics laboratory, which does DNA and BAC work, is not certified. Its accreditation, essentially grandfathered, will expire next year and it will have to meet regulations to become accredited.

Solutions: **Cristman** argued the state's legislature needs to take a look at issues surrounding DUI investigations and should require that the state laboratory report discrepancies.

Hoague said he would like to see Vermont enact tougher DUI laws and provide harsher punishment for repeat offenders.

Hoague and Norris agreed DUI offenses do occur less frequently now than in the 1980s and 1990s.

The local police agencies are involved in the Governor's Highway Safety Program. Flannigan was commander of the state's Traffic Safety program before coming to the St. Albans Barracks. He was presented at a Highway Heroes award ceremony earlier this month with the Sergeant Michael W. Johnson award for a stellar career leading traffic safety initiatives.

Flannigan noted that progress has been made with the creation of safer vehicles, and commended the development of ignition interlock devices, which act like Breathalyzer tests but are installed into vehicles. If a person's BAC registers above the legal limit, the car won't start.

Flannigan said he also supports the DUI court program.

Piloted in Windsor County and rising in popularity, this is similar to the drug court, with focus placed on rehabilitation and decision-making. Defendants are ordered into court soon after arrest for arraignment, and make regular follow-up appearances, rather than being arraigned on a citation a month or so after an incident and continuing on a long and drawn out court process.

Norris noted success in the targeting of high-traffic holiday weekends to prevent impaired driving. New Year's Eve sees fewer dangerous drivers because people know police presence will be higher on the roads. Work in schools by police and outreach groups like Mothers Against Destructive Decisions or Students Against Destructive Decisions have helped, too, he said. He and other officers and agencies try to play a proactive role rather than having to react when tragedy occurs.

Sweeny noted the importance of keeping momentum in those proactive efforts. When something bad happens, he said, everyone thinks about the dangers. But that wears off over time. People always know that speeding kills and driving without a seatbelt is dangerous, he said, yet police write tickets for those offenses every day. The same is true for driving while impaired; people know it is dangerous but the choice is still made.

Flannigan cautioned those drinking to avoid driving altogether because it simply is not worth the risk.

"There's nothing you can change to bring someone back," he said.

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