

Impaired Driving Adjudication Problems in the Houston Area

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Major Problems

- Is DWI a crime?
- High rate of DWI breath test refusals
- Weak Administrative License Revocation Program
- Statutory concerns
- Medical concerns
- Police staffing and training
- Prosecutorial concerns

Is DWI a Crime?

- Most people do not view traffic safety as an issue that affects them
- By golly, this is Texas and we all do it, so it can't be against the law
- Highly specialized area of the law that makes it difficult for police and prosecutors

Harris County DWI Offenses

- Approximately 12,000 DWI cases filed in 2006
- A little over 10,000 were misdemeanors
- Almost 2,000 felony cases
- Misdemeanor convictions: approximately 8,300 cases
- Dismissal rates have almost doubled from 2000
- Total refusal jury conviction percentage in the same period has gone from 65% to 30%

High Rate of Breath Test Refusals

- Texas and Harris County are leaders in the field (and that is not good)
- No criminal penalty for refusal
- Refusal cases have the lowest conviction rate
- Insignificant collateral consequences
 - Driver's license
 - Bond
 - Punishment

Refusal Statistics

- Breath test refusals are a significant problem for prosecutors in DWI cases
- Texas has one of the highest refusal rates in the country
- Statewide refusal rate approximately 45%
- Harris County refusal rate in individualized studies is approximately 48%
- Harris County variances are from 35% on “No Refusal Nights” to sometimes 75%

Weak Administrative License Revocation Program

- Defense lawyers abuse the ALR process for criminal discovery that is otherwise not allowed
- Officers do not attend hearings
- Insignificant legal distinction between refusal and failure
 - DWI 1st: 180 days for refusal and 90 days for failure
 - Compare to Florida and its approximate 20% refusal rate: 1 year for refusal and discretionary with the judge for failures
- Ease of obtaining a restricted license
 - Almost always granted by courts

Statutory Concerns

- Hospitals not required to report DWIs
- Hospitals, in fact, are punished for it
- Medical personnel do not understand HIPAA
- Transportation Code excludes some personnel from performing MANDATORY blood draws
- No criminal sanction for a refusal
- Time of driving requirement
- TCLEOSE Issue

Medical Concerns

- Some agencies are not cooperative in DWI cases
- Mandatory blood draws
- Search warrant blood draws
- Testimonial concerns for staff
- See HIPAA, EMTALA, and Employment Code

Police Staffing and Training

- Insufficient DWI officers
- Hostility towards DWI cases
- Overtime issues
- Blood draw laws
- SFST and DRE concerns / variations
- NHTSA Manual
- Sobriety Checkpoints

Prosecutorial Concerns

- “Baby DAs”
- Felony reductions to misdemeanor
- Prosecutor rotations
- Insufficient training
- Lack of understanding about the science
- DWI search warrants
- HVE campaigns, but no extra ADAs??

Search Warrant Results

- Average breath result: 0.13
- Average blood search warrant result: 0.17
- Average refusal rate: 46%
- Average refusal rate No Refusal nights: 35%
- Almost 45% of arrestees have other substances in their system
 - Not detectable with breath/detectable with blood
- Exonerations

Adjudications

- 90% conviction rate
- Dismissals are the biggest problem
- Suppressions not too bad
- Probations dwindling
- Deferred Adjudication issue???