



# TRAFFIC SAFETY COMMISSION

Perceptions of Drug Recognition Experts (DREs) and DRE Evidence:  
A Qualitative Analysis of the Police, Prosecution, and Defense

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The DRE program aims to fill a gap in detecting and apprehending drivers under the influence of drugs other than alcohol. This study used multiple methods to answer how criminal justice actors and court systems view the effectiveness of the DRE program and DRE-related evidence. Interviews revealed three major themes 1) the use of DREs; 2) limitations of the DRE program; and 3) indirect benefits of the DRE program. Based on these results, the authors offer multiple policy recommendations for consideration.

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## 1. INTRODUCTION

Law enforcement has employed the Drug Recognition Expert (DRE) program for over 40 years as a tool to combat driving under the influence. The impetus for anti-DUI programs is clear: over 10,000 lives are lost each year in the United States from crashes involving impaired drivers, costing over \$44 billion per year (National Center for Statistics and Analysis, 2019; Blincoe et al., 2015). There are various tools available to law enforcement to detect and apprehend impaired drivers, including the standardized field sobriety test (SFST) and portable alcohol screening devices. However, the DRE program attempts to fill a gap in the law enforcement toolkit by detecting and charging non-alcohol drug-impaired drivers. The DRE program offers an avenue by which police officers can receive specialized training on the behavioral and physiological detection of drug impairment, as well as a set of 12 standardized procedures that, together, constitute a DRE evaluation. An officer who receives this training and is certified to conduct DRE evaluations is known as a Drug Recognition Expert.

With a shift away from the War on Drugs (Werb, 2018) and a push toward the legalization of cannabis and potentially other substances, the ability to effectively police drug-impaired driving has taken on increased importance. Washington State, one of the first two states to legalize cannabis for recreational purposes, is a useful demonstration of the increased need to focus on drug-impaired driving. Data from the Washington Traffic Safety Commission (WTSC) (2016) demonstrates that the percentage of drivers involved in fatal crashes who tested positive for cannabis has increased by over 100% from 2010 (pre-legalization) to 2014 (post-legalization). Though the long-term effects of legalization on traffic safety have yet to be determined, research within and outside of Washington State documents that, at a minimum, legalization is associated with a short-term increase in drug-impaired driving (Lane & Hall, 2019). While the specific magnitude of the effects of cannabis on driving safety are somewhat unclear, research typically documents some level of deleterious effects on driving ability and performance (Woo et al., 2019). It is apparent that if there are more drug-impaired drivers on the road and if drug impairment decreases traffic safety, there is an increased and urgent need to combat this social issue. One of the most widely used law enforcement resources to tackle drug-impaired driving is the DRE program.

While previous research related to DREs has mainly focused on drug categorization accuracy (for examples, see Smith et al., 2000; Porath-Waller et al., 2009), the current study is the first in a two-part series to specifically examine the effects of DRE officers (DREs) and DRE evaluations in Washington State on the adjudication of Driving Under the Influence of Drug (DUID) cases. In this first part of the overarching project, we assess law enforcement, prosecutor, and defense attorney perceptions regarding DREs and the DRE program. These perceptions are central to understanding the effectiveness of the DRE program for multiple reasons. If the program is viewed favorably, it will more likely be used by prosecutors and perhaps more likely to be a source of concern among defense attorneys. Conversely, if the program is not viewed in a strong, positive light, it could call into question the efficacy and utility of the program. That is, regardless of the effectiveness of DREs at detecting and apprehending drug-impaired drivers, the program itself is largely moot if it is not used by prosecutors and/or if it is easily combatted by defense attorneys. In the current study, we attempt to fill this gap by examining the perceptions of the DRE program and its use in the

courtroom process by criminal justice actors from Spokane, WA. These criminal justice actors include DRE certified officers, prosecutors, defense attorneys, as well as experts on the DRE program at the state level. The primary goals of this study are to document overall perceptions of the DRE program, the use of DRE-generated evidence in the adjudication process, and to summarize and report major recommendations from these stakeholders.

In the chapters that follow, we provide a brief literature review covering the DRE program, focusing on the program's history, the 12-step DRE Evaluation and its acceptance under the *Frye* standard, and the limited research on perceptions of the program. Next, we present our research methods, which covers research design and goals, a description of the research site, and a summary of the data collection, management, and analytic approach employed by this study. Following is a detailed chapter of results highlighting major themes that emerged from this study and how they link to project goals. We conclude with a brief summary of results, a discussion of project limitations, and a set of policy recommendations and research priorities moving forward.

*COVID-19 Statement:* It is important to acknowledge that we conducted this study during the COVID-19 pandemic. While the ongoing public health crisis slowed data collection efforts and shifted the type of data collected, these data are still well-suited to assess perceptions of the DRE program. All data collected as part of this study followed recommendations from Washington State University regarding safe data collection practices during the COVID-19 pandemic.



## 2. LITERATURE REVIEW

### 2.1. History of the DRE Program

The DRE program originated in the early 1970s out of the Los Angeles Police Department (International Association of Chiefs of Police, n.d.-a). The program emerged from officer concerns when drivers would exhibit impairing symptoms or odd behaviors but had blood alcohol concentrations substantially below the legal limit or even zero. At the time, there was minimal to no training provided for driving under the influence of drugs other than alcohol, making it difficult for officers to compose their observations leading them to suspicions of intoxication. Two LAPD sergeants consulted the medical and psychological field to establish a standardized test for drug impairment to solve this dilemma. In 1979, the LAPD established the first DRE program for the efficient multi-step procedure (IACP, n.d.-a). By the early 1980s, the National Highway Traffic Safety Association (NHTSA) recognized its potential, which led to establishing the Drug Evaluation and Classification Program (DECP) (IACP, n.d.-a). The program further developed a drug impairment recognition protocol and established its ability to train officers to successfully identify drivers under the influence of drug categories outside of alcohol.

Arizona, Colorado, New York, and Virginia all participated in the pilot DEC Program in 1987, with California, Indiana, and Utah following suit the subsequent year. In 1989, the IACP and NHTSA released the program nationwide. In December 2018, there were over 8,000 certified DREs in the United States and 192 in Washington (IACP, 2018a). Today, Canada, the United Kingdom, and other countries participate in the program. The project P.I. visited Washington, DC in December of 2019 to discuss ongoing marijuana-related research and was informed by NHTSA staff that the DRE program is still a primary focus for their agency. Moreover, they were deeply troubled by the decline in DRE callouts in Washington State and were hopeful that additional data on the effectiveness of DREs could reverse the trend.

### 2.2. The DRE Evaluation

The DRE evaluation is a drug influence examination conducted over twelve steps leading up to or after a DUI arrest. These evaluations can help determine probable cause for a DUI arrest. They can also be conducted after the officer who incited the traffic stop believes the driver is impaired but not intoxicated by alcohol (i.e., low PBT results; no alcohol impairment clues). The first step is the breathalyzer to assess if or how much alcohol is in the driver's system (NHTSA, 2018). When results indicate a BAC over the 0.08 limit, law enforcement can typically charge the driver for DUI. Arresting officers are not persuaded to submit a blood warrant to investigate further drug intoxication if the alcohol level is satisfactory for a DUI charge (National Institute on Drug Abuse, 2019). However, if the BAC result is substantially under 0.08, law enforcement may consider other drugs or complicating factors are culprits for the driver's behavior.

The second step is to interview the arresting officer and other witnesses (NHTSA, 2018). Interviews conducted early in the investigation are essential because DREs are typically not the arresting officer (Smith et al., 2002). Impairment indicators for certain drugs, such as marijuana, dissipate within hours of ingestion (Couper & Logan, 2004). Hence, valuable insights into the initial observations of the driver are essential. Key evidence includes driver statements, behaviors, paraphernalia, and drugs found at the scene. The third step is the

preliminary examination, which allows the DRE to observe the driver and ask questions. These questions gather information about previous injuries, health concerns, and recent ingestion of food, beverages, and drugs (IACP, n.d.-b). The DRE also records the driver's pulse measurements for the first time (NHTSA, 2018).

Fourth, the DRE looks at the driver's horizontal and vertical gaze nystagmus (HGN or VGN) (IACP, n.d.-b). Different types of drugs can have varying effects on the eyes that are involuntary to the user. Officers look for involuntary jerking of the eyes, in addition to assessing the driver's ability to follow directions (NHTSA, 2018). This links to the fifth step, which focuses on divided attention tasks, including the Modified Romberg Balance, Walk and Turn, One Leg Stand, and Finger to Nose tests. Each test includes multiple simple steps for the driver to follow and can indicate current coordination abilities (NHTSA, 2018; IACP, n.d.-b).

The sixth step in the protocol is to evaluate the driver's vital signs, such as blood pressure and body temperature (IACP, n.d.-b). Extreme or average temperature and blood pressure can suggest categories of impairment (NHTSA, 2018). The DRE also records the second pulse rate in this step. The seventh step is a darkroom evaluation to examine pupil dilation and equity between the driver's eyes to determine drug categories. The DRE accompanies the suspect in a dark room for a few minutes, allowing time for the eyes to adjust to the darkness. A penlight is used to control the amount of light in their eyes and to examine the nasal and oral area for indications of drug use (NHTSA, 2018).

The eighth step of the DRE evaluation examines the driver's muscle tone. Drugs can influence muscles to become rigid, flaccid, loose, or rubbery (NHTSA, 2018). Although this step is late in the process, the DRE may also observe muscle tone throughout the evaluation. Over the course of observing the driver's muscle tone, the DRE can also conduct the ninth step, which is observing the driver's arms or legs for injection marks that may indicate hypodermic needle use (NHTSA, 2018).

The tenth step is for the DRE to accumulate all observations throughout the examination (IACP, n.d.-b; NHTSA, 2018). These include driver statements and witness observations of the driver's behavior. "An articulable suspicion" is minimally required for a DRE to determine which category or categories of drugs are causing the impairment (NHTSA, 2018, p. 148). The eleventh step is the DRE's official opinion of impairment and specifying the drug category or categories (NHTSA, 2018). The DRE supplements these conclusions by documenting the facts, observations, and conclusions of the case (IACP, n.d.-b; NHTSA, 2018). Finally, the twelfth step is a blood draw conducted by a medical professional (NHTSA, 2018). Toxicology results are used as physical evidence in court and to corroborate with the DRE's conclusions.

### **2.3. Perceptions of the DRE Program**

Much of the literature on the DRE program focuses on the efficacy of DREs at detecting impairment and, more specifically, at their ability to detect specific substances. This literature has produced mixed results, with some studies indicating that DREs are a useful tool for detecting impairing substances (Vaillancourt et al., 2021), and other research indicating limited efficacy of DREs (Beirness, LeCavalier, & Singhal, 2007). A study by Vaillancourt et al. (2021) examined toxicological results from nearly 3,000 Drug Evaluation

and Classification Program (DECP) cases in Canada. 98% of toxicology results indicated at least one potentially impairing substance, and 2% detected no impairing substances. 89% included the substance under the drug category suspected by DRE evaluations. However, 9% of toxicological results did not contain a substance of the suspected drug category, and a minute amount had incomplete evaluations.

While the ability to detect and identify impairment is central to this program and clearly the single largest determinant of its long-term viability, the question of DRE efficacy in the criminal justice process is also important and has received virtually no attention in research. Put simply: it is unknown whether DREs and DRE evaluations are or are not effective tools in the prosecution of drug-impaired driving cases.

While future research from this project will quantitatively assess the effects of the DRE program on the adjudication process, early discussions with program stakeholders revealed that very few DRE-involved cases go to trial. Yet, this does not necessarily imply that the DRE program is ineffective at meeting its traffic safety goals. Indeed, the presence and use of DREs could have several other pre-trial effects, including the decision to move forward with charges and the defendant's desire and willingness to seek a settlement agreement. However, these indirect effects are contingent on relevant stakeholders viewing the DRE program as legitimate and effective.

There is a paucity of research in the perceptions of DREs and DRE generated evidence. While judges have commonly admitted DRE evidence nationwide (as noted in *State v. Baity*, 2000), Celeste (2016) is one of few peer-reviewed articles to discuss expert witness testimony by DREs. The now-retired judge explores the admissibility and limitations of DRE evidence under *Frye* and *Daubert* standards for qualifying them as expert witnesses; however, she does not explicitly discuss her personal perceptions of the program. While Celeste (2016) notes the utility of DRE testimony in explaining the scientific complexity of drug impairment, admission is somewhat based on judicial discretion. While other authors articulate a need for the program and hence their positive perceptions, these are generally developed as thought pieces or integrated within the literature review and are not formulated as formal research documents. For example, a news article within the Chicago Tribune indicated support for DRE use, especially over New Year's (Jones, 2019). An empirical piece by Porath-Waller et al. (2009) noted growing concerns of drug use and driving impaired, and the need to address these social issues. They accentuated that drug intoxication has different signs of impairment than alcohol and needs to be tested differently, and DREs present a scientific method.

### 3. METHODS

This study, reviewed by the Washington State University Institutional Review Board, employed a qualitative case study of the DRE program in Spokane, Washington. Case study designs focus on providing a contextual and in-depth summary of a given event or institution, which in this instance, is the DRE program itself. The primary data collection method was interviews with criminal justice actors and state-level experts on their perceptions of the DRE program in Spokane. These interviews, described below, were complemented by a small set of observational research and content analysis.

Our general research goal was to document perceptions of DREs and the DRE program across different stakeholders. Therefore, our overarching research question is:

*Research Question 1: How is the DRE program and DRE-related evidence viewed by criminal justice actors and court systems?*

#### 3.1 Research Site

As noted above, the current study explores perceptions of the DRE program in Spokane, Washington, which is financially supported in part by the Washington Traffic Safety Commission (WTSC). Spokane is the largest city on the eastern side of the state, and the law enforcement agencies in this region work closely with the WTSC on the administration of the DRE program. Program participants described the Spokane Police Department (SPD) DRE program as small but highly active.

The overall statewide DRE program sits under the Drug Evaluation and Classification program managed by the Washington State Patrol and supported by the WTSC. As per other regions, the Washington DRE program follows the training and certification standards established by the International Association of Chiefs of Police (IACP). To gain the title of DRE in Washington, candidates are required to complete the 24-hour Standardized Field Sobriety Test (SFST) and the 16-hour Advanced Roadside Impairment Driving Enforcement (ARIDE) classes. The process for becoming a DRE certified officer is intensive, requiring not only the previously mentioned classes but also a detailed application. The application considers the officer's involvement in traffic enforcement activities, including recent DUI arrest reports and narratives, letters of recommendation from both local command staff and the local city or county prosecutor's office, as well as responses to essay questions. Once certified, a DRE-candidate is required to complete a 16-hour DRE pre-school and a 56-hour, 5-day DRE school. After this, candidates must complete field certifications and a certification knowledge examination. Once successfully completed, an officer is certified as a DRE and must complete a minimum number of two DRE evaluations per year to remain certified.

#### ***DREs and DUI Charges within Washington Courts***

##### **DRE Acceptance in Washington through the Frye Standard.**

DREs as expert witnesses in DUI trials is a somewhat contested issue under two fundamental standards of evidence admittance, the *Frye* and *Daubert* standards (Seiders, 2017). *Daubert* standards require the judge to act as a gatekeeper for determining admissible expert testimony, such as 'scientific,' 'technical,' or 'specialized' knowledge (*Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 1993; Seiders, 2017). *Daubert* is representative of Federal Rule of Evidence 702 concerning expert witnesses. Testimony must satisfy all four of the following

conditions: "the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;" "the testimony is based on sufficient facts or data," "the testimony is the product of reliable principles and methods;" and "the expert has reliably applied the principles and methods to the facts of the case" (Seiders, 2017, p. 252-253). Multiple states who utilize the *Daubert* standard have scrutinized the admissibility of DRE testimony, although over time has been generally validated for scientific or experience-based reasons (*State v. Sampson*, 2000; *United States v. Everett*, 1997; see Seiders, 2017 for full discussion).

The State of Washington, however, is one of fourteen states that use the *Frye* standard established in *Frye v. United States* in 1923, which has looser guidelines for expert witness admissibility (Schapira & Hong, 2013). The *Frye* standard, also coined the "general acceptance" test, only applies to scientific evidence and uses widespread scientific community acceptance for evidence validation (*State v. Cauthron*, 1993).

### ***State of Washington v. Baity (2000).***

There has been debate about whether the DRE protocol is scientific and subject to the *Frye* standard (Seiders, 2017). During an appeal, *State v. Baity* (2000) approved DRE admissibility under the *Frye* standard, which previously ruled DRE evidence inadmissible. This appeal agreed that DREs and the DRE evaluation has a scientific aspect. Thus, the state supreme court assessed if the DRE evaluation had satisfied the *Frye* standard by its general acceptance in the scientific community. They also noted that DRE evidence had been admitted and upheld nationwide. The courts concurred that a DRE opinion could have two purposes. One purpose for a DRE opinion is to serve as expert testimony on an ultimate issue. A second purpose is to establish probable cause for arrest; however, this does not necessarily certify that opinion as scientific testimony. Ultimately, this crucial court case ruled the DRE evaluation and evidence admissible under *Frye* when the proper foundation is established.

### ***Per se and Affected by Prongs.***

DUIs can be charged under one of two prongs in Washington, known as the *per se* and the affected by prongs. The *per se* prong relates to the *per se* limit for impairment. For example, the *per se* limit for alcohol/ethanol is .08 in Washington, meaning it is illegal to operate a motor vehicle with a blood alcohol content of .08mg/dL or higher. This *per se* standard can also apply to drivers under 21 years of age who consume alcohol. The *per se* standard permits officers to arrest those under 21 years for DUI even if their BAC is under .08.

Other impairing drugs can have a zero-tolerance limit, meaning that any intoxication can be grounds for a DUI arrest if the drug is illegal within the state. For example, in states that follow federal guidelines for marijuana legalization, if blood found in the driver arrested for DUI contains any amount of THC, prosecutors may charge the driver with DUI. In Washington, one of the first two states to legalize marijuana, the *per se* limit was set to 5ng THC/ml of blood. The 5ng limit restricts police officers and prosecutors from charging drivers with non-active THC with DUI.

The affected by prong can be employed in cases in which the driver's intoxication level did not meet or exceed the *per se* standard. This is especially important when drivers are impaired by both alcohol and marijuana. The affected by prong allows prosecutors to charge arrested drivers with DUI when there is sufficiently strong evidence that the driver was

significantly impaired and incapable of driving a vehicle safely. This prong is typically utilized in cases in which the driver has exhibited several signs of impairment but either has a BAC under .08 or a blood toxicology report indicating under 5ng of active THC. However, multiple prosecutors we interviewed have indicated that this prong is extremely difficult to achieve, with multiple stating that juries appreciate a quantitative or “hard” number.

### ***Decline in Callouts***

The International Association of Chiefs of Police (IACP) recently reviewed the DRE program in Washington State (2018b). One of the primary findings of this report is a marked decline in DRE callouts in the state. In 2013, there were a total of 982 evaluations conducted by 205 evaluators. By 2017, only 391 evaluations were conducted by 202 evaluators (IACP, 2018b, p. 4). While the number of DRE evaluators has remained nearly constant, the number of evaluations has declined by approximately 60%. Indeed, the IACP report notes that “DRE evaluations were once conducted on 40% of all DUID cases, but now are only conducted on 7% of all DUID cases” (IACP, 2018b, p. 4). The current study exists within this framework of declining use. Though the primary goal of the overarching study is to document the effects of the DRE program on the adjudication process by first providing a qualitative assessment of perceptions of DREs and the DRE program, the results of this research addressed this issue as well. As such, the current study includes the following supplementary research question:

*Research Question 2: How do individuals associated with or who interact with the DRE program explain the decline in DRE evaluations?*

Recognizing the centrality of this issue, many of the IACP report’s program recommendations focus on strategies to increase DRE use throughout the state. These recommendations include the promotion of a culture that encourages DRE callouts, the creation of a model prosecutor policy to encourage officers to complete DRE evaluations with all DUID cases, update materials encouraging officers to search for evidence of drug-based impairment, implement a recognition program for DREs, and increase the use of DREs in all crashes involving serious bodily harm or fatalities (IACP, 2018b). If successful, these program recommendations would almost certainly increase the number of DRE evaluations conducted each year. Notably, the DRE program carries a substantial training and recruitment cost. Without detailed knowledge of the efficacy of the program, *it is essential that research assesses the value of creating additional opportunities and incentives for DRE evaluations to provide further data to document the program’s effects*. The current study provides a partial, qualitative attempt at addressing this issue.

Beyond recommendations intended to increase DRE callouts, the IACP report also includes several recommendations regarding the administration of the DRE program, improving stakeholder communications, and the creation of a database that allows for a more formal evaluation of the program. Data collected as part of this study is also used to address these topics.

### **3.2 Participants**

Our primary approach is qualitative and employed semi-structured interviews with prosecutors, defense attorneys, and law enforcement officers, including DREs (see Table 3.1). The sampling strategy was a combination of snowball, convenience, and purposeful sampling. Participants were contacted via email, informing them of the study and sought

voluntary participation in an interview regarding DREs. Researchers emailed each contact two to three times. If a participant was interested in meeting, they were sent an IRB consent form with information about interview procedures and consent for recording the interview for transcription purposes. In order to maintain confidentiality for our participants and to be compliant with IRB rules, specific names, titles, or positions are omitted. Given the relatively small number of participants per group, we go further to anonymize them by not providing our unique anonymous identifiers that were maintained as part of the research process, as there is a possibility that multiple quotes associated with a specific respondent would increase the chances of deductive subject identification.

An upper-echelon law enforcement supervisor provided the majority of the law enforcement sampling pool. Contact information of five police officers and the four DREs within the agency were suggested based on their experiences with DUIs or DREs. One police officer and all four DREs agreed to participate in our study, with no replies from four police officers. To gain the perspective of DREs outside the agency, two DREs from the west side of Washington were suggested and also agreed to interviews. These DREs were snowballed from another high-level officer within the DRE administration and suggested based on their extensive experience and investment in the program. Overall, we interviewed six DREs and one non-DRE police officer between July and November 2020. 100% of DREs and 20% of police officers we contacted responded and agreed to participate (see Table 3.1).

The sample of prosecutors similarly relied heavily on snowballing to capture their vast experiences and echelons. First, nine prosecutors were randomly selected from a contact list of city and county-level prosecutors who work within the same jurisdiction as the DRE sample. Three county prosecutors declined, and one did not reply. One county prosecutor agreed to an interview but highly recommended two prosecutors within the contact list, one of whom did not reply, and the second declined. Second, three administrative-level prosecutors were identified and contacted through recommendations suggested by prosecutors and DREs post-interview. In total, six prosecutors were interviewed, two at the county level, three at the city level, and one in a DUI/DRE related administrative position. Overall, two out of the eight county-level prosecutors (25%) agreed to participate. Three city prosecutors out of the three contacted replied and participated (100%). One administrative level prosecutor suggested to us agreed to participate (100%).

Defense attorneys were also mainly identified through snowball sampling from prosecutors and DREs. Two public defense attorneys were contacted for participation, and one accepted (50%) and one declined (50%). Private defense attorneys were identified through prosecutor recommendations based on extensive experience primarily related to DUIs. In total, eight private defense attorneys were contacted. One did not reply (12.5%), two declined (25%), and five accepted (62.5%). One advisor for public defenders was recommended and agreed to participate (100%).

Throughout interviews with participants from Spokane, WA, many noted their experiences might deviate from those on the west side of the state. We addressed this by asking participants for possible DREs or attorneys on the west side to interview for our study. Two DREs, one defense attorney, and two prosecutors from the west side of the state agreed to participate in our research to give us their unique experiences.

**Table 3.1**

Position	Total contacted	No reply	Declined	Accepted	Interviewed
Prosecutors	12	1	3	8	6
Defense attorneys	11	1	3	7	6
Law enforcement/DREs	13	4	0	9	9
Total	36	6	6	24	21

### 3.3 Data Collection, Management, and Analysis

#### *Interview Data*

##### **Interview Procedures.**

We collected most of our qualitative data through semi-structured interviews. Seven interviews were conducted by Brittany Solensten and thirteen were conducted by Dr. Dale Willits. These interviews took an average of 47 minutes, ranging from 20 to 94 minutes.

Twenty interviews were conducted over Zoom, and one was conducted over the phone, and no interviews were conducted in-person for COVID-19 precautions. Face-to-face interviews are considered a gold standard for social interviewing for multiple reasons (Schober, 2017). For example, in-person interviews allow for nonverbal displays, a supportive demeanor, and a “human touch” between the interviewer and participant (Schober, 2017). While video interviewing limits these benefits, we still elicited insightful and wide-ranging comments related to DREs and the program. Before asking questions related to our study, we again informed participants that the interview was anonymous, voluntary, and could be terminated at any time. Audio recordings were intentionally identified at the collection stage, and confidential unlinked during transcriptions, analysis, and storage. No video media was collected.

##### **Interview Questions.**

The IRB approved three interview guides with questions specific to either DREs, prosecutors, or defense attorneys. A sample of attorneys had experience with both the prosecution and the defense side. Questions for these participants were adapted to capture the full range of their perspectives. All participants were asked how many years of experience they had in their respective positions and certifications. The final question for all participants asked for any information they believed was pertinent to the program we possibly overlooked during the interview. A full list of questions and general prompts are listed in Appendices A-C for DREs, prosecutors, and defense attorneys respectively. It is important to note that not each prompt was asked for each interview and additional prompts were used depending on the flow and content of a given interview.

##### ***Interview Questions for DREs.***

We asked DREs about potential differences between drug and alcohol DUI cases, with follow-up questions to promote discussion. Prompts included challenges with drugged driving cases, noticeable changes throughout their time as a DRE, and interactions with prosecutors and defense attorneys. We further asked about their training and frequency of witness testimony as an expert in court. Our last prompt inquired about their perspective of how compelling the evidence they produce is within negotiating DUI cases. Our third line of questioning asked about the benefits and drawbacks surrounding the DRE program and



testimony. Fourth, we asked about typical complaints heard about the program or DREs to see where DREs fit within the context of policing and the courts. We last asked DREs what evidence is best for identifying intoxication, with follow up prompts about the DRE evaluation and using their skills outside of DUI cases.

### ***Interview Questions for Prosecutors and Defense Attorneys.***

We asked prosecutors and defense attorneys about their overall experiences with DUI cases. We then asked about their experiences with DREs as witnesses in DUI court cases, and potential differences in approaching these particular cases. Our follow-up prompts inquired about challenges, trainings, and perspectives related to DRE-related evidence. Our final question asked for their experiences with DREs during trials and how it influences their case outcomes. We further asked what types of evidence were best for DUI cases during plea negotiations and trials.

### **Interview Transcription Procedures.**

All interviews were transcribed verbatim from their corresponding audio recording file in three stages. First, interviews were typed by hand using a foot pedal and transcription software following seven transcription principles set by Mergenthaler and Stinson (1992). These include transcribing verbatim and maintaining commentary structure. Second, a spell check was conducted on the transcript to ensure clarity. Third, the audio file was listened to a second time to ensure transcription accuracy.

### **Interview Analysis.**

Interviews were coded in three stages. First, each transcript was coded for themes related to our research questions. These preliminary codes were used as the basis for the second tier of coding, in which these initial codes were verified and additional codes added. Following this, the codes were grouped into cohesive superordinate themes and sub-themes. Preliminary themes included how DREs and DRE evaluations are used within DUI cases in the courts, specifically trials. Another theme encompassed prosecutor perspectives regarding the value addition of DREs and DRE evaluations in the outcomes of trials. Second, transcripts were coded for when DREs are used in DUI cases, and the perspectives defense attorneys have of DRE-related evidence. The third stage coded for themes that developed over the previous passes of coding, including ancillary benefits of the program.

### ***Court Room Observations***

To gain a different perspective of how DREs are presented in court, we were interested in attending trials that utilized DREs. Unfortunately, due to COVID-19 restrictions, the majority of trials were put on hold or limited to required personnel. However, in October 2020, we observed one DUI trial in Spokane. This case used testimony from a DRE, although no DRE evaluation was conducted. Hand-written notes were taken and analyzed for themes connected to the research project and our formal interviews.

### ***DRE Case Transcripts and Appeals***

Though our data were primarily gathered in interviews, one DRE case transcript and four DRE case summaries were also analyzed to understand how DREs are used in court. Additional transcripts were not collected due to the rarity of DRE testimony in trials. An

upper-level DRE coordinator provided these cases to understand how DREs are used in trials. The transcripts were analyzed for themes related to interviews and how prosecutors and defense attorneys navigate DRE testimony.

## 4. RESULTS

### 4.1 Courtroom Observation Results

One researcher observed an alcohol DUI case on trial that involved testimony by a DRE officer. This case also involved a collision. First, the defense attorney and prosecutor gave their opening statements before swearing in a DRE witness. Although this DRE was not the responding officer, he interacted with the defendant and conducted the SFST. The DRE first stated their name, where they were employed, and their years of experience. They also listed their training, especially emphasizing ARIDE, DRE training, instructing future DRE students, and participation in the DUI task force. Other essential background information included their patrol experience (including collisions), welfare checks, and taking over DUI investigations. All of this information was given before any details pertinent to the case were discussed.

Once the DRE established their credentials, details related to the time, location, and weather at the time of the incident were discussed. Since it was raining, the prosecutor inquired if the officer had issues driving on a wet surface, to which he replied no. The officer was then asked to testify their observations of the defendant, including odor, coordination, and attitude. The DRE is permitted to reference the report to recollect his memory of the event but cannot read the report verbatim. The DRE described the behavior of the driver in detail. For example, he did not simply state the defendant slurred their words, but how their speech was slower, hesitant, or inconsistent.

The DRE was then asked about their training related to the DRAEGER-9510 and breath testing. During this portion, the prosecutor asked a litany of questions expecting specific answers. The DRE was satisfactory in stating the answers the prosecutor wanted. However, the prosecutor followed-up their questions if they did not get the exact answer they needed for their case. It was evident that there was a gap between prosecutorial needs and DRE preparation. Extensive questions about the DRAEGER-9510 were discussed.

The defense attorney addressed the DRE on the stand about if the vehicle may have caused the crash and asked about possible head trauma experienced by the defendant. The DRE was asked if they knew the defendant and how the defendant may appear intoxicated but those are their usual mannerisms. The DRE stated that they consider the totality of the circumstances, and they do not only rely on one indicator of impairment.

The prosecutor readdressed the DRE witness, asking if the defendant appeared visually injured from blood, bruises, or sores, to which the DRE said no. They also stated that they had additionally spoken with responding officers about their observations of the defendant.

The DRE was then released from the stand, and a WSP trooper was called in to help admit the breath ticket. Laying down the foundation to admit the breath ticket was an extensive process, especially in comparison to admitting DREs as expert witnesses. When we asked a prosecutor about their perspective of admitting the breath ticket versus a DRE as an expert witness, they said:

I have to establish the person is qualified by way of skill, education, or experience, or training. If I do that, then they get to testify. What judges have as a case, in *Baity*, that

says a DRE *is* [emphasis in original] qualified. So as long as you can say, that guy is a DRE, he's qualified. What else do we have to talk about?

So that first five minutes can be about, eh, do you have any kids? Yeah, I have kids. Okay, yeah, tell me about your kids. Do you coach? Oh yeah, I coach. And then thirty seconds, fifteen seconds, ten seconds, are you a DRE? Yup. Okay, I'm done, thank you \*swipes hands\*. That's all you really need to do... It's disappointing to hear the DRAEGER takes so long to get in. That's the number one complaint that prosecutors have about it is it just takes so long. Law enforcement in the field, they know if they get this and they have to testify, it's two or three hours of time, it's very, very lengthy. [Upper-level prosecutor]

Although we were limited in our ability to attend DUI cases, this trial provided us insight into a potential benefit of DREs compared to other types of evidence. As previously discussed, *State v. Baity* essentially qualified DREs as experts once they take the stand and the prosecutor lays the proper foundation for the DREs training and experience. *Baity* recognized that the DRE program meets the *Frye* standard and essentially granted the use of the DRE program in Washington State cases. In comparison, breath tickets can take hours to admit properly and may still have foundational issues brought up by the defense. This may reveal some benefit to the impaired by prong instead of the *per se* prong for charging DUIs. If prosecutors can successfully charge a case without a breath ticket, this can reduce their workload in preparation for and in court. Prosecutors did, however, express concern about juror's receptiveness to cases without a *per se* prong.

## 4.2 Content Analysis Results

### *DRE Transcript*

The case transcript that involves DRE testimony had a similar event procession to the court case attended in person. First, the prosecutor asks the DRE about their qualifications and experiences with policing and specifically DUIs. The prosecutor then asked a question, and the DRE gave a succinct answer and this process repeated. If the DRE needed to give a different or more specific answer, the prosecutor followed up with a specific or yes or no question. The DRE was asked to describe the relationship between ethanol and impairment. Specifically, the DRE had to state why alcohol impairs driving ability.

After the DRE established why alcohol is impairing, the DRE explained the driver's SFST performance. Threaded through this testimony is support for each of the tests and how they indicate impairment. For example, the DRE explained the HGN's scientific backing and why it indicates impairment. Within this explanation, the DRE explains how their observations of clues on the HGN test present in the driver's eyes indicated the driver was too intoxicated to drive. Once respective aspects of the SFST were explained, the DRE further explained how the totality of their observations during the test led them to believe the driver was driving under the influence. In cross-examination, the defense attorney asked many minute questions to damage the DREs testimony. This aligns with interviews with prosecutors who stated they have to ask multiple questions to admit SFST results. One prosecutor noted that extensive questioning is unnecessary and unhelpful because the burden is on the defense attorney to bring up potential flaws with the test or how the DRE carried them out:

Prosecutors really need to understand what's the minimum you need to do and teach the judges that. Because if you teach the judges the opposite, which is you know every time the defense raises an objection, oh okay, well let me call my guy back, and it's like no. You have just reinforced every negative stereotype for that judge, which is that every time the defense objects, they're right. And anything that they ask for is going to be necessary in every trial thereafter. You just added it to your script... It's like you gotta push back. That's the fundamental rule for prosecutors. [Upper-level prosecutor]

Beyond the SFST, the DRE also explained the blood results and how each drug found indicates that the defendant was incapable of driving safely. Several pages of the transcript contained DRE testimony guided by the prosecutor that supported and established the validity of blood testing and its connection to drug impairment. In response, the defense attorney actively attacked the validity of blood testing. Arguments included blood draw protocol, handling and storage, and testing procedures.

Overall, the DRE was tasked with upholding their observations, the SFST, and the toxicology report. Clearly, DREs have a massive amount of knowledge pertaining to DUIs that other law enforcement officers may not possess. However, with all the knowledge officers are required to have for admitting DUI evidence, it is sensible to employ a unique position, such as a DRE, to be capable of presenting this evidence on the stand. Especially regarding experience gained on the stand, specializing in DUI cases can be beneficial for prosecutors who handle these cases.

### ***DRE Case Appeals***

Four appeals for Driving Under the Influence of Drugs (DUID) cases involving DREs or non-DREs were also analyzed. One of them, *State v. Quale* (2014), involved impermissible testimony by a DRE. This case illustrates the extent DREs can testify to the ultimate issue of impairment when established procedures are not followed. DREs can testify the drug category they believe was impairing the driver, however, this case exposed certain restrictions. The DRE stated they noticed sufficient clues used for the HGN test in the driver's eyes to have "no doubt" that the driver was impaired. However, the DRE did not perform the full SFST battery—only HGN. Alone, HGN has a 77% correlation to a 0.08 BAC result (IACP, 2013). Because the opinion was not supported scientifically, this testimony was considered improper personal belief that "casts an aura of scientific certainty that the level of drugs was sufficient to impair" (*State v. Baity*, 2000, p. 17). Overall, this case emphasizes the need to follow proper evaluation procedures and carefully articulate the scientific basis supporting the DRE's ultimate opinion.

The second appeal, *State v. Martin* (2019) questioned how non-DREs are permitted to establish probable cause to arrest an impaired driver even though the officer does not have the specific training to detect other drugs. However, the court ruled that non-DREs have the ability to reasonably suspect someone is impaired by a drug and call a DRE to conduct an evaluation that provides the basis for arrest. Another argument made by the defense was that the defendant's driving behavior the officer observed is not evidence of impairment. However, the court ruled that aggressive driving is reasonable evidence upon which an officer may rely to establish impairment. This case demonstrates how non-DREs may

lawfully expand an investigation by relying upon a DRE to investigate suspected drug impairment to establish full probable cause for a DUI arrest.

The third appeal, *State v. Harrison* (2000), also touched upon the ability of non-DREs to establish probable cause for arrest without breath or blood testing. The defense had argued an arrest by the non-DRE officer was invalid. However, the court established that probable cause had been established because the officer only needs reasonable suspicion that the driver is impaired beyond a reasonable doubt. While the court acknowledged an SFST or breath test would have been helpful in establishing probable cause, the officer (a DRE) called in to evaluate the suspect observed sufficient evidence of impairment to arrest the defendant. Another argument was that the DRE should not be able to testify their opinion of impairment because DREs had not been recognized within Washington Courts. However, the appeals court noted the officer was not offered as a DRE expert, and the prosecution never established the officer was a DRE or certified as a DRE. The opinion was appropriate because the trial court properly held the officer was qualified as an expert based on his extensive experience. Contrary to the defense argument, the Washington Supreme Court in *Baity* concluded that DRE evaluations and opinions are admissible under the *Frye* standard.

Finally, *City of Seattle v. Levesque* (2020) held that an officer who is not a DRE or has similar high-level training and experience may not opine what drug category is causing the perceived impairment. The court ruled that non-DREs may suspect drug impairment, but they are limited to testifying that the totality of the circumstances indicated impairment from drugs was present. This case established that a DRE or officer/person of similar training and experience is required to testify as to the specific drug category impairing the individual driver.

Each of these appeals shapes how DREs and non-DREs handle DUI cases. While the first case illustrates a poor example and over-extension of what DREs can testify, the second and third illustrate the evidence needed to arrest an allegedly impaired driver. The final case underscores the need to have DREs involved in and testify in DUI-drugs cases. The need to conduct the DRE evaluation, and how they present their observations in court are well settled under current Washington case law.

### **4.3 Interview Results**

The interviews produced a wealth of data on the perceptions of DREs and the DRE program. After completing the initial and line-by-line coding, we organized the codes into general categorical themes. Though it is possible to generate a variety of thematic combinations given the wealth of these data, for the purposes of this report, we focus on the following three major themes: 1) the Use of DREs; 2) Limitations of the DRE Program; and 3) Indirect benefits of the DRE program.

#### ***Use of DREs***

Our preliminary, non-research discussions with WTSC staff and other experts regarding DRE involvement in the criminal justice process quickly informed us that DRE evaluations have rapidly declined in recent years. Our interviews quickly supported this result, with prosecutors, defense attorneys, and DREs all confirming that DREs and DRE evidence rarely appeared in court. Yet, there was substantial evidence of DRE involvement in the pre-trial

stages of the adjudication process. We discuss these two sub-themes below, then pivot to a discussion of why – according to our participants – DREs rarely appear in trials.

### **The Absence of DREs in Trials.**

When asked about DRE involvement in cases that went to trial, interviewees confirmed the broad absence of DRE evidence in the adjudication process. Prosecutors, for example, often mentioned that they had not used DREs in cases. One county prosecutor noted, when asked if they had used a DRE in trial, that:

Surprisingly, no. This is one of those things where I am fearful that I won't be as useful for you for the study. But no, it has not ever been necessary for me to do that. I did some additional research prior to talking with you and spoke with some of the other... basically, I spoke with one of our supervising attorneys in district court where most of the DUIs go, and at the moment, no one who is currently assigned there has used a DRE either.

Other prosecutors reaffirmed this sentiment:

I cannot recall the last DUI trial where someone used a DRE here. [County prosecutor]

So me, personally, I don't think I've had any experience with them actually testifying. No, I don't think so. [City prosecutor]

These experiences were echoed broadly by the prosecutors in Spokane, both city and county. One prosecuting attorney who handled a substantial number of DUI cases provided one of the few exceptions for the Spokane region, noting that “Yes. So I've had DREs testify. I'm trying to think if I've actually been able to qualify them as an expert.”

The more common response was that they had prepared to use a DRE for a case, then had the case settled prior to trial. For example, one prosecutor noted that “Besides that one motion to dismiss, I don't think I've actually had one testify,” indicating that the only time they had a DRE testify was at a pre-trial dismissal hearing.

There was only a single substantial prosecutor who noted that they frequently used DREs. This person, a prosecutor from outside of the Spokane region, described their experience as more extensive, having done roughly 7 DRE trials. This result was clearly the exception to the rule. By and large, there is simply no evidence from the prosecutorial side that DREs are commonly or seldomly used in trial situations (in Spokane, at least).

Information provided by defense attorneys supported this result. When asked if they had ever encountered a prosecutor using a DRE or DRE evidence in trial, a defense attorney who has defended DUI cases for over 10 years responded, “No, I have not come across that.” Other defense attorneys reported similar trends:

Oh, boy. I would guess... Uhm... less than 3. The vast majority of my cases were alcohol breath tests or refusals. Relatively few DUIs that I've seen over the years were blood and drugs, relatively few, maybe 15 percent. So there's one case that I distinctly remember where a DRE was involved that was a gentleman that had no alcohol in his system, but a lot of other stuff, so. [Private defense attorney]

In the last 12 years, I would say I've seen DREs maybe 5 or 6 times. [Private defense attorney]

I've seen a DRE called at trial. But I don't think I've ever, and I was thinking about this more as I was preparing for this, I don't think I've ever actually had a DRE render a DRE opinion at trial. [Private defense attorney]

A public defender noted that they had “attended a few training sessions that are put on by either retired law enforcement that figure out ways to attack a DRE's investigation” but that they had not had the opportunity to use this information at trial.

Lastly, DRE officers themselves confirmed their lack of use in the trial process. One DRE noted that he had prepared for a case once, but it was later ended with a settlement. When asked if they had testified in other cases, they noted:

No. The one that was, I was getting ready for was that one. Any time they brought me in with my other cases was alcohol.

Similar sentiments were stated by other DREs. A DRE with several years of experience noted that he had only been called to trial once and it had happened within the last 2.5 years:

I had a vehicular homicide case that I attended to, and it was my first time ever testifying as a DRE, and talk about the stress, that was pretty stressful.

No DRE officers reported testifying in a substantial number of trials. Overall, then, prosecutors, defense attorneys, and DREs all agree that DREs are not widely used in the courtroom setting. However, this is not an indication of a lack of DRE productivity and impact in the court system. We expand upon this below.

### **DRE Involvement in Pre-Trial Proceedings.**

While DREs and DRE evaluations rarely appeared in trials, prosecutors and DRE officers provided substantial evidence of DRE involvement in pre-trial stages. In the Spokane municipal area, prosecutors work closely with DREs, as there is a substantial DRE presence on the DUI task force:

So, I work directly with DREs through DUI court. We work, they do our house checks for us, they go check on the individuals. A lot of times they were, the officers that did the initial stops. So they attend all of our staffing and court hearings. I talk to them on a regular basis, they often contact me and ask me questions about cases that are not in DUI courts just because I have a relationship with them. I've also attended multiple training sessions with them, including trainings that are specific to DUI/DRE type investigations slash prosecution. [City prosecutor]

Other prosecutors noted that DREs have pre-trial effects. The general sentiment among prosecutors is that DREs helped their cases even though they were seldom used in trials. One area where this was apparent to prosecutors was in the quality of their reports. Discussing their reports, a county prosecutor noted:

Generally they're more standardized. They do, even if they don't do a full DRE, they're able to generally incorporate the same sort of observations that they may make during the formal evaluation.



Others agreed:

And I would say because of their experience investigating DUIs, they tend to write great reports and write succinct reports in terms of what they see that indicates impairment to them whereas other officers who may not investigate DUIs primarily, sometimes their reports are more lacking. [City prosecutor]

So in terms of the DRE getting to become a DRE, number one, they have to be a high producing DUI officer, so they are out there, and they are actually making good cases. They also have to be a good report writer. [Prosecutor from outside the Spokane area]

In addition, prosecutors noted that having a DRE available helped them to make sense of complicated cases:

Yeah, they really can, in terms of providing the prosecutor ways to ask questions, providing information on drug categories. So in terms of DUI cases, I don't know if you're familiar with what's going on in Washington, but since 2007 our fatalities have been caused mainly by drugged drivers, not alcohol. Alcohol is a major player at 38% but 62% are drugs, and then 44% are poly. So we have this just overwhelming situation where prosecutors are tasked with dealing with drugged drivers, which doesn't look anything like alcohol. And if they're looking for alcohol, they are definitely not doing their job because they're going to miss all the cannabis, they're going to miss the methamphetamine, they're going to miss the heroin.

So it's really interesting that we throw prosecutors in this situation. They all tend to be newer as well, district court, muni court, they tend to be newer prosecutors. And I would say go against the best defense attorneys in the state which are specialized in DUI defense. And oh, by the way, we are also going to throw this drugged driving thing that you don't know anything about. So even if you've lived your life, you don't have usually friends who are using heroin, right? So you don't see what heroin looks like, you don't see what meth looks like. So you just have to go with it based on the report and just do your best. And that's where that DRE can really provide some valuable insight because, number one, they've been doing it a while. We don't let just anyone become a DRE. [City prosecutor]

Prosecutors also argued that DRE involvement can help secure favorable settlements in lieu of going to trial. When discussing how else they interact with DREs, one prosecutor provided an in-depth explanation of how a DRE can be useful before trial:

Now in some cases, you know what's going to be in there because you have additional evidence. Maybe there's burnt residue from someone smoking an opiate pill off of aluminum foil. You know what you are likely to find in the blood, even if you have to wait 8 months for it to come back. But you don't always have that. Sometimes you have people who are just passed out at the wheel. Or who are obviously impaired, but you're not entirely sure. There's no physical evidence as to what the impairing substance might be. The DREs are able to give us that, and they are able to give us that in a fairly structured and strong way.

So the value of that evidence, the strength of that evidence, is something that I can use as a cajole in my negotiations with defense. 'Hey, I've got a DRE who will testify to this and testify that he saw this that and the other.' Well, that's evidence that has to be, if

not refuted at least deflected and explained away at trial, and they know that. So this is just extra stuff in my favor, which makes my case stronger, which means I can extract additional concessions, IE punishment for this individual. So that's typically how they are used. We use them the same way we would use a DRAEGER ticket or a DRAEGER report. Well, the machine said that he blew a 0.15. That's what I would put before the jury at the trial, the jury was going to believe the machine, so how are you going to sidestep that? [County prosecutor]

Prosecutors additionally noted how once defense attorneys have experienced DREs in a trial, they are more likely to plea in subsequent DUIs with DRE testimony. In sum, prosecutors allude that the threat of DREs minimizes the defense's willingness to go to trial:

I actually think that DRE cases tend to go to trial less, especially if the defense attorney has gone to trial with that person before. [City prosecutor]

But no, I have not actually had to use them. Now I've had plenty of cases in which an evaluation has been done, which is not to say they weren't involved in the case in that way. But, and I imagine you'll get to this question, but in case you don't, I would say that one of the reasons that might be the case is because the program is solid enough that defense respects, at least out here, defense respects the fact of a DRE and for lack of a better term is a good threat. They're not necessarily willing to call... to go up against DREs because I don't think they have a lot of confidence in victory in that instance. So I would say that it's helpful, and it's useful to the cases even if they don't necessarily testify. I think a lot of those cases are the ones that also resolve. [County prosecutor]

Here's the thing, They're a great threat. And having great threats is in itself a value. Think about nuclear weapons, think about nuclear weapons, their utility is not in their use, their utility in their threatened use, it's the ability to use them. DREs are of a similar vein, and you have to have the threat be credible for it to be useful. [County prosecutor]

Other prosecutors had more nuanced views on this topic. For example, one city prosecutor noted when discussing plea agreements that DRE evidence:

helps, but again a lot of times when it comes to the pleas, they're just looking at the straight number at that point, and they're not really looking at anything else when it comes to making deals.

Another city prosecutor concisely answered, "I don't think so," when asked if DRE-involved cases were more likely to receive favorable settlements for the state.

DRE officers were more muted on the effects they had on pre-trial outcomes, though this may reflect their general lack of involvement at this stage of a case. Some DREs did, however, indicate that their involvement can influence plea negotiations. When asked about whether their involvement might generate pleas, one DRE said, while laughing: "I've been told that it is." Another DRE presented a longer example of a case in which the defense attorney claimed they would not settle:

So it was you know, it was an accumulation of all these things, but my instructor who was also there wrote a report and he interviewed him, and that defense attorney had

nothing on him except that he was mean. He even told the prosecutor that, I'm gonna go after that guy because he's mean, and I'm going to go after me because he is new. And he ended up actually pleading to the charges. [Spokane DRE]

Defense attorneys universally disagree with this sentiment, contrarily stating that the DRE has little to no bearing on their decision to seek a settlement. When asked about the role DREs play in their decision to encourage their clients to settle, a private defense attorney stated:

Very little. Very little. In the DRE, all it's really going to do is it's going to say hey this guy has gone through extra training. And it's going to be extra hard for you to cross him. But usually, for me, I'm like yeah, but I got the video, and he didn't do this correctly. Or you have, my guy has no history, and he went and got an eval, or come on it's a 0.08 or whatever, the DRE in terms of negotiations I think has very little impact.

When asked to rank DRE evidence in terms of its importance to them, another private defense attorney stated succinctly, "probably at the bottom." Defense attorneys universally reject the notion that having a DRE involved in a case leads to a less-favorable defense position. However the inverse is certainly true. Not having a DRE involved in a case was a notable defense position to negotiate a better plea deal. One public defender provided their perspective on the topic, indicating that the absence of a DRE can certainly make the prosecution more likely to settle:

Because if they don't have a DRE, the defense attorney is immediately going to start attacking that. And that's kind of how I approach it, if I don't have a DRE, I'll go to them and say unless the client has admitted they're on some type of substance, how do you know what they're on? It's unlikely that there's really enough probable cause for the stop because they should be able to articulate some type of suspicion of what type of substance they're on. And so that's fairly important from a defense attorney's standpoint. If there's no DRE officer, then you're relying on a regular officer's opinions of impairment, and it becomes easier to attack on that basis.

Taken as a whole, there is evidence that DREs provide an important pre-trial resource for prosecutors in terms of preparing for cases. Some prosecutors and DREs also suggest that a DRE's involvement during DUIs can produce more favorable outcomes in terms of plea settlements, though defense attorneys dispute this position, citing personal experience with cases and noting that a DRE rarely affects their pre-trial decision making.

### **Explaining the Absence of DREs in the Courtroom System.**

Given the potential indirect effects of DREs on the adjudication process, a looming question exists: why are DREs seemingly underused? Clearly, this is largely driven by the funnel-like nature of the criminal justice system. For a wide variety of reasons, DUI cases do not make it to trial, and when this occurs, the ability and space for a DRE to be involved is minimized. However, interviewees offered several additional hypotheses which are discussed below.

### ***Lack of Trial Opportunities.***

An underlying reason for the lack of DRE involvement in the courts is the rarity of cases going to trial. One county prosecutor offered a rough estimate but overall impression of how often cases go to trial:

They are slightly more common to go to trial. Uhm... I do not have hard numbers, I would be kind of anecdotally estimating if I gave you any, but I would say trials generally are somewhere in the 1% range. DUIs are probably somewhere closer to 3-4%.

Another city prosecutor indicated they had no DUI trial experience despite their position for two years due to most DUI cases ending in plea bargains:

I would probably say in my 160 caseload, probably about 60 are DUIs, if not more. I've been in this office for about 2 years now, so I have a lot of experience with DUIs. Haven't been able to go to trial on one of them yet... Most of them are pled out.

An upper-level prosecutor even noted an extreme case in which a jurisdiction has not had DUI go to trial:

I targeted one of these jurisdictions out in the sticks there... I don't hear from them much. But I looked at their numbers, and they had, not a lot, but I think it was 30-35 DUI cases. And no jury trials. And I thought, oh, I have to get there. They are scared of jury trials; they don't do jury trials. And so I called their office, and I said I would be passing through, and they were a little skeptical and said, nobody generally just passes through our jurisdiction, so what is going on? And I said, well, in truth, I was a little concerned because you never go to trial on DUI cases.

And they laughed, and they said the reason why is because they all plead guilty... He says they have a hanging judge. The judge is deaf on DUIs. They all get a substantial bail amount imposed as soon as they are arraigned. So if they don't go directly to jail because they have a prior, then the judge is going to post a substantial bail, which means they are going to sit in jail until that person is tried on the case, and most of them don't want to sit in jail. So they plead guilty, and they get out.

Overall, one of the reasons for the lack of DRE use in trials is likely the scarcity of trials in general. As discussed in future sections of this report, the DRE program provides additional and unexpected benefits beyond trials. For this reason, it is important to acknowledge this condition when evaluating the DRE program effects only in the courtroom.

### ***Primacy of Blood Evidence.***

A primary reason why there is less DRE involvement in cases beyond the rarity of trials is due to the decline in DRE callouts. A defense attorney speculated that this was because officers were not calling them as often. They noted that:

I just think it's time, place, and opportunity. If there's a DRE around, I guess they might call. But usually, they already have enough information to ask for a warrant, and they'll call it.

Across the board, interviewees suggested that the expedited warrant process and the presence of *per se* limits for alcohol and cannabis have resulted in fewer callouts for DREs. These statements were often framed in the context of convenience and time saved. Defense attorneys were nearly ubiquitous in claims to this effect, with one stating plainly that “the *per se* limits are basically killing the DRE program, in my opinion.” These comments were echoed regarding the role of blood warrants in the decline of DREs:

I want to say about a decade ago, but now that I say that out loud I think it was probably closer to 12 years ago, give or take, one of the county prosecutors, I remember chatting with her quite a bit, and I'm friends with ... There was a prosecutor who I would call a friend, I remember chatting with her, and they started doing what they were calling refusal weekends. And it was kind of a little process, a test that they were trying to do where somebody refused to do a breath test at the station, you know, the evidentiary breath test at the station, then the officer, just as long as they have the correct software or whatever, essentially they would type up a warrant request to the on-call, and email it to the on-call judge, the on-call judge would sign a blood draw authorization warrant, and then the cop would take the person to the hospital, a medical professional would draw their blood.

So that, but that was on like alcohol cases, but that, I believe that that quick blood authorization, blood warrant authorization, in less than 15 minutes, then they can get this done in 5-10 minutes, I believe that judges were accepting the opinion that the impairment opinion of the traffic officers without wanting to see additional DRE evidence. So I believe the folks in the traffic officers basically said well, why are we going to call in a DRE when I can get a blood draw without him? So I [inaudible], refusal weekend more of an alcohol issue when that occurred, I believe that morphed into law enforcement, not needing to bolster their impairment opinion with DRE evaluation, and just skipping over that, and going right for the blood warrant with the judges. [Private defense attorney]

Even more now, I see DRE evaluations less and less in the field because they go to just a search warrant. Those are authorized more quickly. I think the process for getting search warrants are streamlined, so instead of waiting and having somebody come out and run through the tests, they're just going to rely on what the blood says, and say oh, well I see some signs of impairment, but the PBT comes back showing nothing, they go get the search warrant rather than doing that, what I think is an important step of the DRE evaluation. [Private defense attorney]

Because our office more focuses on those blood results, they'd rather have that than just having to convince a jury about the effectiveness of it. [Prosecuting attorney]

A prosecutor noted that in response to juror needs, they were also hesitant to ever move forward without blood work:

...we would have to wait on the blood evidence for that. We're not just going to go on an affected by. Especially if it's a weed case, there is no way we are going to go on an affected by on that prong. Other cases where it's more common drugs like meth and heroin, maybe if we have a DRE come to talk about it and have evidence like a crash. Yeah, we might not need the blood. But for weed, most definitely we are going to wait

for the blood, and in general, probably going to wait for it anyways. It would have to be a pretty bad crash in order to actually go on without the blood.

While Washington law allows DUIs to be charged for either the *per se* limited or evidence of impairment, this prosecutor indicates that the blood evidence is essential. Assuming that officers are aware of this, they might also be less inclined to call out a DRE.

According to some participants, this shift in the ability to obtain warrants has not only decreased the use of DREs, but also minimized one of the key roles for DREs in a DUI case. Speaking about the decline, one defense attorney offered the following:

I've got a theory as to why we see so few DREs anymore, but going back in the day, you know, a decade ago give or take, it seemed like there were occasions where DREs would be called in to do an evaluation down at the station prior to a blood draw being requested. So it was the DREs evaluation was designed to holster the necessity for the blood draw, if that makes any sense.

According to this attorney, DREs were previously used to justify obtaining warrants for blood evidence. Prosecutors mentioned this as well, with some suggesting this process still occurred. For example, one prosecutor noted that in their day-to-day workload, this was perhaps the most common area of overlap with DREs:

And then obviously on a daily basis with my cases, a lot of times DREs are called to the scene, they don't complete the full DRE assessments, but oftentimes they're integral in the warrant process to get a blood draw when things beyond alcohol is suspected.

Another noted that DREs are sometimes viewed as the fallback for when you cannot get the blood warrant:

When [the suspect] refused the blood test, and there's just an alcohol, or the PBT comes up 0's, that's normally where we'll see the DRE get called in because there is no other explanation. But for that, and, or for some reason, you can't get a blood test.

Most participants suggested that the process of getting a blood warrant was not particularly cumbersome. Prosecutors largely relied on blood evidence, while DRE evidence was considered useful, but not necessary in most cases:

Yeah, so the only other instance that I can think of that I might decide to proceed before receiving toxicology results would be if the individual was at such a high-risk individual that I believed if we dismissed the case that they were going to go out and commit another DUI and potentially kill somebody and if I had a full DRE evaluation that was very strong. [County prosecutor]

An experienced prosecutor from outside of the Spokane region noted that the tendency to rely on toxicology stems from inexperienced or new prosecutors in particular are tasked with prosecuting DUI cases. They expanded:

So for younger prosecutors, they don't understand how great these [DREs] can be. And they kind of default to their analyst, right? They default to their toxicologists to explain the tox. Well, your tox can't do what your DRE can. It's the difference, I like to describe it as the difference between the beekeeper and the guy who is studying bees.

He can tell you all the bee patterns and what they do and how they live, but the beekeeper has a very unique knowledge as to bees. They're both experts, but they're different in what they can tell you.

Like the beekeeper, I call the beekeeper the DRE. They're doing it because they've been trained and they've seen it day in and day out. They have a lot of experience. Our officers, especially in Seattle, they see drugs, high people almost every day in their career. They may not be behind a car, the wheel of a car, but they see them. They're dealing with them every day, multiple, multiple, hundreds of times a shift sometimes. So they see it day in and day out. They can explain bees to you. Where the tox can from a very scientific, I read in a book situation. And the tox can only go so far. They can say well that's consistent with, where your DRE can say, yeah, I believe they were absolutely under the influence of that drug category. And I came to this opinion because I reviewed all the evidence. So I think that's the difference. So in a case where you have a DRE, you're going to use them, they're going to be your expert witness, and hopefully, you'll utilize them well.

The reliance on blood evidence was a common theme from prosecutors and defense attorneys alike. Submitting search warrants for drawing blood appears to have an inverse relationship with DRE usage. As the expeditiousness and ease of drawing blood warrants have increased, the comparative reliance and practicality of DREs have decreased.

### ***ARIDE Training.***

In addition to the primacy of blood results, others indicated that the DRE decline was associated with improved training of other officers. The ARIDE program, in particular, was cited as a reason for the decline in DRE callouts and, by proxy, as a reason why DREs appear in court proceedings so infrequently:

That gets back to what I was saying before with an increase in numbers of those who have attended ARIDE, who can perform these sorts of low-level filterings that maybe was not the case beforehand. [City prosecutor]

ARIDE officers are responding frequently. And I know this [interview] isn't about ARIDE officers, but it's kind of useful to note because they are allowed to do a little more specific testimony. They can't do the same as the DRE, but if you have one of those specialized officers, then that makes your case a lot stronger. If it's a new officer that doesn't really know how to administer SFST, you watch the body cams you say, eh... there's just something not right, they haven't had enough experience, then you're more inclined to settle it. [City prosecutor]

I guess what I would say that a reason for that would be either officers are getting better at their jobs and are confident themselves to determine if somebody is impaired without needing a full DRE evaluation, or they're doing a blood draw, they have enough for a warrant so they don't need a full DRE evaluation so they'll do the warrant on their own. [City prosecutor]

One is that officers, again, ARIDE is being pushed out a lot. Officers were believing they didn't need a DRE. And also the time issues of involving a DRE. That was an issue. [DRE Officer, Outside of Spokane]

Another DRE respondent argued that this was an overall good aftereffect that should lead to better and more efficient use of DRE resources:

My goal is to get everybody ARIDE certified. So people, even if you don't want to do the whole training, you can pick up so much when you become ARIDE certified because you're not a DRE, but you kind of understand a little bit of drug impairment, so you can kind of identify, yeah this guy is acting weird, based on that ARIDE that I just say I can say yeah, this person is you know, under the influence of some drug, now what that drug is, I need a DRE. [Spokane DRE]

A prosecutor from the western side of the state expanded on this, pushing back against the notion that the ARIDE program was hurting the DRE program. This comment was especially insightful and, as such, is reported in its entirety:

Well, I think the consensus is that it has reduced ARIDE callouts [of DREs]. I think that's true, and it makes sense to me. It's part of what it was designed to do, right? Part of it is not what they intended, but part of it is exactly, predictably, what you would expect. It is a tool for helping [officers] assess the situation. In the past, somebody would get something they didn't understand, and you would just call a DRE, right? Call a DRE, you tell me whether I've got something or I don't have something. Now I've been given a tool that will help me make that decision, and it will be a better use as a resource as a DRE. So I am not calling DREs in when nothing is going on; he's just tired. He just has a cold. He just has a cold, and he has allergies. Or he was just upset by that event that just happened to him. So yet, he had a couple of drinks, and that's it.

So those are the kinds of things that I think we would expect to see. I don't think we had a good metric or currently have a good metric for how often that is being used more efficiently because we are just seeing an overall reduction and saying, hmm, maybe this was unintentional. I'm confident that at least some of those are inappropriate. We shouldn't have, I think, leaped to the conclusion that this is necessarily an alternative to DREs.

So my sense is we are seeing a reduction in the DRE component as a result of having the ARIDE. But that's a good thing. And the question is, are they now reliant, too reliant on the ARIDE as an alternative to the DRE component. And yes, I think in some cases, that's absolutely what has happened. But I think we can potentially be stretching that too far. Because in my experience, the folks, there's this logical sort of progression of education for law enforcement officers. You get through the academy, then if they are interested, they go to ARIDE, then once they've done ARIDE, they often continue on to DRE. Some of them don't. Part of that is because we don't have the political interest, we don't have the resources, and in many cases, it's, there's simply not sufficient numbers in that jurisdiction for them to warrant that kind of dedicated ability.

So these folks continue to improve their skillset, and they may do independent studies, they may go through aspects of the DRE program, they'll go to supplemental training. So their skillset is not DRE, but it's advanced. So when they begin making these calls, I have absolutely no problem defending those opinions in court because even though it's not a DRE, it's well supported by the Evidence Rules that this person



is what we would call an expert. Somebody with more information than a jury that would be helpful to them to understand, oh okay, so this is your understanding of methadone. This is your understanding; this is where it came from; this is your interaction with that community with meth addicts. So when you say, these are indications, and this is what you saw, when you see a heroin addict, and you can spot the tracks, and you can see their responses, that all makes sense, and the judge and the jury have no difficulty, you know, crediting that person with being an expert.

So I'm a little bit more skeptical that ARIDE is having a negative impact on DREs. I think there's more to it than just that. But yeah, I think it had an impact, some of it was predictably good, and some of it we are not sure about. So I think we need to do a little bit finer analysis of where those calls disappear and why. We came to the conclusion that we are having an unintended consequence by having ARIDE out there. So far, I think from my perspective, it's been an improvement. But I think we need to follow-up with those folks who are relying on ARIDE rather than calling DREs and find out why precisely, in this case, you know, you had a marijuana person, you are not a marijuana expert, but you didn't call anybody to assist you in these observations and document the symptoms. What was the thinking there? What specifically was going on? Maybe it's an issue. And as always, I want to look at what happened to the case because for me, the real litmus test of how effective it'll be was what was the ultimate disposition of the case?

While it would be simple to bemoan the ARIDE program's effects on DRE callouts, this is clearly no simple matter. By default, the ARIDE program may be reducing DRE callouts, yet at the same time, it can refocus DRE resources on areas of greater need. In actuality, enhanced communication between the ARIDE and DRE programs and ARIDE and DRE officers could be beneficial. Such collaboration could enhance transitions from ARIDE to the DRE program, while also clarifying the cases in which ARIDE versus DRE officers should be called.

### ***Resource Constraints.***

DRE participants couched the decline of DRE involvement as a matter of resource constraints. Notably, DREs had heard that officers were at times reluctant to call them out:

I think over time, people have gotten burnt out that a DRE would not show up. So I asked for a DRE, they're not available, then okay, so this is like the fourth time this month that I've asked for a DRE and they're not available. I'm not even going to ask this time, I'm just going to go straight to blood. And that'll be it." [DRE, Spokane]

How come certain DREs don't answer their phone, or don't come to calls. Let's see what's the other one. They're never available... Why can't they do the whole DUI? [DRE, Spokane]

And just also the availability of them. Over here on this side, we don't have too many. I think the county has a decent amount. But with the city cops, we only have 3 right now. And they take vacations, they don't work every day. So they're just not available by the time they might be able to get one, that could be hours later at that point, you're starting to lose evidence. The guy's level of intoxication is going down, so I think that's the biggest issue. [DRE, Spokane]

When asked directly about this, one DRE provided a candid response:

Probably because it is more work for the officer, to be honest. They...they don't want to call, it means they have to stay with them it means more paperwork they have to fill out. They would rather book 'em and get it done is kind of what I think.

While it is true that the overall number of DRE callouts is declining across the state, DREs from Spokane indicate that they are still actively performing DRE evaluations. One of the DREs noted:

We bypass [the certification limit] like the first 2 months of the year. And that's all of us accumulated. And like, I think I'm at 30-something evals as of this year. And I mean that includes refusals, and things like that. I talked to [another DRE] yesterday, he is over 10 already.

### **Use of DREs in Trials Conclusion.**

In conclusion, at least in Spokane, the absence of DRE involvement in trials and the court process cannot be placed purely on the decline of DRE evaluations. Potential reasons range from multiple sources of criminal justice and policing agencies. Significantly, there is an overarching influence of trial scarcity. A combination of fewer callouts, more ARIDE trained officers, and the easier availability of blood warrants can also be an explanation. Each of these activities partially explains why prosecutors and defense attorneys are not reporting working on cases involving DREs in greater numbers.

### ***Perceived Shortcomings of the Current DRE Program***

Another major theme was the various limitations of the current DRE program. Several subordinate themes emerged, including communication problems, incomplete evaluations, a lack of DRE resources, and a perceived lack of scientific and legal rigor. However, by identifying the program's limitations, solutions can be implemented. In addition, the limitations shine light on the need for the DRE program both in and outside trials.

### **Communication.**

Perhaps unsurprisingly, given how infrequently DREs are used in trials, both prosecutors and DREs reported an overall lack of communication. Prosecutorial complaints often revolved around knowing about the availability of DREs. Even at the report writing stage, some prosecutors indicated that they were not entirely sure whether a DRE was involved or not: "We also just read the reports, and normally officers will list that they're a DRE. If they don't, I would wish that they would, then we would know." Another prosecutor from Spokane expanded on this, stating, "I wish we had more access to them because I mean they are there for us, but we don't ever get to use them as much as we want to."

DREs expressed even more frustration with their inability to get feedback from or interact with prosecutors. One Spokane DRE, for example, noted:

I would love to sit down and talk with the prosecutors more. I get zero feedback on my cases here. So... I've had a couple of interactions just with, via email and charging questions and things like that after the fact, but yeah, definitely one of the real weak points I've noticed in Washington or at least regionally here, it's such a small som- I

have no feedback on any of my cases, particularly the DUIs. I don't hear anything from them. So yeah, I wish there was more.

Another DRE from the Spokane region, when asked about how many interactions they have had with prosecutors or defense attorneys stated that these interactions were essentially non-existent:

\*Chuckle\* Uhm. Here, none. I mean I have had, one threaten to go to trial, and it's just a regular alcohol DUI. It was, stemmed from a crash. It's... My trial experience was more in [another state], but I would go to meet with the prosecutor, go over what defense... We had a very aggressive DUI attorney in our area that was statewide famous for being, you know, just a pain. And I spent several hours on the stand with him in not only just regular DUI but also DRE capacity.

So I tried, I don't like being made a fool of on stand, so I would try to see, you know, hey what he's going after, and meet with the prosecutor and kind of go over questions, and put things together, so we were both on the same page, and I kind of knew what was coming, right? If I knew I screwed something up, or if I didn't do something well, they'd say hey look this is kind of the weak point of my case or you know, this is kind of where there is some confusion, so we need to make sure we address this issue in the various cases. If I go to trial for DUI, I really do like to sit down with the prosecutor and make sure we go over all of that stuff.

Others provided similar feedback:

I haven't heard anything from the prosecutors. [DRE, Spokane]

Most of us have talked [about this] and they're not getting much [feedback] at all. They're not getting much engagement from anywhere. Occasionally they'll talk to a prosecutor, because some of them just want to make sure hey is this case good to plea out? And the behaviors that were happening during the arrest. I haven't had, on my cases, I haven't heard anything from prosecutor or defense. Not like if it's just an alcohol DUI. Alcohol DUI I do in defense interviews all the time, but with the DRE cases when I put my name down as a DRE, I haven't heard anything. And a lot of the ones I've talked to have said the same thing- they're not hearing from anybody. They're not being interviewed, so I don't know if the prosecutor is just like, listen we got the case and we have everything that we need. And we can either go to trial or plea, or what's going on behind the scenes but we are not hearing from them. [Experienced DRE, Spokane]

Prosecutors, honestly we just don't hear from them. We don't get the feedback from them. We try to get it, we're not hearing whether or not they like the cases, don't like the cases. You hear, some are saying yeah it makes it easier, I like them, and some it's like eh, it doesn't really matter. We don't know where to go with that. If you want the case, I mean, we want you to tell us that so we can message that you want that case with the DRE versus if you don't, and eh, we can do it either way, then that's telling us just go get the warrant, and don't use the DRE program. [DRE Spokane]

Similar feedback was present from DREs outside of Spokane. When asked if they had contact with the prosecutor on their cases, one DRE responded succinctly by saying, "No." Another

DRE from outside the area had a lengthier answer, though it still suggested a lack of communication:

Well, for our department, I see a prosecutor frequently because we have a court and a jail at our, where I work, so I see them frequently. But as far as case involvement, we don't have a lot of conversation about cases per se because most of the time, they're just trying to plead cases out. We don't have trials very often. But I would say, probably once a month, a prosecutor will talk to me about a case.

These trends, however, were not universal. Some officers reported much more frequent and positive meetings with prosecutors, though again, these were not the norm:

So, being part of the DUI enforcement team forces us to talk to them talk weekly because we started a DUI court, which is post-adjudication, the therapeutic court. So I'm one of the team members, I believe there's 11 of us, so there's the prosecutor, probation, judge, two treatment providers, coordinator, two defense attorneys, and two law enforcement officers. So we have a pretty good team of all different professionals. So we see them weekly, and I bounce stuff off of them all the time [inaudible] we haven't seen in a while. Like hey, but how do you want us to proceed on something like this or if this is something you're interested in, make it the best we can. So I would say our relationship is actually really good. I don't know what the [inaudible]. We call from time to time to talk about some former cases that come up. They're really good to work with. They're busy a lot, and they're always willing to help when they can. [DRE Spokane]

I'll say that prosecutors from my experience I've dealt with are very interested in the DRE process. [DRE outside of Spokane]

Another officer suggested that communication was context-specific, noting that they had better luck outside their current jurisdiction:

When we first started having DREs, at least where I worked in [redacted], then there was more. I think there were more questions or feedback because they weren't familiar with the process. But yeah, there's really not a lot of feedback unless there is a question about it, maybe at a pre-trial hearing or something like that.

This point is extremely important, as it suggests either a place or time-based variation. In terms of place-based variation, this suggests that some prosecutorial offices do a better or worse job of engaging with DREs. If it is time-based, then this indicates that the prosecutors feel more confident about using DRE evidence over time and have less need to interact with the officers. Importantly however, the officers clearly do not feel the same and would greatly prefer more contact with prosecutors. The DREs are unsure if they are not receiving feedback because their reports are satisfactory or insufficient for their cases.

### **Incomplete Evaluations.**

Another problem that was identified with the DRE program was incomplete or partial evaluations. Defense attorneys likewise confirmed that this was one of their favorite avenues of attack against DRE evidence:

A lot of times what you see is that's the case where you go back, and you can find that the DRE exam was not completed with all the steps and therefore the opinion is invalid. [Private defense attorney]

Biased as it may be, I would love to hear like a statistic of like a these DREs opinion got entered into court came into evidence, and it turned out they did not complete the full process. And again, that's just completely selfish because I think that happens a lot more than people realize. [Private defense attorney]

We can subpoena the arresting officers every once in a while, and then I would kind of ask them. And basically, the context is usually they never completed all 12 steps, so \*chuckles\* which is a basis for suppression. [Private defense attorney]\*

Hey, look he missed this step, he missed that step, he missed that step. So, he never, for example, he ever told the guy keep your hands down at your side while you're doing the one-leg stand test, and then the kid you know picks his arms up like that, and then he counts it against him. How is that fair? And it's much much easier to do when you have the video, and you can just say so you gave him your instructions then? Yes. Hey, let's listen. Okay. Let's go through the instructions you're supposed to give. So you're supposed to do this, and you never said that. And you were supposed to do that, but you never said that. That is far and away from the most effective way of countering that sort of thing. [Private defense attorney]

And I like having them because we know exactly how they are supposed to be administered, so when we know that they haven't been administered that way, or they skip a few, why have you skipped a few of them? I like having it honestly. [Private defense attorney]

Prosecutors similarly noted that the defense has successfully used these partial evaluations to counter DRE evidence:

The difficulty is that in order for a DRE to testify the ultimate opinion, they have to have completed the entire DRE process. In many cases, the defendants either refused to complete the process or can't complete the process, or it's just so difficult that they just get a warrant, and there's no reason to complete the entire process. [City prosecutor]

I mean, I need the full process completed. So I don't know if that's anything the officers can control, and I don't really know really how that plays into the overall scheme of things because of time and resources and whatnot. [City prosecutor]

Interestingly, the belief that the entire 12-step DRE evaluation must be completed is misunderstood by prosecutors and defense attorneys alike. *Baity* established that when all steps of the evaluation are completed, the DRE is permitted to testify which drug category impaired the defendant. Indeed, *Baity* states “we emphasize, however, that our opinion today is confined to situations where all 12-steps of the protocol have been undertaken” (p. 17). One defense attorney emphasized this point in particular:

One of the main, in some of these CLEs that I go to...One of the main things that they always drive home is that if the DRE has not completed his full procedure and hit all those steps, including the PBT, he does not get to render his DRE opinion. Or at the

very least, it should be called into question. Because my understanding of the DRE requirements is that they have to complete all those steps, and you can't just skip them.

And then the problem is judges and prosecutors in my experience don't agree with that statement, they generally tend to think well you know it's close enough, right? They tend to treat it as like an archery target, hey well he got close enough. I treat it like a recipe. Hey, if you don't bake this cake correctly, you don't want to end up with a cake you end up with an inedible block. And so that's the difference is that I think it gets treated a lot of times well if it's close enough then it's fine, but a lot of the training that I go to that specifically for criminal defense is you have to hold them to that standard, you have to make sure that they are doing this accurately that they completed all these steps, otherwise because this DRE title frankly holds so much weight with juries, they're going to be able to say this they're going to say oh I'm a DRE and I say that it's a thing and then juries just eat it up. [Private defense attorney]

However, *Baity* does not state that the DRE is restricted from testifying an opinion if the evaluation was only partially completed. *Baity* acknowledged that DREs can still testify multiple aspects of the DRE evaluation as they are objective observations or generally accepted under the *Frye* standard. For example, SFSTs are steps within the DRE evaluation, and officers have testified their SFST observations prior to the inception of the DRE program. Thus, “the DRE officer, properly qualified, may express an opinion that a suspect's behavior and physical attributes are or are not consistent with the behavioral and physical signs associated with certain categories of drugs” (*State v. Baity*, p. 18).

Prosecutors were also sympathetic to the fact that full evaluations were not always possible or even warranted. But in those cases, they were often still left wanting more evidence generated from the DRE:

But if they were called, I would like to do some supplemental report even if it's not their own DRE thing to maybe document their observations and things like that because sometimes we don't get, they're like so and so was called to the scene, and he's a DRE, and maybe he wasn't actually called to do that. So I think if they are called, they don't end up doing the full investigation for the DRE report thing. Like at least write a supplemental of their observations. I think that would be helpful, then at least we could say they are trained in this, and then we can ask them why they decided to not do the full report thing. I feel like it's come up a couple times, and defense attorneys they get all crazy about it. [City prosecutor]

Prosecutors also noted that beyond the partial evaluations, DREs seemed happy to categorize a given suspect as a refusal. This results in a gap in the evidence and therefore is obviously a concern for prosecutors, who often sometimes articulated that they believed that the DREs could do more to generate consent:

I wish they could just be a little more patient with these people. Which again, is easier for me to say. I don't have very much patience, so I would not be good at dealing with what they have to deal with. But like I said, when it comes down to explaining the implied consent warnings, I just wish they took a little more time to read through them. And like I said, they can't give legal advice, but they could you know sometimes

I'm like can you just say 'you don't take the test, DOL is going to suspend your license for this many days, versus if you take the take the test, they won't. [City prosecutor]

[They] obviously can't give legal advice, but sometimes they're just so quick to write refusal, and it's like well jury, especially with the body-cam, the jury is going to be presented that, that's not... the jury is not going to see that as a refusal, so then I'm back to going on either they were affected by alcohol, which is, then you're proving by the SFST, whether or not there was a collision, their actions that night. [City prosecutor]

Overall, incomplete evaluations or refusals are a perceived weakness of DREs during trials. Defense attorneys and prosecutors alike share this sentiment. However, each party is guilty of misunderstanding the privileges outlined in *Baity* for DRE evidence submission and testimony. This misinterpretation may be a source of the lack of DREs in trials. Thus, reeducating prosecutors of the privileges and allowances established in *Baity* may increase their overall trial involvement (potentially through CLEs). Another method of increasing the rate of complete evaluations is for DREs to practice more patience with the defendant. According to prosecutors, this patience allows DREs the opportunity to encourage or explain the consequences of refusing or only partially completing an evaluation.

#### **Lack of DRE Officers.**

The single largest limitation identified by prosecutors and DREs about the program involved a lack of resources. The primary resource shortage was the DRE officers themselves. Nearly every prosecutor described this as an issue. When asked what could be done to make the DRE program more useful, prosecutors responded with statements like:

More of them? Can we do that? Ha-ha. [City prosecutor]

I think it would absolutely be beneficial to have more DRE officers. I think we probably would have more DUI arrests and more DUI prosecution because, assuming the DRE officers are going to DRE training on their own free will, I mean it really comes down to the person, the officer themselves. If the officer wants to be a good officer and write a very good report and be invested in their investigation, then they will be.

And I'm not saying that an officer that is not a DRE wouldn't be that way, but it tends to be the DRE officers have that additional training, and they have that additional training because they've chosen to do that, and therefore you know, they know what they're looking for, and they document what they see. So I mean, if every officer had to go to DRE training, not every single DRE would be spectacular. But I do believe that we would probably have an overall better product of reports that allow us to prosecute cases. And you'd probably see more cases where a full DRE report was done by a DRE just because there would be more of them. [City prosecutors]

"I mean having more is always useful. So it's a limited resource. To have any more of a limited resource, I think is up to a point useful. I think we are still at the stage where the marginal utility of additional DREs is high enough to make them worthwhile in my opinion." [County prosecutor]

Even one defense attorney noted that the lack of DRE resources is potentially problematic, stating that “DRE officers only work particular days as well. So someone’s picked up say on a Monday or Tuesday, it’s less likely that there’s going to be a DRE than a Friday Saturday.” These statements illustrate a positive reputation of DRE officers and imply that training qualified DRE candidates would have an exponentially beneficial impact. These benefits include enhanced DRE availability to attend DUI cases and assist prosecutors in preparation for and during trials.

### **Lack of Scientific and Legal Rigor.**

Lastly, on the topic of limitations, several comments called into question the scientific and legal rigor of DREs and DRE testimony. Much but not all these data came from defense attorneys and reflected either their most common avenues of attacking DRE evidence or their opinions about how much weight should be given to DREs.

In terms of scientific rigor, defense attorneys noted that DREs were often wrong and unqualified to perform certain aspects of the evaluation. In terms of perceived accuracy of drug category calls made by DREs, one experienced private defense attorney stated that “half the time they are wrong, ha-ha, about the drug.” Others echoed their concerns about DRE preparedness. Other prosecutors have noted consistent incorrect calls, and how they had planned to use these wrong calls as evidence in a DUI case:

We’re seeing that commonly where 8 months after the blood’s taken, it’s coming back with nothing in it.” [Private defense attorney]

“So I did a public records request on him, quite extensive, I asked for all of his DRE reports for the last year. And the blood if there was anything back because we were planning on using it for impeachment testimony. Unfortunately, that was an extremely large amount of data, so it never really came out to furnish because we didn’t have the time for it. But just based on, and this has no real backup basis other than what I’ve personally seen and heard in my office, but there are certain officers where they’re more frequently getting it wrong. [Private defense attorney]

In addition to defense attorneys claiming DREs are fairly inaccurate in determining the correct drug category allegedly impairing the driver, they also argue that DREs are medically unqualified to testify about the science behind drug use and toxicology:

They’re not an expert on it, they don’t have a criminal, they may have a criminal background, but they don’t have a science background. So it’s not like they have a Ph.D. in molecular cell biology or something to do with the physiology of blood alcohol, the physiology of different drugs. [Private defense attorney]

I have a hard time crediting, allowing law enforcement with minimal medical training... I have a hard time allowing them to make, to provide medical testimony in evidence. [Private defense attorney]

One prosecutor echoed these statements, perhaps suggesting some level of concern with the degree to which DRE evidence, as it currently stands, can be trusted with matters of life and liberty:



Like it would be great if [DREs] were actually, you know, toxicologists with at least a bachelor's in some sort of chemistry or toxicology degree. You know something like that, I'd love to actually send them off for some additional trainings, some additional degrees, that seems unreasonable. But that could be something we could do.

In terms of legal rigor, an impassioned argument was presented by a defense attorney regarding the issue of expert testimony. While the courts have largely settled this issue, this attorney viewed this as a significant problem that likely gave undue weight to DRE and DRE evidence:

How does a DRE officer, and this could be more of a question for attorneys, and maybe police departments themselves. They call themselves Drug Recognition Experts, but that's a lot different than an expert in the legal term of who's an expert at trial. And it seems as though because a DRE has expert tagged on to the end of their title, they've sort of blended that to their automatically an expert in their field, they can testify as an expert.

However, another defense attorney noted that a DRE is qualified to testify as an expert under the condition they have the proper medical training or certification. When inquired about the potential for police officers to become certified as phlebotomists, the defense attorney noted two arguments:

I try to be reasonable. And so the reasonable part of me says well... if they're properly trained and certified, why not? The other, the defense lawyer side of me said this is outrageous... Obviously, it would make me nervous, but again, if I just try to be a reasonable person, as long as the individual is properly trained and authorized, they got a, you know, a Department of Health certification to draw the blood, and just because they wear a uniform, a law enforcement uniform, I don't see that as a major problem.

Overall, the scientific rigor of the DRE evaluation and DRE testimony is a common target of attack by defense attorneys. Prosecutors actively deflect this weakness by establishing the proper foundation for DRE testimony and citing previous cases establishing the scientific validity of the DRE evaluation.

### **Current Shortcomings of the DRE Program Conclusion.**

The second theme coded within our study were the current shortcomings of the DRE program. Analyses concluded that communication problems, incomplete evaluations, a lack of DRE resources, and a perceived lack of scientific and legal rigor were marked weaknesses of the program during and outside trials. However, each shortcoming also indicates the strengths of the DRE program. For example, interviews with DREs indicated they desire prosecutor feedback, indicating their passion to follow-up on DUI cases that use their DRE expertise. Additionally, by identifying that incomplete evaluations are a source of contention and confusion between prosecutors and defense attorneys, this misunderstanding can be addressed to bolster the credibility and usage of DREs in trials. Both prosecutors and a defense attorney indicated a lack of DRE resources, indicating a clear need for the training and expertise DREs gain through the program. Lastly, although the scientific and legal rigor of the DRE evaluation is often notably low according to defense attorneys, significant case law has laid a solid foundation for DRE testimony.

### ***Indirect Benefits of the DRE Program***

Although the DRE program's main goals surround DUI cases and giving expert testimony, interviewees did not limit the use of DREs exclusively to these situations. Throughout interviews, it became clear that DREs have multiple ancillary benefits outside of typical DUI cases. Three notable benefits were revealed during interviews that extended beyond arresting impaired drivers. First, the DRE program draws in highly qualified candidates through a rigorous application process, leading to DREs who are passionate about DUIs. Second, the DRE training may increase the overall efficiency of routine police patrol and in trials. Lastly, DREs also serve as a resource for the community and outside of DUIs. While these benefits are separate from the DRE program's expected or measured outcomes, they further illustrate its additional value.

#### **Selective and Passionate Recruitment.**

An indirect consequence of the DRE program is the identification and selection of officers who are passionate and capable of conducting DUI investigations. The application and recertification process serves as a barrier to prevent unenthusiastic or unqualified candidates from attending DRE training. An additional unexpected benefit is a tendency for DREs to extend their passion by instructing other officers in trainings related to DUIs, including SFST and ARIDE training.

#### ***Application Process and Recertification.***

The selection and recruitment process to become a DRE is intensive and has high expectations. This process helps identify high-achieving officers who can focus on traffic enforcement to a greater degree and may develop skills that might benefit them in other aspects of the job. Even if they do not testify frequently, interviewees conveyed a sense that DREs are related to an increase in DUI stops. In terms of skills, law enforcement officers cannot attend the DRE pre-school because they “had nothing better to do that week anyway” [Prosecutor]. An upper-level prosecutor explains the application process best:

So in terms of the DRE getting to become a DRE, number one, they have to be a high producing DUI officer, so they are out there, and they are actually making good cases. They also have to be a good report writer. They submit their reports with their application to DRE school. They also have to attend ARIDE, the advanced roadside impaired driving enforcement... If they are not doing their field sobrieties well, then they don't get to sit through ARIDE. So some instructors are a little bit more lenient and will let them try again, and some are more strict where they're like sorry, you can't do fields, you don't get to be here. So they have to show that they are already proficient in alcohol DUI detection, another DUI detection before they get to go to ARIDE. So we have all these different things that they have to overcome before they are even allowed to apply.

Multiple components are also submitted in the application to the committee to demonstrate their proficiency and skills for DUI cases:

So we want those people to provide their reports. They have to have a letter of recommendation from a prosecutor, they have to have a letter of recommendation from their local DRE coordinator. So they have all these different people in their

agency that are sending letters on their behalf. They have to show their numbers, their DUI numbers, and then they have to actually show reports. They have to attach, at least, I think, five reports to their application, and then they have to fill out this application. So then it goes to a committee, and they pick. And we have a lot of people who don't get to come to DRE school. [City Prosecutor]

Clearly, the application process to become part of the reputedly elite school is extensive, selective, and attempts to draw in willing and capable people to complete the work. While those accepted to the program are considered qualified to attend the DRE-preschool, not all students will graduate. The DRE school is considered one of the most difficult programs within law enforcement by prosecutors and DREs alike:

This is the hardest, and when you talk to DREs, it's one of the hardest courses that you'll ever go through because DRE pre-school is really, really hard. A lot of physiology, a lot memorization that you just have to do and just have to be good at. A lot of studying. And they test actively. And if they don't pass, then they leave, they have kicked people out of DRE school because they were just like, I'm sorry, you're just not going to be a good quality candidate. Then finally, DRE school is at the end. They take their test, and then they have to do field certs. So it's not like they just have to remember it for a moment for a test. They have to actually show it. So we go out into the field, and we find people that are impaired, and they have to call the right drug category. [Upper-level prosecutor]

...it's kind of neat to go through something that is seen as one of, a very difficult school through law enforcement. [DRE, Spokane]

While one of the goals of the DRE program is to draw in qualified and exceptional candidates to attend DRE training and become certified, one of the unexpected benefits of this process is also selecting those who are both passionate about police work and removing impaired drivers from public roads:

Some of the DREs that I work with, officer [redacted], [redacted], they do come out whenever they're able to. They're always open to callouts. Sometimes, \*chuckle\* for [redacted], for instance, even on his days off, he'll come in and do an eval just because he's that passionate about it. So I see them in a modicum of cases. [City Prosecutor]

I think the benefit of the DRE, even if their skills aren't specifically used for the main purpose, is that they tend to be officers who want to be doing that specific type of investigation, so they tend to be more invested in their investigation. [City Prosecutor]

...all the science behind it and the history behind it and the SFST you know, some people they're just so passionate about it, and they LOVE to talk about it. And DREs are that. You know, that's what they're focusing on. So obviously refreshing, any time someone is passionate about anything, it's refreshing. So it's like those DREs are passionate about it. [City Prosecutor]

So I've always had a passion for it, I always had a passion it, and so being able to hold on to that ... As we speak right now, it's something that I definitely want to continue and to be a part of. [Spokane DRE]

Although research has not determined how DREs or DRE evidence is related to case outcomes, it seems clear the DRE program identifies and trains officers to focus on a call type (DUIs) that other officers may wish to avoid. Regardless of the effects downstream, DRE recruitment and training seems to ensure that more DUID offenders are arrested. These are only a small portion of quotes by our interviewees about the strong interest and passion in the DRE program. These quotes and sentiments demonstrate how the DRE school attracts well-qualified officers who are zealous about drunk and drug-impaired drivers. This enthusiasm is beneficial for DREs and prosecutors alike, and ensures that the resources and training invested into the officers are worthwhile, and may encourage recertification and completing DRE evaluations. Overall, DUI passion is nearly as essential as capable officers within the DRE program, and should be considered in the DRE application process.

***Instructors.***

An additional indirect benefit of the DRE program is the tendency of DREs to also instruct prosecutor DUI boot camps, SFST courses, and the DRE program itself:

I teach at the basic law enforcement academy when it comes to the SFST and I see the recruits and you know their eyes open into alcohol. [Spokane DRE]

...because I'm a DRE, I also instruct SFST courses. [Spokane DRE]

I'm also a field training officer... [DRE outside Spokane]

I'm an [ARIDE] instructor too. [DRE outside Spokane]

This subtheme may be correlated to the passion DREs have for DUI cases. It appears that the DRE program also draws in candidates who want to pass on their knowledge and training to the next law enforcement generation. This is an interesting finding as instructing was not specifically inquired about in the interview, so it may be that other DREs are also serving as instructors.

Taking on an instructor role can have multiple benefits. While it is unknown the directionality in this relationship (officers may be instructors before becoming DREs), it is once again clear that the DRE program draws in candidates who want to share their knowledge with others, formally and informally. A non-DRE notes informal instruction by a DRE officer:

So [redacted DRE] did a fantastic job with making me like a little cheat sheet pocket card. So that, because he's a DRE, I don't know, maybe that helps, or maybe that's just because he's a good dude that likes to help us out. And that certainly made, I guess, the [DUI] process easier for me.

Overall, DREs have the unexpected benefit of paying forward their knowledge and expertise in multiple ways, further demonstrating their passion for law enforcement and DUIs. The DRE program's application process successfully accepts applicants eager to extend their passion for combating impaired driving. This passion may extend to increased DRE recertification and pedagogy related to DUI cases, drug impairment, and detection.

## **Enhancing Daily and Testimonial Efficiency.**

### ***Writing Quality.***

As previously noted, a consistent remark by prosecutors indicated that DREs are better report and warrant writers. While all officers are required to complete SFST training, which includes instructions on proper report writing and observations, DREs tend to do these consistently better:

So their reports are generally higher quality. They are easier to read. They have a lot more of the formatting and the sort of observations that we'd be looking for... So yes, it would be my opinion that they produce a higher quality of report, even leaving aside the formal drug recognition opinions or protocols that they do. But their reports are generally of a higher quality than other non-DRE line officers. Not to say that other non-DRE line officers don't have quality reports, but as a percentage, I would say yes. [County prosecutor]

...because of their experience investigating DUIs, they tend to write great reports and write succinct reports in terms of what they see that indicates impairment to them whereas other officers who may not investigate DUIs primarily, sometimes their reports are more lacking. [City prosecutor]

One prosecutor mentioned that they prefer reports written by DREs:

I, we would prefer more of them to do the reports per se. Because again, the only DRE on a number of cases, especially for the weed ones, we would love to have for that because it's super helpful, especially when we don't have tox.

Once again, the directionality of this relationship is unclear. As previously discussed, capable report writing is already a prerequisite for admission into the program. However, these statements by prosecutors illustrate that DREs continue to produce better reports and are more useful and helpful for the prosecutor and navigating their cases. Especially considering that DREs attend to cases beyond DUIs, their efficiency and succinctness are beneficial across their daily police routines.

### ***Speaking to People.***

A second unexpected benefit we discovered about the DRE program was their ability to cooperate and talk to potentially impaired drivers. When asked if there were any other benefits of the DRE training, a DRE within Spokane detailed how it changed how they interact with drivers during a DUI:

One of the biggest things is just being able to talk to people. And I see that all the time. A lot of law enforcement comes down to hey, we just teach them to go on calls, we teach them to do things where they just get the facts. And a lot of times when you have this law enforcement officer who is you know, in this uniform, and this person who's being suspected of a crime, now you have this huge wall put up, and there's always this you know, I'm not going to tell you everything, and you're going to have to get it out of me. And so that's one of the things that I think in the DRE training that we teach, at least in this state, is we try to bring them down to the level, hey you might be dealing with somebody who is an addict, somebody who is struggling in their life, who's in

crisis, and they're using a lot. And you need to bring yourself down to their level, you know? Talk to them as a person, treat them with respect.

The DRE continued to state how these interviewing skills are utilized every day throughout their career:

They'll use it in every aspect of their career. They use it in homicide investigations; they use it in DV investigation; they use it, you know when talking to children. And some of our DREs are some of the... they're some of the best representation of each department. They are the ones that you know, will get out and actually talk to people, maybe who's a homeless person, a transient laying on the street. They'll get down and talk to them on their level. Where some of the other officers, you know, the young kids and stuff, they'll just be like, this is just a homeless guy, you know? But we start seeing the other sides of it from doing our training...

Especially since defendant statements are nearly essential in determining drug impairment (Porath & Beirness, 2009), this enhancement in interview skills helps extract important information in determining impairment and drug category:

When you start talking to people and understanding their side of things, you start getting a whole lot more information from them. And that's extremely useful. They can be useful for a lot of reasons. One of them is they're not going to tell you evidence for the crime if they won't talk. And us being able to talk to them, and get that information out of them, and that's part, I mean that's our last step in our evaluation is, we get down to the okay. I know you've said 100 times you haven't used any drugs, but let's be honest, you know. Here's what I'm seeing. Let's just be honest. You have a problem, those kinds of things.

And they start opening up to you and talking to you and telling you... When you have to stand in a dark room with somebody who is high. And you know, you're an officer, you're in a very small, usually, we do these things like in a small bathroom, a public bathroom, it has very, you know four feet by four foot. And you shut the lights off, and you're in there with somebody who is high, and they're scared because you have a gun, and you're a police officer. And you're like, I don't know if this person's going to go crazy on me in this bathroom. It kind of... it's kind of a leveling field. It kind of makes you start thinking okay, let's start talking, let's start kind of, now you've taken all this visual, you know, this visual, I'm scared of you because you're a cop, and I'm looking at you because you're a transient homeless person. It takes all that away, and you start talking as two people.

And it kind of, it allows the officers to start realizing that, stop building those walls of you know, I'm a cop, and you're a suspect. And I think that those are the things that are really helpful across the board with these DREs. [Spokane DRE]

Although DREs are trained in conducting interviews with DUI suspects, it is clear that this skill transcends across police officers' daily work. Law enforcement interacts with thousands of people across their careers, so enhancing interview skills is a clear benefit outside the scope of DUIs.

### ***Proficiency in the Testimony.***

An essential aspect of DRE training is giving suitable expert testimony. Despite the rarity of expert testimony by DREs, their testimony training increases their overall efficiency on the stand. Especially regarding DRE cases that do not specifically require DRE expertise, those with DRE training can help expedite the process. One of the ancillary benefits mentioned by prosecutors is their efficiency and expertise to understand the line of questioning prosecutors go through for admitting evidence. While the DRE program specifically instructs the officers how to give expert testimony, these unintended benefits further illustrate the strengths of the DRE program.

Interviews with prosecutors uncovered positive experiences with DRE testimony, especially regarding going through the standard lines of questioning to admit standard evidence. Multiple prosecutors mentioned how compared to non-DREs, DREs are more experienced and prepared for the stand in this area:

...I was about to go to trial on a DUI with a non-DRE, and they usually come to me beforehand, and I'm a prosecutor who is very prepared, so we go through the questioning that would occur at trial. And it was very apparent you know when you're not a DRE... you're not as, you don't have as much experience in dealing with the SFST. You know your responses aren't as thorough, and as lengthy, as say a DRE just because the DRE that is what they focused on, they did the additional training, they're a lot more excited and passionate about it.

I would say [DRE testimony] is more experienced. And it is... they're easier to work with, in the sense that they know what I need to prove because they have more experience with DUI cases. There's a mutual understanding there. Less prep involved in terms of understanding why I'm asking the questions I'm asking.

[Officers] don't want to come in and testify. They don't testify very often, so they're not feeling confident, and they're the ones on the stand, it's terrifying for them. Whereas the DREs, they want to help out... they don't give me any grief about when there is a trial... They want to be helpful, so that's always a relief too.

As these sentiments demonstrate, even when DREs are not admitted as expert witnesses in the court, they provide prosecutors confidence in their trial preparations. DREs also diminish the preparation required by prosecutors for their DUI cases. This is an extremely beneficial resource for prosecutors across all DUI cases, even if they do not involve the DRE evaluation.

However, an important disclaimer is that calling in a DRE opens the officer and the prosecution to attack from the defense attorney. DRE testimony and experience is open to scrutiny by the defense during trials. Additionally, DREs are compelled to also supply testimony that may support the defense attorney when prompted. DREs can also testify against other officers regarding how they investigated, wrote a report, or supplied testimony. The standards of DREs are generally higher and more refined which allows them to potentially testify against primary or arriving officer conclusions and actions.

Prosecutors can appreciate the immense expertise DREs provide, even if the case does not involve the DRE evaluation. DREs provide more standardized and succinct reports compared

to non-DREs, which bolsters the case and increases the ability to prosecute more efficiently and reliably. In addition, when DREs testify in court, prosecutors feel more confident in asking their line of questioning and understanding what the prosecutor needs to present to the judge and jury. Overall, when prosecutors are knowledgeable about DREs, it can provide a sense of ease, confidence, and capability for cases, regardless if there is a complete DRE evaluation.

### **Resource Beyond the Scope of DUI Cases.**

Lastly, DREs and their training serve as an additional resource beyond specific program goals regarding DRE evaluations. There are multiple tangents DREs take with their impairment training. Although the aim of the program is to provide evidence for drugged-driving cases, DREs commonly expand beyond this role. DREs are repeatedly called upon by prosecutors as a resource in outside cases. DREs also instruct teachers and doctors in the broader community to detect drug impairment in their students and patients. They can serve as crucial professionals in recognizing mental health issues, benefitting those who interact with DREs, and recommending potential resources.

### ***Resource for Prosecutors.***

An upper-level prosecutor noted how they use DREs outside of the cases they attend. Although there is a distinction between prosecutors who first began their legal careers towards the peak of DRE use in the state, this prosecutor explicitly states how they use DREs for assistance and viewpoints for DUI cases:

...with cases, even other prosecutors will send me cases, and they'll send them on to [DRE redacted] and [DRE redacted] and say hey, what do you think? What do you think we have here? What is this? What drug category would you call here? It's obviously poly, but what do you think? How do we go forward? And in terms of evaluating cases, they're valuable. I also loop them into cases where a DRE should've been called, and they weren't called. [Upper-level prosecutor]

One DRE noted how they have served as a resource for prosecutors:

Occasionally [DREs] will talk to a prosecutor, because some of them just want to make sure hey is this case good to plea out? And the behaviors that were happening during the arrest.

Newer prosecutors have fewer interactions with DREs, and interviews with these attorneys and DREs have demonstrated little additional contact outside of cases directly involved with the associated case. However, the upper-level prosecutor clearly illustrates an example of how DREs can serve as a resource for prosecutors in outside cases. While DREs are encouraged to reach out to prosecutors to build rapport, the ability for prosecutors to reach out to DREs for assistance is an additional benefit of the program.

### ***Instructing other Professions.***

DREs were repeatedly noted for their use outside of the direct DRE program goals. The skillset DREs acquire in determining drug impairment can be passed on to others in the community. Multiple professions, such as doctors, teachers, and counselors, may interact with people under the influence of drugs. These professions can benefit from learning how



to detect impairment by increasing their safety and ability to offer the best treatment or resources for these individuals. An upper-level prosecutor explains this benefit:

I know [DREs] have gone into ER hospitals and trained doctors. And it's funny to say, but an officer is training a medical professional on drug impairment...So as DRE instructors, when they can train, which is outside of the DRE process and the DUI process, but they train actual schoolteachers... But they go in, and I've gone with them. And taught like schoolteachers and counselors about these types of drugs.

Not all DREs participate in this type of community outreach. However, their expert training and willingness to extend their training to those who would benefit is another testament to the passion DREs have for the program and keeping the community safe. While DREs are not forced to share their knowledge with others even outside the criminal justice system, their enthusiasm and motivation for detecting drug impairment are another unexpected beneficial outcome of the DRE program.

#### **Indirect benefits conclusion.**

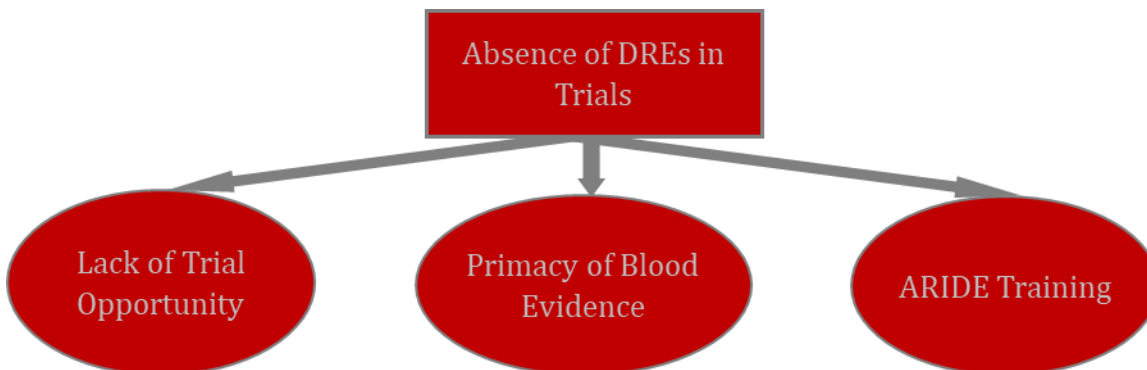
As noted by law enforcement and criminal justice actors alike, three unanticipated benefits revealed impacts of the DRE program beyond arresting impaired drivers. First, the application process and standards for officers to attend the DRE school draw in highly qualified candidates who are passionate about DUIs. In addition, the DRE training spans multiple aspects of daily police work, including speaking with people and testifying in trials. Lastly, DREs serve prosecutors and the community alike as a resource in drug cases and drug impairment. Many of these benefits would be missed in quantitative analyses. Conclusions from this section indicate the DRE program serves as a springboard into spanning community and court boundaries beyond DUIs.

## 5. CONCLUSIONS

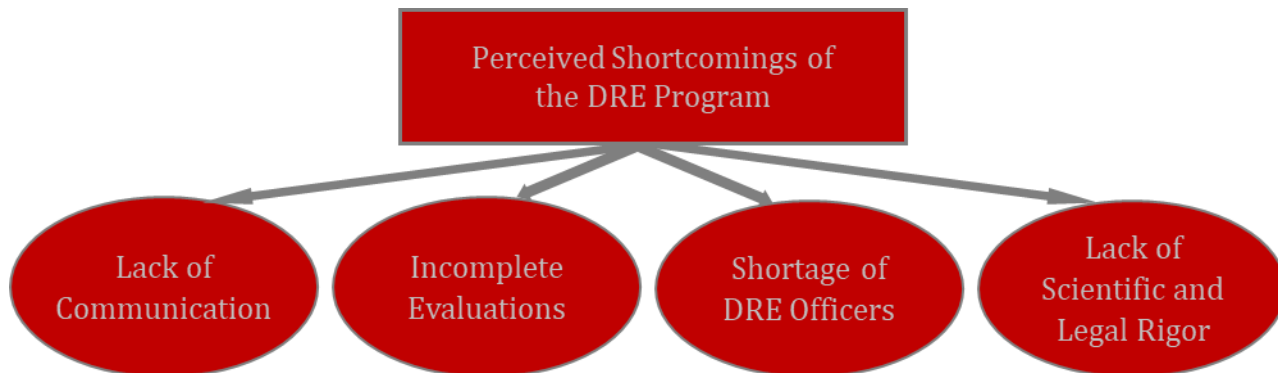
### 5.1 Summary of Results

Qualitative data analysis generated three themes: 1) The rarity of DRE in trials, 2) Perceived limitations of the DRE program, 3) Indirect benefits of DREs with several sub-themes each:

**Figure 5.1: Absence of DREs in Trials**



**Figure 5.2: Perceived Shortcomings of the DRE Program**



**Figure 5.3: Indirect Benefits of the DRE Program**



Commentary by DRE officers, prosecutors, and defense attorneys predominately surrounded these three themes, and the participants often circled back to discuss these issues in more detail.

### ***Absence of DREs in Trials***

Participants were nearly unanimous on this point – DRE officers rarely testify in their role as a DRE in court cases. Only a handful of participants had seen more than one instance of a trial involving a DRE. Importantly, this does not imply that DREs are not testifying in other cases, only that they are not testifying as a DRE in those cases. With knowledge of the funnel-like nature of the criminal justice system and the fact that fewer and fewer DRE evaluations have occurred over time (with perhaps an uptick in recent years), this result is unsurprising. Put simply, the universe of cases in which a DRE might testify is already small and shrinks based on plea settlements and instances in which charges are dropped. Given this, it is likely to be difficult parsing out the specific effects of DRE testimony on case outcomes. However, given that prosecutors cite the improved skillset and report writing ability of DREs, it is possible that cases involving a DRE – whether they involve drugs or alcohol – are more likely to result in guilty verdicts for the state. In the context of Spokane, this type of analysis is necessary and can provide important insights into the efficacy of the DRE program.

Future Research Question 1: Are cases initiated by DREs more likely to result in convictions or settlements than cases not involving DREs?

Beyond the fact that DREs rarely appear in the courtroom, participants implied that these numbers were down over-time. There were a number of reasons offered for this, including: 1) the primacy of blood evidence, 2) the growth in the ARIDE program, and 3) their pre-trial involvement. Put briefly, respondents argued that given changes in the ease of obtaining blood warrants, officers and prosecutors are much more likely to rely on that evidence than they were in the past, thereby reducing the need for DRE evidence. Similarly, the ARIDE program that provides advanced impairment detection skills for non-DRE officers may have also resulted in more officers feeling overly confident in handling drugged-driving cases, thereby reducing DRE callouts. Lastly, it is also possible that DRE involvement in pre-trial proceedings pushes cases to settlement, thereby resulting in fewer DREs involved in trial settings.

The first two arguments were agreed upon by nearly all participants: blood warrants/evidence and the presence of ARIDE-trained officers have decreased DRE involvement. The consequences of this, however, are unclear.

Future Research Question 2: How do case outcomes differ when a DRE is involved versus cases involving other forms of evidence?

The third point – that DRE evidence might create pressure for settlements – is less clear. Many prosecutors and some DREs suggested that this was the case. However, defense attorneys were unanimous in rejecting this claim. This, however, is also addressable with the right data. One possible explanation for this is that the pressure to resolve cases falls mostly on prosecutors. Given the perceived improvements of reports, these reports may allow prosecutors to better sense both the strengths and weaknesses of their cases, thereby positioning them to seek settlements that are more favorable for prosecutors at the onset.

Future Research Question 3: Are cases involving DREs more likely to result in settlement pleas than cases not involving DREs?

These three research questions are the foundation for the continued case study of Spokane that is ongoing as part of this larger research project. Using incident-report data from the Spokane Police Department and case outcome data from the Washington Administrative Office of the Courts, it is possible to provide answers to each of the questions above. It is worth noting that data was a substantial challenge in this regard. Though the Spokane Police Department was able to identify DRE-involved cases relatively easy, these cases are not linked to court cases in a systematic manner. Linking DUI incident reports to DUI case outcomes is fraught with challenges in this regard, suggesting a need for a more centralized data repository.

The other two emergent themes – perceived limitations and flaws of the DRE program, and the indirect benefits of the DRE program – are not addressable in the current Spokane case study project. However, these results were so clear from the data at hand that they deserve additional attention and future research efforts.

### ***Perceived Shortcomings of the DRE Program***

While law enforcement and prosecutor participants lauded the DRE program as a general idea, they suggested that there were at least two substantial limitations that mitigated its effectiveness. First, prosecutors and especially DREs decried the lack of communication between each other. DREs are heavily concerned that they virtually receive no feedback from prosecutors on their performance in terms of the quality of their work or their effects on case outcomes. Obviously, the lack of communication is a major concern for the program, given that the odds of successful prosecution are likely increased when there is greater collaboration among prosecutors and police officials. However, this concern about the lack of communication is a promising sign. It demonstrates that DREs and prosecutors are interested in addressing this issue and can be addressed in the future.

In addition to this, there was broad concern among prosecutors that there were simply not enough DRE resources to make effective widespread use of the program. DRE officers themselves validated these concerns, noting that they heard of cases in which patrol officers sought a DRE but could not locate one. The inability for DREs to attend all calls may be due to either not having one on for a particular shift or time constraints in how long it took a given DRE to respond to a call. Unlike communication – which is clearly an issue that needs to be resolved – resource limitations are more difficult to assess. Given the finite resource allocation from federal, state, and local sources, there is a hard limit on how many DREs officers can be recruited and maintained across the state. Investing in the DRE program is in some instances likely to occur at the expense of other law enforcement investments, and in that regard, the three future research questions above must be answered before further investments can be fully justified.

From a defense perspective, there remains continued ambiguity about the rigor of DRE evidence. Defense attorneys are particularly concerned about the lack of clinical or scientific training received by DREs, as well as the notion that DREs can serve as experts to issue final opinions on cases in which they were involved. Indeed, a potential training issue for defense attorneys is a failure to grasp the difference between scientific experts and technical experts

in training. While a scientific expert has a science background that allows them to express an opinion, a technical expert has different expectations. Technical experts are certified for a particular skill and trained to evaluate results based on practical and scientific information. A technical expert is not required to fully understand the underlying theories supporting their respective training.

While a full legal analysis of these issues is outside of the scope of this research team's expertise, these issues are likely to remain an ongoing area of contention. In terms of actual cases, defense attorneys most frequently leaned on the fact that many DREs did not complete a full evaluation for a given case. More attention is needed in this area – why are many DRE evaluations incomplete? Is this simply a matter of suspect refusals or a reflection of resource shortages? Or, as some prosecutors suggested, is this an area that needs a reformation in terms of DRE training and instructions? This topic is vital given that some research suggests that not all DRE evaluation segments are equally useful for detecting impairment (Porath-Waller & Beirness, 2010). There could be further implications about how partial evaluations are weighed as evidence. While many of the participants suggested that case law had largely been established in this regard, future challenges will present themselves. A published case only applies to the law to the facts in that case, thus a new set of facts creates a new legal issue. Beyond the legality issue, it is important from a societal perspective to document whether the current state of legal affairs is favored or desired.

### ***Indirect Benefits of the DRE Program***

The DRE program has the specific purpose of training law enforcement officers to detect drug impairment through a DRE evaluation and present their expert opinion in court. However, there is clearly a multitude of benefits that extend beyond the primary goals of the program. A major indirect benefit of DRE training stems from the program's selectivity in drawing in candidates who are passionate about DUIs. The application process and school are considered extensive and arduous. However, this has the indirect benefit of drawing in candidates passionate about ensuring public safety on the roads, especially by removing impaired drivers. Their training in interview skills also enhances their ability to talk with people outside of the DUI sphere. This passion also extends to DREs who instruct the SFST, ARIDE, and the DRE school. Considering DREs are not obligated to share their expertise, especially through instructing other officers, the DRE program certainly emphasizes passing it on to their students.

Another indirect benefit was the notable efficiency of DREs for cases that do not involve a DRE evaluation. While DREs are trained to detect drug impairment, this carries into their proficiency in report writing quality and satisfactory testimony for the prosecutor. However, this relationship may not be uni-directional. Prosecutors also noted that DREs decrease their workload during direct examination by properly answering questions that benefit the prosecutor's arguments. Although DREs are trained on structuring their reports, prosecutors consistently noted that their reports were more valuable and even preferred by prosecutors. However, this remains an open research question. Extended research was conducted to examine a subset of DUI warrants written by DREs and non-DREs and rated using clarity scores outlined by the Washington DWI Detection and Standardized Field Sobriety Testing manual (IACP, 2013). Preliminary results suggested that there is considerable DRE-to-DRE

variation in report writing in addition to variation between reports. A full examination should address the issue of report quality directly.

Lastly, DREs serve as a community resource outside of their law enforcement field. DREs can be a resource for prosecutors for other cases involving drugs or impairment. Although newer prosecutors do not seek out DRE assistance, an upper-level prosecutor actively asks for DRE perspectives on cases, and the majority of DREs are willing to help. While DREs are encouraged to introduce themselves to prosecutors, this is an unanticipated benefit that should be emphasized. DREs also serve as a community resource for hospitals and schools to help keep the professionals and their clients safe. Drug use is prominent, thus the unanticipated benefit of DREs to act as a resource for others who interact with those who use or abuse drugs should be extended and accentuated.

## **5.2 Research Limitations**

As with all research, we acknowledge this project has several important limitations. First and foremost, this was a case study of the DRE program within the Spokane, Washington region. Though interviews were conducted with informants from the western side of the state, these results should not be considered generalizable to all of Washington State nor the DRE program nationwide. In particular, these results do not include a sizable number of interviews with professionals along the major I-5 population corridor running from Vancouver through Seattle. In addition, these results lean heavily toward more urban areas. Rural DREs, prosecutors, and defense attorneys are not represented in this research. This limitation is sizable, however, as research has highlighted important differences between large and small-town police departments (Falcone, Wells, & Weisheit, 2002). Some participants in this study have also suggested regional variations in how DREs are used and perceived. In addition, the sample of interviewees was not selected at random. Though non-random selection is common in qualitative research, the sampling strategy did not produce a representative sample of potential applicants. Further, because participation was voluntary and applicants could opt-in/opt-out of the project, there is potential for self-selection bias (if the decision to participate is systematically related to perceptions of the DRE program).

Taken together, these limitations imply that it would be risky to generalize from this project to the state more broadly. While a genuine limitation, the goal of the project was to more narrowly examine the DRE program within Spokane. In this regard, the sample-based limitations are largely mitigated. In addition, the data collected from participants provides strong insights as to how, when, and why DREs and DRE evaluations are and are not useful for the criminal justice process. This work lays the foundation for future quantitative work, as well as future qualitative work statewide.

In addition to the sample-based limitations above, there are other potential limitations. While in-person interviews were preferred and planned originally, due to the COVID-19 pandemic, all interviews had to be conducted over Zoom or via phone calls. Though the interviews went well across the board and, in fact, Zoom-based interviews allowed for greater flexibility in scheduling, we cannot discount the possibility that remotely conducting interviews generates data of a different type and quality than in-person. That is, some interviewees would have possibly shared more (or less) had the interviews been conducted

in-person. The Zoom framework also affected the research in terms of technical issues. Latency sometimes impacted the flow of conversation, and there were some sound quality issues. Indeed, at least one interview suffered from moderate to major sound quality issues, resulting in our limited ability to use data from that participant.

### 5.3 Policy Recommendations

Based on the results of this qualitative evaluation of the DRE program in Spokane, we offer the following policy recommendations moving forward:

#### 1. *Finalize the Spokane Case Study*

A quantitative assessment of DRE evidence in the Spokane context is necessary to address the future research questions listed above. Without insights on whether DRE evidence produces more guilty pleas or verdicts, it is impossible to determine how to best move forward. Such a project is underway, and its results will help inform the remaining policy recommendations below.

#### 2. *Improve Data Collection*

Though not a major theme of our qualitative analysis, this research discovered as part of the larger project that there are clear data availability problems that limit the feasibility of a formal analysis of the DRE program. There is currently no formal database available where all DRE cases can easily be identified across the state (and especially over-time). The State DRE Coordinator has begun to collect this information personally, but this still requires significant investment on their part. A more formalized system where cases involving DRE evaluations are systematically transferred to the DRE coordinator and stored in a secure database is essential for effective data collection. The system could document drugged driving trends that would simultaneously ameliorate the workload for conducting a program evaluation of the DRE program (see point 3, below). Ideally, such a solution will make use of software that can organize and generate data for both reporting and analytic purposes. Further, the software would track refusals, partial evaluations, and full evaluations and link to case outcome data.

#### 3. *Conduct an independent Needs Assessment and develop ongoing evaluation of Washington's Drug Evaluation and Classification Program*

While the current project provided a close examination of the perceptions of the DRE program in Spokane and included participants outside of Spokane (who generally made statements in agreement with our Spokane interviewees) and the ongoing quantitative aspects of this project will address the effects on case outcomes, this project *does not* constitute a formal program evaluation of the DRE program or of the broader Drug Evaluation and Classification Program (DECP). DREs from Spokane suggested that they were more active and engaged than other jurisdictions. Though the current project cannot confirm this, it is still the case that it would be hazardous to generalize from this project.

An independent needs assessment and program evaluation would examine the overall logic model for the DRE program, including outcome assessments. This needs assessment would focus on documenting the areas in the state where DRE resources are least available and determining whether and when other problems – like communication between law enforcement and prosecution, as well as data availability issues – exist and at what levels. In

this sense, an independent evaluation should build upon the exploratory work conducted here. The outcome assessment would explore how the current DRE program is or is not successful at achieving traffic safety and criminal justice goals. To be comprehensive, such an analysis should include a cost-benefit analysis. This effort would be different from the IACP evaluation in that it would include information on the costs of maintaining the DRE program as opposed to the potential consequences. In addition, this analysis would highlight state-wide trends in perceptions and effects of DREs across the state. The IACP report was largely a summary of policy recommendations, while this report would focus on the likelihood that the specified recommendations would produce the desired outcomes.

The current study nor the IACP evaluation cannot definitively state that the DRE program is or is not a worthwhile investment. This qualitative perceptual study suggests both strengths and opportunities of the program. Nevertheless, more data, both qualitative and quantitative, are needed to fully address this issue. An independent needs assessment and program evaluation must include participation from the International Association of Chiefs of Police, but the current research team argues that IACP be treated as key informants and sources of data, rather than evaluators. A formal program evaluation should be conducted by researchers outside of law enforcement and traffic safety circles. Many of the issues we evaluated in this report could be explored in further depth with a quantitative report effort, the role of partial evaluations, and their effects on pre-trial decision making. Indeed, improving DRE data systems is essential for supporting ongoing and future evaluations.

#### *4. Develop Strategies to Address Current Program Shortcomings*

This project identified three major shortcomings of the DRE program: 1) the availability of DRE resources, 2) weak communication between law enforcement and prosecution, and 3) perceived issues related to incomplete evaluations. Though a more robust program evaluation is required to determine the extent to which these issues exist across the state and, perhaps more importantly, to determine the value of investing in the DRE program, the current program clearly needs additional revisions and investments.

#### ***Assess how DRE Resources are Distributed and Incentivize DRE Use.***

In terms of DRE resources, participants articulated that the availability of DREs in a timely fashion was a limiting factor for taking advantage of the program. The number of DREs should be examined across the state, with funding directed toward areas with fewer DREs and greater DUI counts. Related to this, the statewide DRE program and individual agencies likely need to create formalized rules and procedures that encourage DRE responses while also prioritizing when and where these resources are needed most urgently.

Improvements to data systems are needed for this effort. As part of a non-research interview, DRE leadership indicated to the research team that they prefer allocating DREs to incidents involving fatal crashes and to more serious crimes like vehicular homicide and assault. Based on the complaints about DRE availability, it makes sense to focus resources on the areas where there is the greatest need. Program revisions that either strongly encourage, or ideally, require DRE officers to respond to these calls would mark a significant shift in DRE usage. This would require communication from department leadership regarding incidents that will make DREs unavailable to respond to other calls. Relatedly, additional incentives and pressures are warranted to ensure that DRE officers accept call outs and strive to exceed



the number of evaluations required each year for certification. To protect the confidentiality of some respondents, specific details will not be reported and were not discussed in the results section, but *some of our interviewees believe that a proportion of DRE officers avoid accepting callouts and that they could readily accomplish more evaluations per year than they currently do.* As much of the DRE funding comes from the Washington Traffic Safety Commission, this appears to be an area where contingent funding could be used. Creating appropriate incentives and pressures to complete DRE evaluations would effectively make full use of available resources.

### ***Develop Strategies to Improve DRE/Prosecution Communication.***

The number one concern among DRE officers interviewed was a lack of feedback and engagement from prosecutors. This apprehension is a fairly difficult issue to address, as variation in police and prosecutors almost certainly exists at the level of place. In other words, some agencies and prosecution offices likely have a culture of collaboration, whereas in others, cases are perhaps more likely to be simply handed off from one part of the criminal justice system to the other. If one of the DRE program's overarching goals is to improve criminal justice outcomes, then the former is clearly desirable. Respondents from Spokane who were on the DUI task force indicated that this was less of an issue (though they too wanted feedback on reports). Given these sentiments, it is sensible to place all active DREs on DUI task forces and to ensure that these task forces are active.

A potential limitation is primarily related to prosecutorial factors. For example, DUIs tend to be tried by junior prosecutors, who move “up” the chain to prosecute other offenses after a short period of time. This turnover process not only reduces institutional memory but may also make it more difficult to maintain lines of communication between officers and prosecutors. Additionally, one DRE noted that they would like to pass their cases onto prosecutors who prefer DUI cases. However, one prosecutor noted they are assigned cases using an alphabetically stratified system and cannot cherry-pick charges. Traffic Safety Resource Prosecutors (TRSPs) may fill a valuable role in this regard, with careful consideration placed on requiring these TRSPs to provide some sort of feedback, even if just a brief email, to each officer who conducts a DRE assessment and completes a report.

### ***Implement Strategies to Understand Partial Evaluations.***

Defense attorneys reported that partial evaluations are perhaps the easiest path of attack when it comes to DRE evidence. While more empirical work needs to be conducted on the overall value of DRE testimony and additional legal research needs to examine the appropriate scope of DRE evidence, as the program exists now, partial evaluations are a perceived shortcoming that may affect program performance. Defense attorneys actively attacked partial evaluations on legal grounds. However, *Baity* and other Washington case law has firmly established that DREs still have a wide range of helpful testimony for prosecutors. However, prosecutors suggested that this is the result of officer discretion and that, in many cases, officers “give up” on suspects in terms of encouraging them to complete a full evaluation. While this is potentially risky territory as law enforcement officers cannot provide suspects with legal advice, the manner in which officers engage with suspects is essential. One of the DRE officers from Spokane that we interviewed prided themselves on

their ability to connect and engage with suspects and argued that through their approach, was often successful at securing permission to complete a full evaluation.

In this regard, a set of best practices should be developed to approach the issue of securing consent, and reeducating prosecutors of the full testimony abilities despite no or partial evaluations. Body-worn camera analysis would likely be useful here, as it is possible, at least for agencies with body-worn camera programs, to examine interactions in which consent was acquired versus those in which it was not. Further absent from this study, there are clear and obvious steps that can be taken. Regular communication about the usefulness of partial evaluations and DRE observations should be promoted, not only among the DRE leadership but also by prosecutors (see the prior discussion of communication issues). In addition, given the large body of research linking procedural justice and citizen compliance, one obvious strategy is to ensure that all DRE officers have also completed and maintain procedural justice training.

#### **5.4 Conclusion**

The DRE program aims to fill a gap in detecting and apprehending drivers under the influence of drugs other than alcohol. This study used multiple methods to answer how criminal justice actors and court systems view the DRE program and DRE-related evidence. Our courtroom observation demonstrated the time-saving benefits of admitting DREs as experts in the courtroom. The case transcript demonstrated the extensive testimony required in DUI cases, providing evidence that specialization in DUI, and especially DUID, cases is beneficial for both prosecutors and law enforcement. The appeals firmly established how DREs present their observations and evaluation in court under Washington case law.

The interviews produced a wealth of data on the perceptions of DREs and the DRE program. Three major themes emerged: 1) the use of DREs; 2) limitations of the DRE program; and 3) indirect benefits of the DRE program. Participants spoke to the broad absence of DRE evidence in the adjudication process. Multiple reasons were noted for the apparent lack of DREs in trials, including the lack of trials, the primacy of blood evidence, ARIDE, and resource constraints, including a lack of DRE officers. These activities could explain why prosecutors and defense attorneys are not reporting cases involving DREs in greater numbers. The shortcomings of the DRE program concluded that communication problems, incomplete evaluations, a lack of DRE resources, and a perceived lack of scientific and legal rigor were marked weaknesses of the program during and outside of trials. A significant finding was identifying that incomplete evaluations are a source of contention and confusion between prosecutors and defense attorneys, which can now be addressed to bolster the credibility and usage of DREs in trials. Lastly, there were several unanticipated and ancillary benefits revealed during interviews. It was clear that the DRE program goes beyond arresting impaired drivers. First, the application process and standards to attend the DRE school help draw in highly qualified candidates who are passionate about DUIs. In addition, the DRE training spans multiple aspects of daily police work, including speaking with people and testifying in trials outside of DUIs. Finally, DREs serve prosecutors and the community alike as a resource in drug cases and drug impairment. Many of these benefits would be missed in quantitative analyses. These conclusions indicate the DRE program serves as a springboard into spanning community and court boundaries.

Based on our results, we offered multiple policy recommendations moving forward, including finalizing the Spokane Case Study to identify if DRE evidence produces more guilty pleas or verdicts. Additionally, improvements in data collection are necessary for conducting a formal analysis of the DRE program. An independent needs assessment ongoing evaluation of Washington's Drug Evaluation and Classification Program is also recommended because DREs from Spokane suggested they were more active and engaged than other jurisdictions. Lastly, strategies to address current program shortcomings, including an assessment of how DRE resources are distributed to incentivize DRE use, develop strategies to improve DRE/prosecution communication, and implement strategies to reduce misunderstanding of partial evaluations are all suggested.

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## Appendix

### Appendix A: Interview Questions for Drug Evaluation Experts

Instructions: Thank you for agreeing to talk to me about your experiences of being a witness during a DUI trial as a DRE. Information from this interview will be used as part of a broader study where we detail how DRE evidence compares to other types of evidence used during DUI cases. Your answers will be recorded and transcribed to assist in the processing of data. In any publications about this research, we will not use your name. Your comments will be either grouped together with others or you will be referred to more generally as a DRE. As we move through the interview, please tell me if you would like to skip a question or if you would like further clarification.

- 1.) How many years of experience do you have as an officer/DRE?
- 2.) First, please begin by telling me what, if anything, is different between DUI cases involving alcohol versus other drugs you are trained to detect?
  - a. Prompt: Any challenges or difficulties compared to alcohol?
  - b. Prompt: Have there been any noticeable changes throughout your DRE experience?
  - c. Prompt: How are your interactions between the prosecutor and defense attorney?
  - d. Prompt: Have you received any specific instructions regarding being a witness in DUI cases from your supervisors?
  - e. Prompt (**always ask**): How often do you have to testify as a DRE?
  - f. Prompt: In your experience, is your testimony compelling for negotiating plea deals?
- 3.) Thinking about the DRE program and test in a broader context, what do you think some of the drawbacks or benefits have been regarding your testimony?
- 4.) What are some complaints you have noticed regarding DREs? Can you describe the types of complaints related to it you typically see/hear about?
- 5.) In your opinion, what evidence is best at accurately identifying intoxication?
  - a. Prompt: What are the key pieces of your 12-step process that you believe are the most compelling?
  - b. Prompt: Are you noticing any changes in your approach in DUI cases before versus after your DRE training?

## Appendix B: Interview Questions for Prosecutors

Instructions: Thank you for agreeing to talk to me about your experiences and opinions regarding the use of DREs, both in terms of how they are used as evidence and their effects on the adjudication process, as well as your experience communicating with and working with DREs. Information from this interview will be used as part of a broader study where we detail how DRE evidence compares to other types of evidence used during DUI cases. Your answers will be recorded and transcribed to assist in the processing of data. In any publications about this research, we will not use your name. Your comments will be either grouped together with others or you will be referred to more generally as a prosecuting attorney. As we move through the interview, please tell me if you would like to skip a question or if you would like further clarification.

1. What experience do you have in DUI court cases? (Number of years, number of trials, etc.)
2. What experience do you have working with DREs? as witnesses in DUI cases?
  - a. Have you used DREs in trials before? (Prompt for additional information: Why don't you use DREs that often or what types of cases do you like to use DRE?/Why do you think other attorneys do not use DREs often)
  - b. How do you most commonly interact with DREs?
  - c. What types of cases are you less likely to work with DREs on?
  - d. When you do use DREs, how do you make use of them as evidence?
3. Is there a difference in your approach when there is a DRE witness?
  - a. Prompt: Any challenges or difficulties with this evidence? Do defense attorneys push back on DRE evidence?
  - b. Prompt: Have you received any specific instructions regarding DUI cases or DREs from your supervisors? How do prosecutors get trained regarding DUI cases more broadly and DRE evidence more specifically?
  - c. Prompt: Any other thoughts on DRE evidence or witnesses?
4. Thinking about when a DRE is involved in an investigation, what sort of factors make a case more likely to end up in a plea bargain?
  - a. Prompt: What sort of factors do you look for in deciding to pursue a plea versus going to court?
  - b. Prompt: Thinking about the evidence you cite for either trials or pleas, what types of evidence are most important? What types of evidence seem less important or less often used? [Prompt for details]
  - c. Prompt: What type of evidence is best a plea agreement or going to trial? Do you think that presence of DREs or DRE evidence increases the likelihood that a suspect is willing to enter a plea bargain?
  - d. Prompt: What would make the DRE program more useful to you as a prosecutor?



- e. Prompt: What are some of the weaknesses or limitations of the DRE program as it currently exists?
- f. Prompt: Why do you think that DRE usage has decreased in recent years?
- g. Prompt: One of the things we have learned in this study is that we do not know everything we need to know to fully assess the DRE program. Are there any other things that you would like to tell us about DREs? Are there any questions that you think we should be asking or topics we should be covering?

## Appendix C: Interview Questions for Defense Attorneys

Instructions: Thank you for agreeing to talk to me about your experiences and opinions regarding the use of DREs, both in terms of how they are used as evidence and their effects on the adjudication process, as well as your experience communicating with DREs and prosecutors who plan to use DRE evidence. Information from this interview will be used as part of a broader study where we detail how DRE evidence compares to other types of evidence used during DUI cases. Your answers will be recorded and transcribed to assist in the processing of data. In any publications about this research, we will not use your name. Your comments will be either grouped together with others or you will be referred to more generally as a defense attorney. As we move through the interview, please tell me if you would like to skip a question or if you would like further clarification.

1. What experience do you have in DUI court cases? (Number of years, number of trials, etc.)
2. How often do DRE or DRE evaluations appear in your cases?
  - a. Have you experienced a DREs used in a trial before? (Prompt for additional information:
  - b. How do you most commonly interact with DREs?
  - c. What types of cases seem more or less likely to involve DREs?
  - d. When you do use DREs, how do you make use of them as evidence?
3. How do you approach DRE evidence?
  - a. Prompt: Does a DRE change your perspective on settling a case?
  - b. Any challenges or difficulties with this evidence? Do defense attorneys push back on DRE evidence?
  - c. Prompt: Have you received any specific instructions regarding DUI cases or DREs?
  - d. Prompt: Any other thoughts on DRE evidence or witnesses?
4. Thinking about DUI evidence is involved in an investigation, what sort of factors make a case more likely to end up in a plea bargain?
  - a. Prompt: What sort of factors do you look for in deciding to pursue a plea versus going to court?
  - b. Prompt: Thinking about the evidence you cite for either trials or pleas, what types of evidence are most important? What types of evidence seem less important or less often used? [Prompt for details]
  - c. Prompt: What type of evidence is best a plea agreement or going to trial? Do you think that presence of DREs or DRE evidence increases the likelihood that a suspect is willing to enter a plea bargain?
  - d. Prompt: Do you believe that the DRE program is useful to prosecutors? From your perspective, would you keep this program going?
  - e. Prompt: One of the things we have learned in this study is that we do not know everything we need to know to fully assess the DRE program. Are there

any other things that you would like to tell us about DREs? Are there any questions that you think we should be asking or topics we should be covering?