

# *Washington State Traffic Safety Prosecutor Newsletter*

*Winter 2023 edition*

*Brought to you by Melanie Dane, Bradely Lane, and our impaired driving partners.*

**In this issue:**

- December is National Impaired Driving Prevention Month
- Happy Holidays and Road Safety
- DRE update.
- Toxicology Lab Updates.
- What your Washington Traffic Safety Prosecutors have been up to.
- Save the dates for the 2024 TSRP Bootcamps.
- DRE preschool for prosecutors coming your way.
- National Prosecutor Impaired Driving Trainings.
- 2023-2024 DUI Benchbook is out!
- Stay safe this holiday and as we roll into Superbowl weekend in February.



## December is National Impaired Driving Prevention Month.

The National Highway Traffic Safety Administration (NHTSA), within the U.S. Department of Transportation with the White House's Office of National Drug Control Policy (ONDCP), and the U.S. Department of Health and Human Service's Substance Abuse and Mental Health Services Administration remind you to *celebrate safely this holiday season*. We stand with all those who have known the tragic consequences of drugged or drunk driving, and we rededicate ourselves to preventing it this December and throughout the year.

Weekends and holidays are always dangerous times on our roadways. Two of the most celebrated days of the year, Christmas Eve and New Year's Eve, are also among the deadliest. That's why December has been recognized as National Impaired Driving Prevention Month. Taking personal responsibility for a safe ride saves lives.

### Have a plan before you go out.

Before taking that first drink, have a plan that includes a designated driver, a taxi or ride share, or plan to stay overnight. Just one drink can cause a decline in visual function, mental judgment, and motor skills resulting in driver impairment.



In the 1980s, the United States saw a significant reduction in alcohol-involved crashes due to lowering the legal driving limit to 0.08 blood alcohol concentration, increasing the minimum legal drinking age to 21 and instituting educational campaigns about the dangers of drinking and driving.

However, in the decades since, drivers with alcohol concentrations at or above 0.08 have remained involved in about one-third of all traffic fatalities in the U.S.

- That's about 10,000 lives lost every year.
- In Washington, 740 people died on Washington roads with more than half of those fatalities involving the use of an impairing substance.
- Impaired driving due to alcohol remains the top risk factor in fatal crashes.

However, the current U.S. national culture regarding driving and alcohol is not supportive of lowering driving limits for all adult drivers. And despite drivers' views of drinking and driving as a very serious threat, more than one in eight drivers admit to driving in the past year when they thought they were close to or over the legal.

People's beliefs about how much is too much must change. Rarely does someone who has not been arrested for DUI ever associate the amount of alcohol they drink with a BAC number. Most people think two or three drinks is "acceptable" to then be "fine" to drive. Those same people think they will not feel intoxicated until they are at a .08. We know that to be false. Those of us in the war against impaired driving know that one drink can cause impairment and therefore, no amount of alcohol or mind-altering substance is "fine".

This coming year, the Washington State legislature is again considering lowering the BAC limit for operating a motor vehicle from .08 percent to .05 percent, to accurately reflect when impairment really starts. As we gear up for this next legislative session, watch SB 5002-reducing the state per se BAC level to .05. To follow this historic legislation you can click the [link here](#) to watch the bill's progress and get materials to educate your Prosecutors, community leaders,

and those in the hospitality industry who fear this will create greater liability for their staff or reduce sales. [Click here to read more about why .05 is essential to saving lives.](#)

To learn more about the many causes of impairment, visit [nsc.org/impairment](https://nsc.org/impairment). Also visit the [Washington Traffic Safety Commission](#) to learn more about safety campaigns, Washington driving data, target zero, programs and grants, and our DRE program.

## Happy Holidays from the Washington Traffic Safety Commission



The Washington Traffic Safety Commission (WTSC) is asking Washingtonians to have a happy holiday season by travelling safely and responsibly on all roads and highways.

Law enforcement agencies across the state will have an increased presence on roads over a period from December 13 to January 1 to help remind everyone to drive safely. Patrols will be monitoring traffic for instances of impaired driving. Last year, 740 people died on Washington roads, with more than half of those fatalities involving alcohol or drug impaired driving.

Impaired driving due to alcohol or drug use is the top risk factor in fatal crashes. It is also preventable. Impairment begins at a lower blood alcohol concentration (BAC) than the current .08 legal limit. Reduced small muscle control (including eye focus), impaired judgment, and reduced alertness begin at .05 BAC. Before someone reaches .07 BAC, their crash risk has doubled.

Jack Fletcher is a safe-driving advocate whose life was changed by an impaired driver. In July 2014, he was hit head-on by a driver whose BAC was twice the legal limit. “I was hit head-on by a drunk driver. I was placed in an induced coma for five days and woke up to a new reality. I don’t ever call my crash an accident because accidents aren’t preventable. This was very preventable.”

“Most people drive sober, but the small number of people who drive impaired pose a serious risk to themselves and to all of us on our roads,” said Mark McKechnie, WTSC External Relations Director. “Everyone plays a role in making our roads safer. Talking with those closest to us and setting a safe example is a great way to get started.”

Everyone can help prevent impaired driving. WTSC offers some advice for holiday revelers before they get behind the wheel:

- Designate a sober driver before drinking.
- Pre-plan the trip home by scheduling a rideshare or cab pick-up.
- Arrange for family or friends to stay the night after holiday festivities.
- Use public transportation.
- Call 911 if you see or suspect someone is driving impaired. \*\*\* And if you call, be sure and give 911 your

name and all your information so that law enforcement can contact you if needed for prosecution. If Prosecutors cannot find the witnesses the defense will challenge the legality of the stop.

Traffic fatalities are beginning to slowly decline after a surge during the pandemic, but we have a long way to go to get to zero deaths. The National Highway Traffic Safety Administration's (NHTSA) early estimates of traffic fatalities for the first half of 2023 projects a 3.3% decrease in the total number of motor vehicle related deaths during the first six months of 2023, compared to the first half of 2022. However, this still means nearly 20,000 people were killed in preventable tragedies during the first half of this year alone. Consider this:



Compare:

**Ethiopia 2019: 159 souls lost.**

**Indonesia 2018: 189 souls lost.**

- **346 people died in two airplane crashes**
- **737Max jets grounded worldwide for 793 days**
- **Congressional investigation and expert panel to prevent future crashes**

How is it that we can lose 20,000 souls to preventable crashes, but when two airliners crash, the jets are grounded for nearly 3 years as experts investigate how to prevent these tragedies?

In that same 793 days:

- **87,000 people died in car crashes in U.S.**
- **24,000 people died in impaired driving crashes.**
- **9.7 million people were seriously injured.**
- **No congressional hearing, no expert panel was convened.**

*Thanks to MADD for providing much of the factual data above.*

## Congratulations Washington DRE School graduates & upcoming DRE classes

Washington State DRE School #39 was completed over the course of three weeks in September 2023. Eleven students completed their Drug Recognition Expert (DRE) training. The class had four troopers and eight allied agency officers. Allied agencies are any agency outside of the state patrol. They completed three phases of training.

The first two phases of training, the DRE Pre-School and the DRE 7-Day School, occurred August 21-September 1, 2023, in Wenatchee, WA. These two phases include courses in physiology, vital signs, Standardized Field Sobriety

Testing (SFST), and extensive material on each of the seven categories of drugs. These phases also include two Controlled Drinking Sessions that enable the students to conduct SFST's to hone their skills.

The final and third phase of training is the DRE Field Certifications held September 26-October 1, 2023, in Mesa, AZ. During this phase, students must conduct a minimum of 12 drug influence evaluations while under the supervision of a DRE instructor, identifying subjects under the influence, and attaining an 80% toxicological confirmation rate. Field Certifications were completed at Mesa Police Department over a 3-day period in coordination with Mesa PD Officer and Arizona DRE State Coordinator George Chwe.

Special thanks to Officer Chwe, the Mesa PD detention staff, and all Mesa PD staff for their hospitality. The students had the opportunity to evaluate volunteers who were under the influence of multiple drug categories while under the supervision of DRE Instructors. The DRE students in two person teams evaluated each of the volunteers with a primary evaluator and a scribe evaluator completing 72 evaluations which resulted in 144 total reports for DRE instructors to review.

Please welcome 11 new DREs to our state:

- Officer Xenon Berkeley, Spokane Police Department
- Trooper Travis Cunningham, Washington State Patrol-D6 Okanogan
- Officer Joshua Loberg, Seattle Police Department
- Deputy Vincent McKenzie, Spokane County Sheriff's Office
- Deputy Isaac Norton, San Juan Island County Sheriff's Office
- Officer Brittany Orlosky, Lynnwood Police Department
- Officer Mackenzie Ray, Seattle Police Department
- Trooper Cody Robinson, Washington State Patrol-D8 Hoquiam
- Trooper Steven Spaude, Washington State Patrol-D5 Vancouver
- Deputy Kim Weeks, Spokane County Sheriff's Office
- Trooper Jamon York, Washington State Patrol-D1 Tacoma



The drug recognition expert program currently has 121 DREs in Washington State. There are over 8,000 certified DREs in the United States. Internationally, there are 827 in Canada and one in the UK.

## **PROSECUTORS and IMPAIRED DRIVING partners:**

The next DRE School (#40) in Washington is scheduled January 8-26, 2024. It will be held in Suquamish, Washington. 12 students were selected to attend the class. The field certification phase of training is scheduled January 30-February 4, 2024, in Mesa, AZ, and we expect 12 newly certified DREs to land back in our state on February 4, 2024.

We also anticipate conducting a second DRE School (#41) in Eastern Washington later this year.

The first 3 days of the DRE School is the "pre school". ***I encourage any Prosecutor wanting to learn more about the DRE program to attend. This is the best training to understand the DRE evaluations you receive from your DRE experts.***

A prerequisite to be accepted into the DRE school for Law Enforcement Officers is ARIDE. There are a number

of other requirements including recommendations to the program that officers must obtain to be considered for the DRE program.

Prosecutors, if you wish to attend the pre-school, please contact Ms. Rebecca Cortez, Program Specialist to register for the class. Class size is limited due to space.

rebecca.cortez@wsp.wa.gov

### **WHAT IS ARIDE?**

ARIDE stands for Advanced Roadside Impaired Driving Enforcement.

**Prosecutors: If you have not attended an Aride class, and you prosecute DUI cases, you are missing out on vital information that will assist you in prosecution of the DUI driver. Most Prosecutors do not know they can attend or when they are being held. Your TSRP's will keep you informed of all of the classes in 2024. If you can not attend a bootcamp, attend ARIDE.**

ARIDE is intended to bridge the gap between the SFST and DRE programs by providing officers and prosecutors with general knowledge related to drug impairment and by promoting the use of DREs in states that have the DEC Program. One of the more significant aspects of ARIDE is the required student demonstration of the SFST proficiency requirement.



Prosecutors, toxicologists, and judges are encouraged to attend. This course will help those combatting impaired driving to understand the signs of impairment related to drugs, alcohol, or a combination of both, to enable them to effectively work with law enforcement to reduce the number of impaired driving incidents as well as crashes which result in serious injuries and fatalities.

Understanding impairment at the roadside is critical to understanding the DUI case.

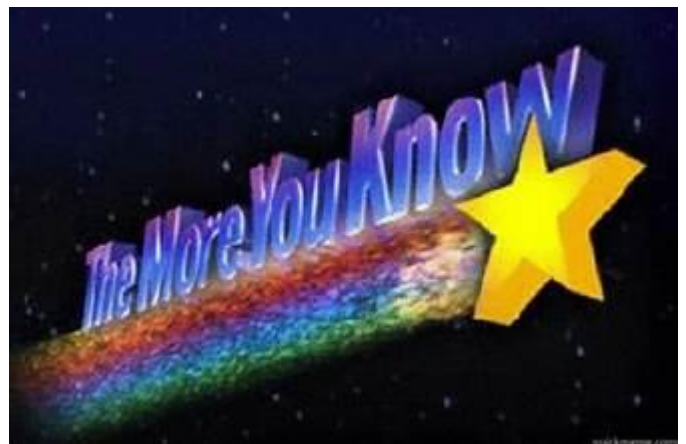
**COST: FREE**

Upcoming Aride Class Dates and Time: 8:30a-1700.

January 16-17, 2024; Yakima Police Department  
March 7-8, 2024; Bellevue Washington .

To keep up to date on upcoming ARIDE classes you can click here or the [CJTC website](#) or on the [WSP site](#).

**Contact** Ms. Rebecca Cortez, Program Specialist to register for the class. Class size is limited due to space.  
rebecca.cortez@wsp.wa.gov





# Toxicology

WSP had a Dedication Ceremony for the new Federal Way Toxicology Laboratory in early December 2023. The new facility will allow for greater lab capacity and room for additional forensic scientists and instrumentation to assist in meeting the rising demands for toxicology services in Washington.

This year the Toxicology Division is on track to receive over 17,000 case submissions, a 13% INCREASE from year-to-date figures in 2022.

Currently, targeted casework is being performed at the new facility and work continues to bring online full comprehensive testing out of that location. All evidence submissions continue to be received at the Seattle Facility.

The Division is currently in the hiring process to add additional technical and administrative staff. Once hired, forensic scientists complete a rigorous 12-18 month training program. Last month three forensic scientists completed their training programs and will begin issuing toxicology reports this month. Congratulations to our new toxicologists.

A gentle reminder regarding subpoenas: When sending a subpoena to the laboratory, use the email [toxlab@wsp.wa.gov](mailto:toxlab@wsp.wa.gov). The subject line must tell the reader the ST # for the case and the name of each scientist you are subpoenaing. The court date should also be included in the subject line.

## Training, Training, and more Training!

### The State Patrol's Advanced Collision Investigations course:

For two weeks, TSRP, Bradley Lane, attended the State Patrol's Advanced Collision Investigations course at the academy in Shelton, WA. While there, he spent most of the time in the classroom, learning about many aspects of investigating vehicular crash scenes. It was a "crash-course" in the use of physics and math in calculating pre-crash vehicle speeds, angles of impact, human trajectories, and using many other pieces of evidence to reconstruct a crash causation. This knowledge will be a great benefit to litigation practitioners in the state as Bradley will be able to add this to various training modules in the future.

What your TSRP's have been up to this past quarter.....

## 'Law Enforcement Liaisons' "Traffic Safety Champions Conference"

This fall, TSRPs Melanie Dane and Bradley Lane, participated in the "Traffic Safety Champions" conference in Wenatchee, WA. It was attended by over 100 members of the law enforcement community from around the state. All Law Enforcement Officers are invited to attend due to their outstanding service within their department. Bradley instructed on 2023 COA and Supreme Court case updates and how they impact the way we conduct traffic investigations and prosecute impaired driving cases. Melanie instructed on the vital need for communication between law enforcement, prosecution, and other witnesses in impaired driving litigation. It was great to see some familiar faces and to connect with new liaisons in the community.



## TSRP Bootcamp:

**In October, we concluded our final DUI Bootcamp of the year!** 15 attendees from around the state ranging from district/muni court DPAs to City Attorney Brass had the opportunity to spend two days learning about everything impaired driving! All training sections were well-received and deemed "highly useful" by our attendees. The Fife City Attorney went out of her way to thank the faculty for our learned instruction and seldom-seen energy and enthusiasm in conveying the curriculum concerning complicated impaired driving cases. This time around, the second day, the "law day", we were joined by Michelle Rutherford who presented breath test and tox training. The faculty was once again comprised of WSP, Seattle PD, your TSRPs, the Seattle City Attorney's Office, and the SnoCo Prosecutor's Office, funded by WSP and Traffic Safety. This was a great way to close-out the year with a lasting impression that some of the leading agencies in this state are taking impaired driving seriously. Keep an eye out for our DUI Bootcamp schedule for 2024!

## TSRP BOOTCAMP 2024 SAVE THE DATES:

After hosting five bootcamps around the state in 2023, the faculty decided to scale back on travel while still providing ample opportunities for those of you around the state to attend. The plan for 2024 is to bring two bootcamps covering the basic nuts and bolts of DUI Prosecution. The bootcamps will be held:

1. The week of March 25<sup>th</sup> on the west side of the state, and,
2. The week of September 16<sup>th</sup> on the central or east side of the state.

This year the program will span a 3-day period. A controlled drinking lab and SFST instruction will continue to be included in the curriculum.

**In October**, we are going to offer a **DRE preschool for Prosecutors**. This will be a full 3 day course. More details to come but a prerequisite to attend is to attend the prosecutor bootcamp and/or an Aride class prior to the DRE preschool. Save the dates for October 21-23rd, 2024. This will be the full DRE Pre-School program, just the same as your DRE experts receive.



**Seattle PD's news! A Forensic Phlebotomy Program!** That's right, Seattle PD has greenlit the roll-out of a forensic phlebotomy training program for their officers in the field. It's anticipated that the use of forensic blood draws in the precincts will reduce the warrant and blood draw process to a mere 30-minutes per DUI case! The perspective roll-out for the program is spring 2024. Big thanks to Seattle PD's Impaired Driving Training Coordinator, Jon Huber, Seattle PD's

EMS Coordinator/Safety Officer, Tyler Verhaar, and your own TSRP, Bradley Lane, for the development, presentation, and implementation of the program.

**WSP Basic Academy Class:** TSRPs Bradley Lane and Melanie Dane, had the pleasure of visiting the current State Patrol's Trooper Basic Academy class to spend the day instructing on all matters of trial practice, the legal framework of impaired driving cases, and investigative practices. The State Patrol was very appreciative of the contribution that the TSRP program was able to make to their knowledge base. It's a big class this year - a great sign for traffic safety in Washington state.

### **MADD Region 10 summit in Boise, Idaho.**

Melanie attended this was a one-day summit where the states of Region 10 were represented. Boise launched a statewide impaired driving enforcement campaign, and with the launch of the statewide campaign, a one-day regional summit on impaired driving took place. The summit featured distinguished speakers from Mothers Against Drunk Driving (MADD), the National Highway Traffic Safety Administration (NHTSA), and law enforcement experts from agencies throughout the state and the nation. "Data reveals a concerning 14.2% increase in alcohol-related crash fatalities nationwide from 2020 to 2021, underscoring the critical importance of responsible driving behaviors," explained Greg Fredericksen, NHTSA's Region 10 Administrator.

"Driving under the influence is not an accident or a mistake. It is a choice and a crime," said Dennis Maughan, MADD Regional Executive Director. "It not only puts the driver's life at risk, but also endangers the lives of innocent pedestrians, passengers, and other drivers who share the road with them."

## Upcoming Live Webinar Training for Law Enforcement Officers, Prosecutors, and Judges

The "The National TSRP Program is pleased to announce upcoming sessions of its "Traffic Tuesday" Webinar Series. This series of webinars is presented by the National Association of Prosecutor Coordinators (NAPC) under a cooperative agreement with NHTSA and is designed to enhance the investigation and prosecution of DUI-related offenses. **All times are Eastern Time.**

Sessions are scheduled throughout the first half of 2024; interested attendees can register and find additional

information about the webinars [HERE](#).

Tuesday, January 16, 2024

- Title: How Do We Prove It? A Case Study of DUI Investigation & Conviction after Narcan

Tuesday, February 27, 2024

- Title: DRE and the IACP 2024: Updates & Enhancements

Tuesday, March 26, 2024

- Title: Detecting the Impaired Driver in 60 Seconds

Tuesday, April 30, 2024

- Title: Field Sobriety Tests and the Detection of Cannabis-Impaired Driving

Tuesday, May 21, 2024

- Title: Cannabis & Chemical Testing

There is **NO CHARGE** to attend these webinars, however you must register in advance using the links listed above. You must register for each webinar individually. After registering you will receive a confirmation email containing instructions on how to join the webinar. Please make sure you retain the confirmation email sent to you and be careful to enter your email address correctly; you will not be able to join the webinar if you do not receive a confirmation email.

If you have any questions or need any assistance registering for any of these webinars, please feel free to contact Vin Petty, Florida TSRP and Coordinator of the National “Traffic Tuesday” Webinar Program at [VinPetty@FloridaTSRP.com](mailto:VinPetty@FloridaTSRP.com).

*These webinars are being conducted by the National TSRP Program utilizing the National TSRP Program webinar account. The account is funded through the NAPC/NHTSA Cooperative Agreement, Project Number 693JJ92050011.*

*For Washington Attorneys, you can submit the curriculum to WSBA for credits.*

## More training opportunities:

### *Webinar Wednesday Series-Drug DUI cases*

Wednesday, January 3, 2024, from 1p-2p Eastern

**Just the Facts, Ma'am... Everything I Never Knew I Needed to Know about the Drug Evaluation & Classification Program**

Presenter: Tim Cornelius - Florida State DRE Coordinator

Registration Link: <https://attendee.gotowebinar.com/register/2815250479855206239>

[For more information click here.](#) \

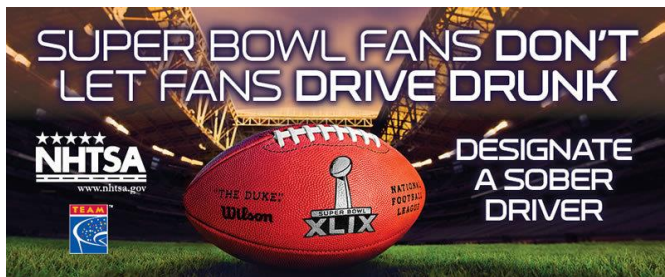
## The 2023-2024 DUI Benchbook for Washington is now available!

This comprehensive reference book for judicial officers seeks to thoroughly examine the legal and practical aspects of litigation concerning DUI and other impaired driving cases.

Here is the 2023 DUI Bench Book Edition. You will find the [2023 updated version](#) which should replace the 2022 version. The [newsletter](#) highlights new laws and cases you should be aware of. And new this year, is [Chapter 29](#), a resource guide for judges and prosecutors providing additional information from the CDC, NHTSA, WTSC, and others on the prevalence and perils of impaired driving.

The Washington State Driving under the Influence (DUI) Bench Book is published by LSP Publishing. It is funded by the Washington Traffic Safety Commission and provided to the Administrative Office of the Courts.

Thank you to Judge Portnoy and all of those who work tirelessly to bring this valuable material to the bench and to the attorneys who handle impaired driving cases.



Each year, Super Bowl garners millions of viewers, with many taking the opportunity to cheer on their favorite team with a night out or by attending a party. To help keep us all safe on the roads, NHTSA is teaming up with State and local traffic safety advocates to remind football enthusiasts that:

### Fans Don't Let Fans Drive Drunk.

If you plan to drink alcohol, plan for a sober ride home. If you're going out to a Super Bowl party and you plan to drink alcohol, make sure you plan for a designated driver to get you home safely at the end of the night. The **DD** is not the person who drinks the least! If you're a designated driver, be the night's MVP and keep that commitment front and center.

If you're hosting a party, prepare plenty of food and non-alcoholic drink options for your guests, especially for the designated drivers. Remind your friends and family: "Fans Don't Let Fans Drive Drunk." Take keys at the door for anyone who is driving home and keep them if they have had too much to drink. Be sure your friends have a ride share app on their phone.

Everyone should know by now that it is illegal to drive impaired. More than 13,000 people are killed in drunk-driving crashes annually, and nearly one person is killed every 39 minutes. In fact, fatalities in alcohol-impaired-driving crashes increased from 14% to 31% in recent years. Another important reminder: Never serve alcohol to minors.

## Washington Supreme Court Keller Update: Case No. 1 – 101171-7

The “10% issue” also known as State v. Keller, was argued before the Justices of the Supreme Court on October 26, 2023. To date, the court has NOT ruled on the case. The recording of the hearing is [here](#). I encourage you to watch the argument. It is important to remember that with DUI cases, our trial court judges have the most experience with the expert testimony, evidence, and how breath and blood testing is conducted. Appellate judges, in every case, must be educated on the law and the process. In this case, the Justices asked a lot of questions about how the instrument works and about the math. Math in any legal argument can get convoluted. In this situation, Justices wanted to know when the math can or must be done, what the admissibility statute requires, what the WAC requires, what a valid test requires, and they dove into some historical questions about the science of breath testing.

I encourage you all to watch. I also want to congratulate the attorneys for Kitsap County and State ( DOL), Randall Avery Sutton and Dionne Padilla-Huddleston. Stay tuned for the ruling.

### AN ASK FROM YOUR TSRP's:

As always, if you have reply briefs and defense briefs on emerging DUI issues, please send them to Bradley and Melanie. We are aware of a number of issues circling the state, but we are not always provided with the pleadings necessary to assist with a reply.

If you have CV's on experts, FF and CL that are prepared on an emerging issue, or anything you think we should be aware of, please send it our way.

We have the benefit of reaching out to national prosecutor partners on issues that have come up nationwide and we want to provide you with the best service possible.

If you have the pleasure of having to argue the “Draeger” was not approved motion, you can find materials [here](#) and the Benton Court order denying defense motion.

Thank you!

You can email us at [mdane@mrsc.org](mailto:mdane@mrsc.org) (Melanie) and [Bradley.lane@seattle.gov](mailto:Bradley.lane@seattle.gov) (Bradley).



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<https://duienforcers.wildapricot.org>

***Opinions expressed here are those of the authors. Some issues discussed are evolving and fluid. They are expected to change over time. Always consult your policy documents and your legal advisor before changing practices or implementing revisions. Also please talk with your local criminal prosecutors. They will have the most up to date information about rulings and their effect on cases.***