

# Washington State Traffic Safety Prosecutor Newsletter

Spring 2024 edition

Brought to you by Traffic Safety Resource Prosecutors, Bradely Lane and Melanie Dane.

## In this issue:

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- DRE update.
- SPD Phlebotomy program
- Toxicology Lab updates.
- Save the dates for the final 2024 TSRP Bootcamp
- National Prosecutor Impaired Driving Trainings.
- Tips and reminders



## State v. Hall-Haught – Publication Motion DENIED! 27 Wash.App.2d 1042 (2023)

Serving WA crash prosecutors a huge blow in the wake of the *Seattle v. Wiggins* decision, Division-1 of the Court of Appeals has denied Island County's publication motion. The decision in *Hall-Haught* would've given us great ammunition to use against the defense argument that a surrogate witness toxicologist offends the confrontation clause. However, all is not lost! Remember, despite what the defense will argue, *Wiggins* **did not** overrule *State v. Lui*! *Lui* is still the law of the land and we should show the court that *Wiggins* is a mere application of the *Lui* rationale where the surrogate witness toxicologist doesn't provide sufficient testimony that they "arrived at

their expert conclusion after an **independent review of the testing data.**" Remember you can still cite to unpublished opinions released after 2013 for persuasive authority so long as you cite them as "unpublished". See GR 14.1. Contact your TSRP's for some guidance or briefing on this issue – Don't reinvent the wheel.

## Despite this past short legislative session being less impactful on state traffic safety, some important measures were passed –

HB 1493 – DOSA's and DP's – What does this bill mean for traffic safety? Well, this is lengthy bill with a number of components but primarily it allows defendants convicted of felony DUI or physical control to enter into a Drug Offender Sentencing Alternative (DOSA) or a Residential-DOSA. Additionally, it makes possible for a defendant to enter into a second deferred prosecution for a consecutive DUI or physical control. We're still uncertain about how this will affect our legal landscape in the court system, but your TSRP's predict that we're going to see more deferred prosecution dispositions earlier on.

## What's Going on with the WA 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. The recording of the hearing is [here](#). NO UPDATES TO DATE.

### Congratulations Washington DRE School graduates

The 40<sup>th</sup> DRE School in Washington was held in January 2024. Twelve new Drug Recognition Experts (DREs) completed their training on February 3, 2024. Please find the list below. The first two phases of training, DRE Pre-School and DRE 7-Day School was held from January 8 to January 19 in Suquamish, WA. The final and third phase of training is the DRE Field Certifications held January 30 to February 4 in Mesa, AZ. Contact me if you have further questions. Have a good day!

Name			Agency
Trooper	Christopher	Connelly	Washington State Patrol
Deputy	Wyatt	Galbreath	Kitsap County Sheriff's Office
Trooper	Jared	Gearhart	Washington State Patrol
Officer	Miguel	Juarez	Sunnyside Police Department
Officer	Stephen	Laughlin	Puyallup Police Department
Trooper	Cameron	Osmer	Washington State Patrol
Trooper	Bryan	Perkins	Washington State Patrol
Officer	Chad	Pleadwell	Anacortes Police Department
Trooper	Andrew	Simmonds	Washington State Patrol
Officer	Kylie	Swift	Yakima Police Department
Trooper	Ryan	Williams	Washington State Patrol
Officer	Clayton	Woodruff	Kirkland Police Department

## Congrats to Seattle PD's inaugural class of officer forensic phlebotomists!

Last year, Seattle PD and TSRP Bradley Lane started the process of rolling-out a forensic blood draw program with the City of Seattle. This past quarter, they trained and certified about 20 officers to perform DUI blood draws at the precinct! It's estimated that this will cut the blood warrant/blood draw process down to a mere 30-minutes per case!

We look forward to the progress that this program makes as it becomes fully implemented in the field.



## HOW ABOUT 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 prosecuting impaired driving cases. Most Prosecutors are unaware that they can attend this class if there is space available. Your TSRP's will keep you informed of all of the classes in 2024. If you cannot attend a bootcamp, attend ARIDE.

Upcoming classes: April 3-4, 2024 -

Dates and Location. Click here for more details. You must reach out to

Information/Registration Contact: Ms. Rebecca Cortez, Program Specialist at

[rebecca.cortez@wsp.wa.gov](mailto:rebecca.cortez@wsp.wa.gov) to attend. Space is limited and may not always accommodate prosecutors auditing the class.

- April 3-4, 2024 -  
Location: [Pullman, Washington](#)
- April 18-19, 2024 -  
Location: [JBLM, Washington](#)
- April 24-25, 2024 -  
Location: [Wenatchee, Washington](#)
- May 6-7, 2024 -  
Location: [Ellensburg, Washington](#)
- May 15-16, 2024 -  
Location: [Sunnyside, Washington](#)



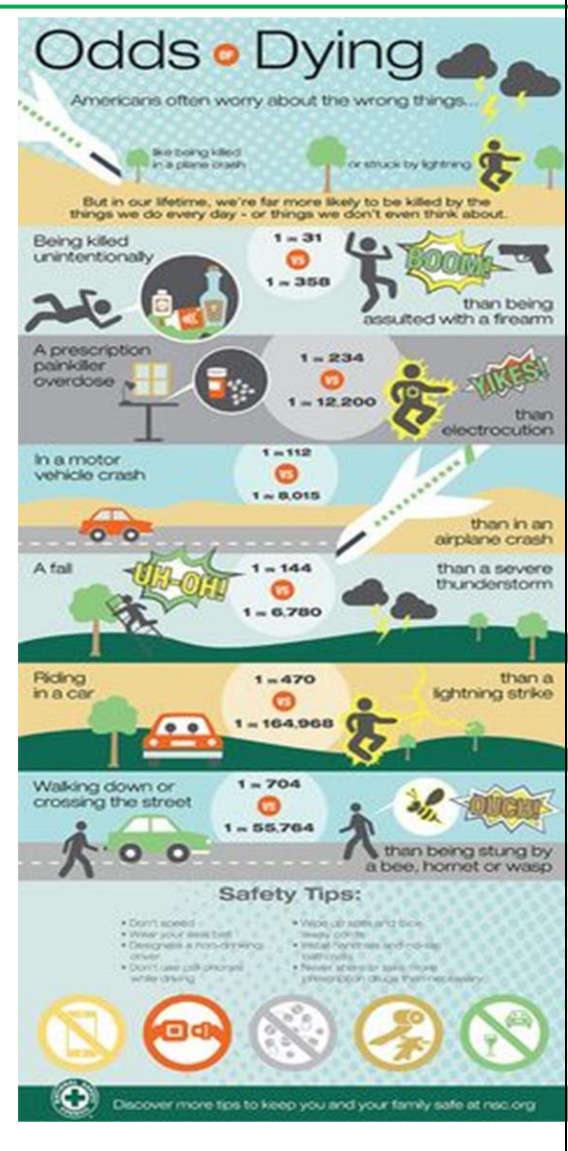
On occasion, we hear silly excuses for why a driver “looked” like they might be impaired. Sometimes those excuses even suggest that breath and blood test results are faulty because the real reason was something else.

When those explanations start to sound like medical excuses, take note. Drivers who suggest they were not impaired by any drug or alcohol (but looked like they were impaired) may be arguing their client was (and remains) impaired by a medical condition. If true, the driver should not be driving. For example, a driver who claims to have had a seizure, suffered from diabetic shock, is narcoleptic, or was “sleep-driving”—are all claiming the driver has a medical condition that compromises their ability to drive a motor vehicle.

If this comes up in a case where the driver has a Commercial Driver's License (CDL), report the claim to [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov). The driver's CDL will promptly be suspended and an investigation starts looking into whether the driver should be allowed to keep their CDL license.

In the case of a Washington driver, report the claim to <http://www.dol.wa.gov/driverslicense/safety.html>. At that site, go to the “Report Unsafe Drivers” tab and fill out the short form. DOL will take it from there.

In fairness to the defense, make sure they understand you take their medical condition arguments seriously. If they are making these claims—their client will suffer the consequences!



## Toxicology

### A quarterly update from our friends at the State Tox Lab:

The WSP Toxicology Laboratory ended 2023 with 17,358 case submissions. This is a 13% increase compared to 2022 submissions and equates to almost 2,000 additional cases submitted for toxicology testing.

Last month, Forensic Scientists Andrea Hinton and Garret Cratch joined the Federal Way Toxicology Laboratory. The Division is currently hiring additional technical staff, to include forensic scientists, across both laboratory locations.



## Training, Training, and more Training!

## Drug Recognition Expert School:

For three days this quarter, TSRP, Melanie Dane, attended Drug Recognition Expert Pre-School hosted in Suquamish, WA. 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.

## TSRP BOOTCAMPS ARE IN FULL SWING:

This year the TSRP program is hosting 2 regional bootcamps for Prosecutors to attend and learn the fundamentals of issue spotting DUI cases and prosecuting the impaired driving offender.

## Western Washington Bootcamp –

The first bootcamp was a HUGE success! On March 25-27, almost 30 prosecutor attendees from around western Washington convened on the Kirkland Police Department HQ for instruction on all-things DUI.



**Join us for the next one -**

The second Bootcamp is September 16-18, in Yakima Washington. **Save the date.** Registration will go live in July.

The course includes both legal and law enforcement perspectives, an introduction to what the laws and WAC's say, what you need to know to admit blood or breath evidence, how to prosecute an "affected" by case, and you will see drinkers perform the SFST's and observe the clues for each test. This class is currently full.

## **Keep an eye out! -**

**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.

Be on the lookout for additional training from your TSRP's. Stay tuned.



## **Common Case Law Reminders**

### **Can the defense order the LEO to leave the BAC room while consulting?**



No. The client has a right to privacy during the consultation, but our courts have said that right is balanced against legitimate enforcement interests as well. State v. Federov, 183 Wn.2d 669 (2015). The right to privacy doesn't require you to stop the 15-minute observation period or leave a belligerent drunk alone with the Draeger (\$12,000). Ideally, the defense and the enforcement interests can be met from outside the room through a window. But if that isn't possible, staying in the room is allowed. Stay as far from the suspect as possible to avoid overhearing the conversation. Turn on any fan that might help muffle the conversation. If you can't help overhearing the conversation, consider ear-muffs or ear-plugs. Document it all.

### **What about physical access to the suspect?**

No. The pre-charge right to consult with an attorney does not include the right to the physical presence of the defense attorney. State v. Staeheli, 102 Wn.2d 305 (1984). The defendant is entitled to an opportunity to consult with an attorney prior to questioning and the breath test. If that opportunity is provided, we have satisfied our obligations and the defendant must elect how to proceed without further delay. Be sure to document how the delay in waiting for the defense would likely affect the investigation and duties (delay, interference, resources, other calls, etc).



## Upcoming Traffic Tuesday webinars

Join us for “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 in Eastern Time.**

Sessions are scheduled throughout the first half of 2024. Interested attendees can register and find additional

information such as the webinars below [HERE](#). Past session worth going back and watching.

Tuesday, April 30, 2024

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

Tuesday, May 21, 2024

- Title: Cannabis & Chemical Testing

## WEBINAR WEDNESDAY

Getting there is half the battle!

*Webinar Wednesday is an ongoing series which started in January. It is all about DRUGS!*

For all sessions past and coming up, click [here](#).

Sessions coming up:

Title: Drug Categories in Drug DUI Cases: Cannabis, Part 1 - The DRE

Date: Wednesday, April 3, 2024 (NOTE – Back-to-Back Sessions)

Time: 1p-2p Eastern

Presenter: Detective Tom Heller - Seattle (WA) Police Department

Registration Link:

<https://attendee.gotowebinar.com/register/5138497657536494684>

Title: Drug Categories in Drug DUI Cases: Cannabis, Part 2 - The Toxicologist

Date: Wednesday, April 3, 2024 (NOTE – Back-to-Back Sessions)

Time: 3p-4p Eastern

Presenter: Lauren Wolfe - Maryland State Police

Registration Link: <https://attendee.gotowebinar.com/register/8198579256762015323>





Title: Drug Categories in Drug DUI Cases: Poly-Drug use, Part 1 - The DRE

Date: Thursday, April 25, 2024

(NOTE – Thursday Back-to-Back Sessions)

Presenter: Sergeant Jay Riggen - Vermont State Police

Registration Link: <https://attendee.gotowebinar.com/register/4777751190998188888>

Title: Drug Categories in Drug DUI Cases:

Poly-Drug Use, Part 2 - The Toxicologist

Date: Thursday, April 25, 2024 (NOTE – Thursday Back-to-Back Sessions)

Time: 3p-4p Eastern

Presenter: Robert M. Almeida, M.S., D-ABFT-FT, TC-NRCC

- Forensic Toxicologist Supervisor & Manager
- Forensic Laboratory Division
- San Francisco (CA) Office of the Chief Medical Examiner



<https://attendee.gotowebinar.com/register/4698343363365072981>

**You must register to attend.** If you have any questions please reach out to Melanie at [mdane@mrsc.org](mailto:mdane@mrsc.org) or Brad at [Bradley.lane@seattle.gov](mailto:Bradley.lane@seattle.gov)

## **The 2023-2024 DUI Benchbook is Live and Available for Download!**

If you are still using the old DUI benchbook, it is time for an upgrade. This is the most up to date version of the benchbook. You will find the [2023 updated version](#) which replaces the 2022 version. The [newsletter](#) highlights new laws and cases you should be aware of. Most if not all of your DUI legal issues or laws will be found in this book.

### **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 Skagit County Court order denying defense motion.

Thank you!.

Melanie and Brad



You can contact 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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*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.*