



## CRITICAL DUI SYSTEM REFORMS: PROSECUTION



Increase resources for prosecutors to facilitate the hiring, retention, and training of talented lawyers dedicated to DUI adjudication.

### Call to Action

To ensure that talented lawyers remain at prosecuting attorney offices and take an interest in the adjudication of DUI cases, leadership is needed. From orientation onward, the importance of prosecuting impaired driving cases should be reiterated. New prosecutors must understand that removing an impaired driver, particularly a high-risk impaired driver, from the roads prevents completely avoidable and senseless tragedy. While district or state attorney (DA/SA) offices struggle with many competing priorities, DUI is a crime that affects every single community and accounts for a significant loss of innocent life – nearly 11,000 people each year. A cultural shift must occur in these offices that encourages prosecutors to take on impaired driving cases with the same level of urgency and preparation as they would for felony and/or other violent crimes. In addition to leadership, emphasis must be placed on education to ensure that young prosecutors gain the knowledge and skills necessary to be effective when trying these complex cases. In addition to establishing a culture where DUI cases are prioritized, focus must also be placed on addressing some of the larger systemic issues that plague the field and lead to turnover such as low salaries and resources to increase support staff to lighten workload and guard against burnout.

### Challenge/ Background

DUI cases are not easy cases to prosecute and even seasoned prosecutors find these cases to be challenging. While most DUIs are classified as misdemeanor offenses, these cases can require a significant amount of work to prepare and should they advance to trial, are exceedingly difficult to win. There are several reasons why these cases are particularly difficult:

- There are few types of criminal prosecution that involve more types of evidence, including scientific evidence, and complicated rules and procedures than DUI.
- Existing DUI statutes and related regulations can be incredibly intricate, and few prosecutors are well-versed on these issues.
- Prosecutors often have minimal training and a lack of understanding of the scientific evidence and DUI defenses.
- The DUI defense bar is extremely daunting opposition and new prosecutors are ill-equipped to take them on as they have the advantage of being familiar with relevant case law, studies, and defense strategies.
- DUI defendants tend to be of higher socioeconomic status than other justice-involved individuals and, therefore, are often able to afford not only experienced defense attorneys but also expert or professional witnesses.





## Challenge/ Background

- Expert defense testimony is common to the point of being expected in DUI cases. There are many “professional” witnesses who are paid to provide testimony in these cases and due to their extensive experience in the courtroom, they are highly effective in front of a jury and know how to evade prosecutor strategies and lines of questioning.
- DUI jury trials can be especially challenging because many members of the public have at one point in their lives made the decision to get behind the wheel while they were under the influence of alcohol or drugs (particularly marijuana or prescribed medications). As such, they can relate to the defendant in DUI cases unlike other criminal cases.

It goes against reason that cases of this difficulty and complexity would be assigned to inexperienced prosecutors, but this is standard practice in most offices. While prosecutors are likely to learn a great deal from their trials and tribulations in court, the difficulties of understanding DUI evidence and fear of losing DUI cases might discourage them from taking impaired driving cases to trial and may prefer to handle other types of cases. Subsequently, it is difficult to find prosecutors who have and maintain a passion for prosecuting impaired driving cases. Of course, developing great prosecutors holds little long-term value if the district/state attorney offices cannot retain them.

Prosecutors are dedicated civil servants who represent the state in the criminal justice process. Similar to other professionals within the justice system, prosecutors work long hours in a stressful environment. Within a few years, prosecutors gain extensive trial experience and on-the-job training which makes them attractive to defense firms and civil litigation practices that pay significantly higher salaries. Subsequently, a universal challenge faced by every prosecuting attorney’s office is the hiring, training, and retention of talented lawyers.

The retention of prosecuting attorneys is difficult and multifaceted, but the problem can be summed up by the following: low pay, long hours, and stress. While the experience of prosecutors varies significantly from one jurisdiction to another (particularly between urban and rural offices), there are common issues encountered in every locality.

First, as state employees, prosecutors make significantly less than attorneys in private practice. In many jurisdictions, the starting salary for prosecutors is less than \$50,000 while attorneys in private practice with a few years’ experience can make triple that amount. For young lawyers who live in areas with a high cost of living, the starting salary for a prosecutor may not be a livable wage. Moreover, many new prosecutors have accrued hundreds of thousands of dollars in student loan debt as a result of their undergraduate and law school degrees and being able to make payments on top of paying bills is a source of great concern. Absent significant increases in salaries within a few years of employment with the state, many of these lawyers will leave to pursue higher paying positions at private law firms.





## Challenge/ Background

Second, prosecutors are expected to work long hours and significant overtime without commensurate pay. Average caseloads vary but prosecutors often work far more than 40 hours per week to adequately prepare for motions, hearings, etc. Furthermore, prosecutors must routinely prepare cases for trial which requires many overtime hours to ensure that all relevant documents and evidence are filed, witnesses are adequately prepared, and the trial strategy is well thought out. As cases proceed to trial, prosecutors must also be prepared to contend with last minute motion filings by the defense and ongoing plea negotiations. The trial environment is one of extremely high stress as any decision made can affect the outcome of a case. In addition to these responsibilities, many prosecutors are also required to be on-call and available outside of regular work hours. Law enforcement agencies frequently request that a prosecutor be present at crime scenes or post-arrest at the police station to monitor investigations. Prosecutors might also be called upon to obtain search warrants. While this on-call duty rotates throughout the office, prosecutors can expect to work overnight, on weekends, and/or on holidays periodically throughout the year.

Lastly, the stress associated with working in the criminal justice system can be significant enough to cause burnout. This is an issue that is also commonly experienced by law enforcement and probation officers, as well. While the focus of this section is on prosecutors it goes without saying that any job where there is a high degree of danger or significant caseloads, the likelihood of physical, mental, and/or emotional exhaustion from chronic work-related stress is high. People who experience burnout often show physical signs of energy depletion or exhaustion, a lack of motivation, and reduced professional efficacy. In other words, burnout can prevent someone from performing their job in an effective manner. All criminal justice practitioners are at increased risk for burnout due to the inherent level of stress that comes with having to work with offenders and/or victims on a daily basis. Every decision that prosecutors make have significant consequences. In addition, the outcomes of individual cases are largely out of their hands. Even if they present the strongest possible case, the outcome is determined by a judge or jury and sometimes the defendant is acquitted. Tough losses are often internalized which makes it difficult to “leave work at the office.” These factors coalesce to create the revolving door between prosecuting attorneys’ offices and private firms and unfortunately, this is not an easy problem to resolve.

It is important to understand that these issues are present regardless of the jurisdiction or nature of caseloads. However, when exploring this issue in the context of DUI adjudication, these problems are often compounded. Consider the following: very few individuals enter law school with the intention of establishing a law career focused on the prosecution of impaired driving offenses. While DUI defense work can be extremely profitable over time, the prosecution of these cases is not. At best, an individual could envision a career as a civil servant where he/she rises through the ranks of a prosecuting attorney’s office to become a chief assistant or the elected district/state attorney themselves. New law school graduates are not excited at the prospect of a DUI case landing on their desk as these cases tend to be misdemeanors and do not have high-profile trials like murder or gang cases. This is not to say that new prosecutors fail to understand that DUI cases are important however, it is unlikely that these are the types of cases that inspired them to enroll in law school.





## Strategies to Implement Solutions

Issues regarding the hiring, training, and retention of prosecutors are systemic in nature and to address these challenges effectively, a multi-faceted approach must be employed. For the purposes of this plan, the approach is segmented into four primary strategies: establish an office culture that prioritizes DUI prosecution, cultivate leadership, increase support, and provide DUI educational opportunities. The following section outlines steps that can be taken to implement each strategy.

### Establish an Office Culture that Prioritizes the Prosecution of DUI Cases:

- Highlight the importance of prosecuting impaired driving cases at the time of orientation and on an ongoing basis. These messages should be delivered by both the elected DA/SA and executive staff. Culture change starts at the top and new prosecutors need to know that their supervisors and the elected official prioritize these cases.
- Do not permit staff or other stakeholders to minimize DUI cases. If there is discussion about misdemeanor DUI cases being “just a DUI,” prosecutors should speak up and note that each impaired driving incident could result in a senseless and avoidable tragedy.
- Institute plea bargaining policies that prevent impaired driving offenses from being pled down to reckless driving or comparable charges except for first-time offenders, and then only when appropriate countermeasures like screening, assessment, treatment, monitoring, and ignition interlock are employed. Prosecutors must be able to negotiate pleas in DUI cases but from a public safety perspective, it is imperative that convictions reflect the impaired driving offense otherwise future DUIs may be treated as a first offense.
- Establish DUI case units if the office is large enough and there are enough impaired driving charges filed to support this practice. By creating a specialized unit, new prosecutors may have the opportunity to gain additional experience and support when handling these cases.
- Implement vertical prosecution (i.e., assigning the same prosecutor to review, charge, and adjudicate each case) in DUI cases as resources permit. This practice, which is particularly important in DUI cases involving serious bodily injury or death, leads to greater continuity/consistency in cases and increases impaired driving expertise among prosecutors.
- Recognize the work of prosecutors who consistently take on DUI cases and secure favorable resolutions/case outcomes. By acknowledging the performance of these prosecutors, it could motivate them to continue pursuing these cases and inspire other prosecutors to follow their example.





## Strategies to Implement Solutions

- Support law enforcement by aggressively pursuing DUI cases. Law enforcement officers commonly cite lack of support from prosecutor offices and lack of case follow through as reasons for limited engagement in traffic safety. If DUI cases are routinely dismissed or pled down, law enforcement may be less inclined to pursue DUI investigations in the future. All prosecutors should respect the work that law enforcement does to remove impaired drivers from the roadways. This can be demonstrated by exhibiting a comparable level of commitment in pursuing charges and resolution in DUI cases.
- Encourage prosecutors to work collaboratively with witnesses in DUI cases, particularly law enforcement officers and toxicologists. In addition to building relationships, this is an opportunity for new prosecutors to learn from experts.
- Encourage new prosecutors to reach out to more experienced lawyers, including Traffic Safety Resource Prosecutors (TSRPs) if they have questions regarding case law, statutory requirements, or defense strategies. TSRPs are active or former prosecutors who have extensive knowledge in the area of traffic crimes. As a function of their job, TSRPs provide training, education, and support to prosecutors on these issues and might even be brought in to assist in the prosecution of high-profile vehicular homicide cases. TSRPs are funded through state highway safety offices (each state has at least one if not several) and are embedded in a variety of agencies as each state is different in its approach to the program (some are with law enforcement agencies, prosecutor offices, Attorney General's offices, etc.). The National Traffic Law Center (NTLC) maintains an updated list of TSRPs for individuals interested in identifying their state's TSRP.
- Require prosecutors to always meet with victims in DUI cases. While meeting with victims can be difficult, this should be done in every case as it is an opportunity to better understand the impact that this crime has on innocent people. Prosecutors should also be encouraged to keep victims informed about the developments in their cases and listen to their input regarding possible outcomes (e.g., plea agreements) as standard practice. In cases where a trial occurs, these meetings with victims can prepare prosecutors in making statements to the court and articulating the effect that the crime has had on others.
- Promote information-sharing among prosecutors and provide access to resources. New prosecutors who are tasked with adjudicating DUI cases are likely to encounter the same defense attorneys and possibly the same expert witnesses. Knowledge is power and prosecutors should keep a record of who they encounter in court and ways to overcome defense tactics.





## Strategies to Implement Solutions

### Cultivate Leadership:

- Identify prosecutors who have an aptitude and talent for adjudicating DUI cases and encourage them to continue to pursue these cases in the future.
- Encourage new prosecutors who are interested in engaging on difficult or complex cases to request the opportunity to adjudicate an impaired driving case. If office leadership presents DUI cases as a challenge, it might pique the interest of eager young lawyers.
- Bring in leaders to discuss the importance of adjudicating DUI cases including law enforcement executives and victim advocates. Prosecutors should gain both the law enforcement and victim perspective as it might inspire them to act.
- Encourage all new prosecutors to attend a victim impact panel as part of their orientation/training. By attending these panels and hearing victim stories, the importance and seriousness of these crimes will become apparent. This could serve as a motivating force.
- Encourage law enforcement officers and/or victims to offer learning opportunities to new prosecutors who they believe have an interest in impaired driving cases. Many prosecutors who specialize in traffic safety do so because someone recognized their potential and offered to educate and connect them with others in the field.
  - o New prosecutors should be encouraged to go on ride-alongs, attend sobriety checkpoints, participate in wet and/or green labs, attend law enforcement trainings and functions, attend victim advocacy events, etc.
- Foster relationships with frontline law enforcement officers. Positive working relationships between prosecutors and law enforcement are imperative in all criminal prosecutions. In DUI cases, experienced officers can assist prosecutors in identifying case strengths and weaknesses and in preparing for testimony.
- Encourage prosecutors to make impaired driving their area of expertise; this gives them a niche and promotes leadership.

### Enhance Staff Motivation and Provide Support:

Offices can implement several strategies that are relatively easy to achieve and can be advanced through policy change. The benefit of establishing new protocols is that leadership has control over these decisions. Some policy and practical changes that district/state attorneys can consider that might enhance prosecutor motivation include:

- Hire additional support staff to assist prosecutors in handling a variety of tasks and to increase efficiency.
- Establish mentorship programs to increase collaboration between new and experienced prosecutors and to promote information-sharing.
- Communicate the rationale for decisions and changes as needed to increase office transparency.
- Recognize the work being done by individual prosecutors.





## Strategies to Implement Solutions

- Hold regular meetings where staff can share concerns and offer suggestions.
- Offer opportunities for education and training. These opportunities should be shared with and available to all prosecutors. For offices that lack resources, identify creative ways to provide prosecutors with online training.
- Provide staff with information about student loan forgiveness programs and other relevant resources that can help them address debt incurred as a result of their education.
- Encourage prosecutors to establish relationships with other stakeholders, particularly law enforcement.
- Recognize the potential for burnout and educate staff about resources that are available to them in the community should they experience any mental health issues as a result of the job.

### Provide Educational Opportunities:

Many prosecutor offices lack the resources to offer impaired driving training. However, DUI educational opportunities exist and through state and federal grant funds, training can be brought to individual jurisdictions where offices do not have the ability to send staff to out-of-state conferences. In addition to in-person training, there are also many free, online resources available including the [Prosecuting DUI Cases](#) course, webinars, and guides/monographs.

Offices that lack the resources to conduct DUI training should reach out to their state TSRPs and larger in-state prosecutor offices to determine what level of support they can offer. If the TSRPs cannot do in-person trainings, they can provide prosecutors with resources and guidance when DUIs are added to their caseloads. In addition to TSRPs, the [National Traffic Law Center](#) (NTLC) is a great resource. Housed within the National District Attorneys' Association, NTLC aims to improve the adjudication of traffic safety cases and serves as a clearinghouse for criminal justice practitioners interested in learning more about the law and highway safety. NTLC offers training, technical assistance, and resources to prosecutors, judges, and law enforcement officers. The Center also publishes a quarterly newsletter called *Between the Lines* that summarizes the most recent developments, research, and court decisions related to traffic safety. DA/SA offices are encouraged to contact NTLC to identify whether grants are available to administer state trainings.





## Strategies to Implement Solutions

Below is a list of some training opportunities that offices should consider:

- Complete [Prosecuting DUI Cases](#), a free online course offered by Responsibility.org and the National Traffic Law Center. Every prosecutor who lacks experience adjudicating DUIs should complete this course before they enter court as it will provide them with basic knowledge related to alcohol toxicology, lines of questioning, and common defense tactics. Prosecutors can obtain CLE credits for completing the course.
- Offer all new prosecutors as much orientation training as possible before they are assigned a caseload. Larger/urban jurisdictions may be better positioned to offer this type of training (e.g., in Miami-Dade County, all incoming prosecutors receive five weeks of training before handling cases in court and are not expected to handle cases without the assistance of a more experienced prosecutor in a primary courtroom for at least one more month). Offices without the resources to provide similar training should at least consider allowing their attorneys to attend training in larger jurisdictions.
- Provide a DUI manual to every new prosecutor. At minimum, this guide should include a summary of relevant statutes and associated requirements, case law, etc. In some states, the TSRP or prosecuting attorneys' association might be responsible for developing and updating this manual. Prosecutor offices in large jurisdictions often create comprehensive manuals that may run hundreds of pages.
- Identify in-person training opportunities and other education opportunities where continuing legal education (CLE) credits are offered. These may include state prosecutor conferences and state law enforcement trainings. Also encourage new prosecutors to participate in trial advocacy courses. State bar associations will often keep an updated list of different training opportunities that are available throughout the year.
- Request specific impaired driving trainings offered by the state TSRPs. This may include curriculum-based trainings that are supported by the National Highway Traffic Safety Administration (NHTSA) such as Prosecuting the Drugged Driver.
- Encourage prosecutors who are interested in gaining knowledge and expertise about impaired driving and plan to handle DUI cases for extended periods of time to reach out to local law enforcement agencies and identify opportunities to attend the following types of trainings:
  - o Breath testing courses;
  - o Standardized field sobriety test (SFST) training;
  - o Horizontal gaze nystagmus (HGN) training;
  - o Advanced Roadside Impaired Driving Enforcement (ARIDE);
  - o Crash investigation/reconstruction courses.







## Strategies to Implement Solutions

- Encourage prosecutors who are interested in developing further expertise to attend drug recognition expert (DRE) school or the [Borkenstein courses](#) on alcohol and drugs. The latter provides an in-depth examination of medical-legal issues related to alcohol and drug-impaired driving.
- Promote cross-training opportunities among prosecutors, law enforcement, and toxicologists whenever possible. Collaborate with the state highway safety office to fund annual cross-trainings that focus on the most recent impaired driving research and state court decisions as well as common challenges. These trainings provide an opportunity to network and are one venue where the various facets of the system can identify if there are ways to strengthen existing practice.
- Identify web-based training opportunities and encourage prosecutors to participate. These are frequently offered by the National Highway Traffic Safety Administration (NHTSA), the National Traffic Law Center (NTLC), and the National Law Enforcement Liaison Program (NLELP).
- If funding permits, prosecutors should be encouraged to attend national traffic safety conferences including the nation's largest traffic safety conference, [Lifesavers](#), and the [Governors Highway Safety Association](#) (GHSA) Annual Meeting.

## Stakeholders

Prosecutors should collaborate with and learn from seasoned prosecutors including division chiefs and the elected official in their office; law enforcement executives and frontline officers including those who have spent a significant amount of time conducting traffic enforcement; drug recognition experts; toxicologists; judges and judicial outreach liaisons; state highway safety office leadership; and, impaired driving victims and advocates.

Prosecutors can learn from each of these individuals and the lessons they impart will help build stronger and more effective DUI case presentations. Leadership within district/state attorney offices should encourage the development of working relationships among prosecutors, law enforcement, and toxicologists. Whenever possible, prosecutors should be given the opportunity to participate in cross-training with these practitioners. Moreover, offices should endeavor to connect new prosecutors with the state TSRP and schedule at least one potential impaired driving training per year. The state highway office staff as well as victim advocacy organizations can encourage prosecutors to continue to adjudicate these cases and provide support and funding to aid them in these efforts. Lastly, to continue to develop leadership, cultivate passion, and increase motivation, it is important to let prosecutors know that their work on impaired driving cases is noticed, supported, and making a difference in the community. All stakeholders can do the latter.





## Barriers

While prosecuting attorney offices recognize the importance of adjudicating DUI cases, internally these cases are not always given the same level of priority as other crimes. DUIs are typically misdemeanor cases and, as such, are assigned to new and inexperienced prosecutors to free up more experienced practitioners to handle high-level felony cases. Investment in impaired driving training opportunities and fostering passion in this area of law is not consistently done because offices have a myriad of competing priorities that require attention. With limited resources and staffing, attention of senior prosecutors cannot always be devoted to impaired driving cases. To overcome this challenge, leadership must create a cultural shift within the office, and this can be effectively accomplished by implementing the aforementioned strategies. The bottom line is that for impaired driving cases to be prioritized by new prosecutors, these cases must be prioritized by the elected official. Moreover, if prosecutors are recognized for their work on these cases, they may be motivated to become leaders and it is this leadership that will drive change and produce better case outcomes.

With respect to the systemic issues related to prosecutor hiring and retention, the primary barrier is the level of resources available to individual offices. While larger offices may be able to provide prosecutors with more support and livable wages, other offices may inevitably lose staff to private law firms. State legislatures are responsible for funding all government agencies and initiatives and all states operate under financial constraints and budget crunches. Not only is it difficult to allocate funds, there are many competing priorities both within and outside of the criminal justice system. While offices may not be able to offer specific incentives, an emphasis can be placed on increasing staff morale. For some individuals, career satisfaction and having the knowledge that they are making a significant difference is more important than other aspects of a job. Every prosecutor office should inspire its staff and motivate them by reinforcing that by trying cases, including impaired driving cases, they protect public safety and save innocent lives.

## Caveats

Regardless of the level of resources devoted to training or increases in support, new prosecutors will continue to leave in pursuit of other career aspirations. This is the nature of the job market. What is important for prosecuting attorney offices is to find ways to cultivate leadership and to retain the practitioners who exhibit the greatest passion. For some individuals, being a prosecutor is a job whereas for others, it is a calling. If office leaders can find young prosecutors who ascribe to the latter ideology and pair them with law enforcement officers and victim advocates, there is the potential to create the next generation of impaired driving leadership within the office.

Also, irrespective of any individual prosecutor's career trajectory or path, while he/she is in the office and overseeing impaired driving cases, it is important to convey the importance of the task at hand. The work that is being done matters to the community and to victims. Impaired driving is a completely preventable violent crime. While statutes may classify DUIs as misdemeanors or lower level crimes, each incident of impaired driving places the public at risk. It is incumbent on every prosecutor to handle these cases like the serious crimes that they are and seek resolutions that serve the public's interest and safety.





## Reform in Action

The experience in Florida may provide a road map for other jurisdictions seeking to reduce prosecutor turnover. The Miami-Dade State Attorney (SA), Katherine Fernandez Rundle has long prioritized prosecutor training and DUI cases. As noted above, the Miami office provides incoming prosecutors with five weeks of training before they begin handling cases in court. During that time, SA Rundle and her Chiefs meet with and speak to the prosecutors about the mission of the office and their expectations. The County Court Chief and Training Attorney provide the prosecutors with a comprehensive DUI manual that summarizes state laws, regulations, and case decisions. The new staff also listen to a surviving victim who shares his or her experience, as well as police officers and toxicologists who provide cross-training. Prosecutors practice their skills during mock hearings and trial segments. Finally, the office assigns the new prosecutors more experienced mentors who provide guidance and advice. The office provides more experienced prosecutors with the opportunity to attend state and national conferences and go to the same training courses that law enforcement officers attend.

An example of a strong DUI unit and vertical prosecution in impaired driving cases can be found at the Orange County District Attorney's Office (ODCA). The ODCA receives grant funding from the California Office of Traffic Safety (OTS) to administer an alcohol and drug-impaired driver prosecution program and a statewide DUI/D training program that houses the California TSRP network. For nearly a decade, OCDA has taken the lead in developing innovative approaches to the prosecution of impaired driving cases including a collaborative model that integrates prosecution, investigation, and toxicology in drug-impaired driving cases. OCDA currently administers the TSRP program and is responsible for delivering training statewide to both law enforcement and prosecutors. The office receives more than a million dollars in OTS grant funds each year to maintain a multiple vertical prosecution positions throughout the county. These prosecutors exclusively handle drug-impaired driving cases and they are responsible for reviewing the cases, filing charges, and seeing those cases through to resolution.

## Resources

[\*Prosecuting DUI Cases\*](#) (free online course; CLE credits)

[\*DWI Prosecutor's Handbook\*](#) (National Traffic Law Center)

[\*Traffic Safety Resource Prosecutor's Manual\*](#) (NHTSA, 2016)

[\*Traffic law resources\*](#) (NTLC)

[\*List of state TSRPs\*](#) (updated June 2019)

