



2004

UTAH COMMISSION ON CRIMINAL AND JUVENILE JUSTICE

# Second Annual DUI Report to the Utah Legislature

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# Acknowledgements

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## DUI in Utah

**O**n September 18, 2003 six-year-old Christopher Robles' life was forever changed. He became an only child when an impaired driver killed his 4-year-old sister Yarnari and nine-year-old brother Jorge "Teto" Almedia-Robles as they played in their front yard. Christopher, who was also hit, suffered serious injuries that confined him to a wheelchair for a period of time. The family, who lived in Taylorsville, later sold their home, haunted by the memories of that September day.

The driver Michael Joseph Whitton, 19, was driving under the influence of methamphetamine when he lost control of his vehicle and crashed into the children. Whitton eventually pled guilty to two felony counts of second-degree auto homicide and one misdemeanor DUI count. He was given the maximum prison sentence of one to 15 years for each felony and a year in jail for the misdemeanor.

A month later, another family suffered a similar tragedy when Tory Lee Jacques, 21, ran over members of the Smith family as they were walking along a sidewalk. Killed instantly was 6-year-old Darius "Buddha" Joseph Smith. Critically injured were his sister Autumn, 9, and his brother Desi, 11. Their father, Earl Lee Smith Jr., 42, was also injured.

Jacques admitted he had five to six beers before he got behind the wheel that night. Prior to hitting the Smith family, he had rammed into another car, injuring the driver. Jacques had a blood alcohol level of .11 and a cocaine metabolite in his system. Nine months later Jacques pled guilty to one count of second-degree felony automobile homicide and two counts of third-degree felony driving under the influence and causing serious bodily injury. Mr. Smith had argued that Jacques should have been charged with murder and attempted murder. Jacques is scheduled to be sentenced November 2004.

In this year of heartbreak, there were also some rays of hope. One father, Ryan Nielson, tried to single-handedly prevent impaired drivers from getting behind the wheel by providing them with free rides home. New technology was introduced to continuously monitor an offender's alcohol use. Legislation passed to close loopholes in driver license restrictions. An assessment and referral service was piloted in Salt Lake County. A University of Utah study shed new light on DUI offenders. And

almost all of Utah’s Justice Courts were electronically linked to the state’s database allowing for the sharing of DUI information among all jurisdictions.

This year’s report will attempt to bring greater insight into the problem of driving under the influence in Utah. The report will examine the offenders, agencies, organizations and systems in place to address DUI. The report will also examine what appears to be working to reduce DUI and what still needs to be done.

***Defining DUI***

Driving under the influence (DUI) occurs when an individual operates or is in physical control of a vehicle with a 0.08% or more blood alcohol content in their system, or whose driving is considered “unsafe” due to alcohol or other drugs in the body.

DUI is a Class B misdemeanor, punishable by a fine, jail or community service, 90-day license suspension, an alcohol class, or alcohol problem assessment. More severe criminal actions are taken for DUI with a passenger under the age of 16 years, DUI with an injury or fatal crash, or DUI that is the second or more DUI offense within 10 years.

**Recommendations**

- **Continue to improve Utah’s DUI databases.** Law enforcement agencies, court personnel and driver license personnel must populate the DUI database with complete and accurate information on offenders. Justice Courts, in particular, must improve their electronic reporting capabilities.
- **Train law enforcement officers on the use and availability of telephonic driver license hearings.** Law enforcement officers must become familiar with how to access and use the telephonic option for driver license hearings so that impaired drivers will lose their driving privileges.
- **Pass legislation to consolidate and create categories of no alcohol restricted drivers.** The Legislature can improve the application of the no alcohol license provisions by consolidating them into one section of the code. Additionally, the law should prevent all DUI offenders from avoiding this restriction by creating specific offender categories that include those who refuse to take a BAC test.
- **Train judges and prosecutors on the use and application of ignition interlock devices.** Both professions require additional training on Utah’s ignition interlock laws and their application. They also need to become more familiar with how ignition interlock devices work to stop impaired drivers.

- **Increase the availability of ignition interlock devices in rural areas.** Private providers need to respond to the increased need for these devices so that judges may order them when the law requires.

## Data Snapshot

Utah’s DUI arrests were virtually identical to last year’s. There were 14,461 arrests, 30 fewer than the previous fiscal year. Court filings, however, have increased by nearly 10 percent in both District and Justice Courts. While there is no profile of a DUI offender, the majority are male (80 percent), the average age is 32, and the average blood alcohol content at the time of arrest was .14.

<i>DUI in Utah</i>	<i>FY 2003</i>	<i>FY 2004</i>	<i>Percent Change</i>
DUI Arrests	14,491	14,461	-.20%
District Court Cases Disposed	2,293	2,533	9.47%
Justice Court Filings	9,450	10,316	8.39%
Source: Administrative Office of the Courts; Bureau of Criminal Identification; Driver License Division, Utah Department of Public Safety			

## A National Perspective

How does Utah compare with the rest of nation? Utah has the lowest alcohol related traffic fatalities rate in the nation with only 15 percent of traffic deaths attributable to alcohol. The average nationwide is 40 percent. Utah’s rate has declined 43 percent over the last 10 years, while the national rate declined only 25 percent over that same time period.

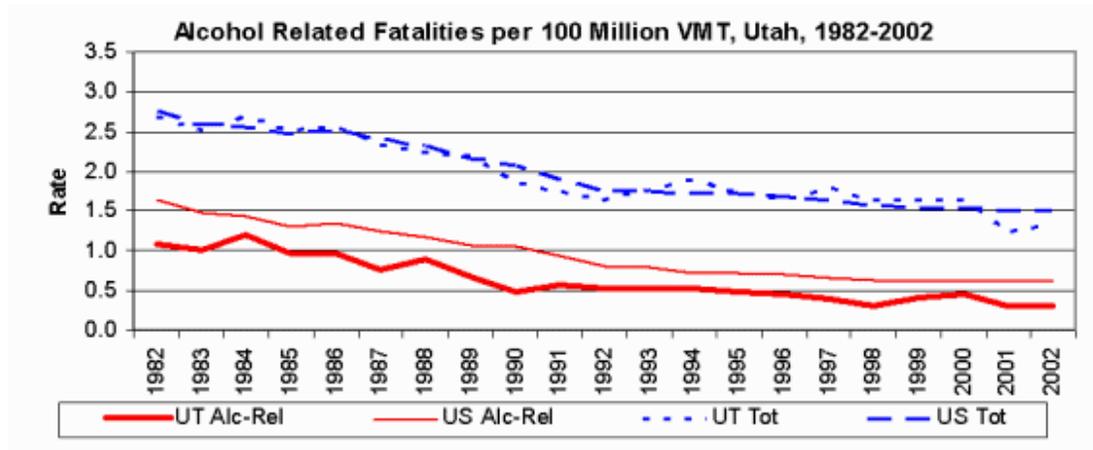
Such a low fatality rate is to be expected considering that Utah also has the lowest consumption rate of alcohol in the nation.<sup>1</sup> Utah’s rate of alcohol dependence or abuse, however, ranks 19<sup>th</sup> highest in the nation with 8.18% of the population estimated to have an alcohol problem.<sup>2</sup>

<i>Utah Alcohol Related Traffic Fatalities</i>	<i>2002 Calendar Year</i>	<i>2003 Calendar Year</i>	<i>Percent Change</i>
Total Traffic Deaths	328	309	-5.8%
Alcohol Related Deaths	71	46	-35%
Percent Alcohol	22%	15%	-31.8%
Source: National Highway Traffic Safety Administration			

<sup>1</sup> Substance Abuse and Mental Health Administration, Office of Applied Studies, “National Survey on Drug Use and Health,” 2002.

<sup>2</sup> Ibid.

When viewing the data based on vehicle miles traveled, Utah's rate of .30 deaths is second best to Vermont's rate of .28. The state with the highest fatality rate per 100 million vehicle miles traveled was South Carolina with a rate of 1.17.



Source: National Highway Traffic Safety Administration

## 2004 DUI Legislation

### HB 128 Amendments to Operating Under the Influence Rep. Dana Love

Lowers the blood alcohol content per se limit to .05 (compared to .08) if a person is 21 years of age, has a passenger under 16 years of age in the vehicle and has had a prior DUI conviction.

Allows the use of oral fluids as an authorized chemical test under the implied consent law and requires the Department of Public Safety to establish standards for the testing.

Provides that a person is guilty of a Class B misdemeanor if the person is driving while the person's license is suspended, disqualified or revoked for a DUI violation, and the person has any amount of alcohol in the body.

Requires the Commission on Criminal and Juvenile Justice (CCJJ) to study child endangerment for driving under the influence violations and report to the Transportation Interim Committee by November 2004.

### HB 289 Alcoholic Beverage Amendments to Minors Rep. Lorraine Pace

Makes it unlawful for any minor to have any measurable amount of alcohol in the body. Exceptions are alcohol consumed for medicinal purposes or as part of a religious service.

**SB 20**                    **DUI Amendments**  
**Sen. Carlene Walker**

Provides that a judge or court with felony jurisdiction must approve a plea of guilty or no contest to a possible felony DUI charge.

Allows pleas in abeyance for certain DUI offenses, but specifies that the plea in abeyance is the equivalent of a conviction for purposes of enhancement of penalties for subsequent DUI offenses and for purposes of expungement. Sunsets the plea in abeyance provision on June 30, 2006.

Requires an assessment of DUI offenders if found appropriate by a screening.

Provides that a court may not expunge a person's record for a conviction of automobile homicide or a felony DUI violation; or within ten years of a felony violation by a person that knowingly and intentionally has any amount of a controlled substance in the person's body and operates a vehicle in a negligent manner causing serious bodily injury or death or for the equivalent of a misdemeanor DUI conviction.

Requires CCJJ to study pleas in abeyance for driving under the influence violations and report to the Transportation Interim Committee.

**SB 168**                    **Driver License Related Amendments**  
**Sen. Carlene Walker**

Individuals whose driving privilege has been suspended, revoked or denied due to DUI, alcohol reckless, refusal to submit to a chemical test, or auto homicide are subject to the no alcohol restriction even if they have not yet been issued a Conditional License. No alcohol restriction prohibits a driver from operating a motor vehicle with any measurable amount of alcohol in the body. Violation of the law will extend the license penalty an additional year.

Provides that the Driver License Division may issue, reinstate, or renew a driver license only in the form of a no alcohol conditional license to a person for a period of ten years, instead of six, following a second or subsequent qualifying driving under the influence conviction.

## 2004 DUI Committee, Utah Substance Abuse and Anti-Violence Coordinating Council (USAAV)

The USAAV DUI Committee meets monthly to consider ways to improve Utah's DUI system. Chaired by Anna Kay Waddoups, the committee worked on DUI legislation, commissioned a survey of judges' use of ignition interlock devices, monitored Justice Court's electronic reporting capabilities, and testified at legislative hearings on Utah's DUI system. The committee never lacked for items to discuss. Meetings were always productive if not brimming with items that needed consideration. Under the direction of Chairperson Waddoups, the DUI Committee contributed greatly to efforts to protect Utah's roadways from DUI drivers.

	<b>Anna Kay Waddoups</b> Citizen Member <i>DUI Committee Chairperson</i>
David Beach	Director, Highway Safety Office <i>Department of Public Safety</i>
Bart Blackstock	Deputy Director, Driver License Division <i>Department of Public Safety</i>
Paul Boyden	Executive Director <i>Statewide Association of Prosecutors</i>
Neil Cohen	Compliance Officer <i>Department of Alcoholic Beverage Control</i>
Mary Lou Emerson	Assistant Division Director <i>Division of Substance Abuse and Mental Health</i>
Chief Wayne Hansen	Farmington Police Department <i>Utah Chiefs of Police Association</i>
Gail Johnson	Education Specialist <i>Utah State Office of Education</i>
Teri Pectol	Program Manager, Highway Safety Office <i>Department of Public Safety</i>
Major Neil Porter	Utah Highway Patrol <i>Department of Public Safety</i>
Richard Schwermer	Assistant State Court Administrator <i>Administrative Office of the Courts</i>
Sheriff Kirk Smith	Washington County Sheriff's Office <i>Utah Sheriff's Association</i>
Nora B. Stephens	Citizen Member <i>Retired, Utah State Representative</i>
Carlene Walker	Senator <i>Utah State Senate</i>
	Susan Burke, <i>USAAV Director</i>

## Statewide DUI Arrests

Anna Kay Waddoup's first experience with a drunk driver was as a victim. It happened on February 14, 2000 as she was on her way to meet her husband for a Valentine's Day lunch. She was rear-ended by an uninsured drunk driver. The physical pains of that experience still linger.

Waddoup's second experience with drunk driving was in 2004, riding along with the Utah Highway Patrol during a DUI sweep. That night officers took five drunk and impaired drivers off the street. Waddoups quickly learned that the typical impaired driver on Utah's roadways is not easy for the untrained eye to identify. But to a trained officer, the first sign of an impaired driver could be as simple as a lane change.

In FY 2004, Utah law enforcement officers made 14,461 DUI arrests, 30 fewer than in the previous year. Many of these arrests occur during specialized DUI enforcement events or "sweeps" that specifically target and remove from Utah roads individuals driving under the influence. DUI impound fees (\$400,000 in FY 2004) were used to fund these sweeps.

<i>Statewide DUI Sweeps</i>	<i>FY 2004</i>
Shifts worked	<b>2,010</b>
DUI arrests	<b>1,334</b>
State tax impounds	<b>1,150</b>
Vehicles stopped	<b>11,673</b>
Alcohol related arrests	<b>531</b>
Drug related arrests	<b>250</b>
Warrants served	<b>154</b>
All other contacts	<b>12,341</b>
Source: Utah Office of Highway Safety, Utah Department of Public Safety	

The state's beer tax funds are also used to support DUI enforcement activities as well as programs related to DUI such as treatment and prevention. In FY 2004, \$2,712,500 was dispersed statewide on a formula basis<sup>3</sup>. Funds can be spent in one or more of six general categories: (1) DUI law enforcement, (2) general alcohol-related law enforcement, (3) prosecution/court cases for alcohol-related cases, (4) treatment of alcohol problems, and (5) confinement of alcohol law offenders.

Communities that receive more than \$1,000 in beer tax revenues are required to submit an Annual Report to the Utah Substance Abuse and Anti-Violence Coordinating Council outlining how funds were utilized and certifying that they were used in accordance with the law. Reports are due by October 1 of each year.

## The Arrest

A DUI arrest from the initial traffic stop and the completion of all paperwork can take anywhere from 90 minutes to three hours depending on the complexity of the case, the officer's familiarity with the process, and the proximity of the local jail. When a law enforcement officer conducts a stop on a potential DUI driver, the officer can request that the person submit to a Standardized Field Sobriety Test. The test, established by the National Highway Traffic Safety Administration, involves the walk and turn, the one leg stand and the horizontal gaze nystagmus. If the officer has probable cause to make an arrest, the officer can request that the person submit to a breath, blood and/or urine test.

Under Utah law, any person operating a motor vehicle is considered to have given consent to a chemical test or tests of breath, blood, urine or oral fluids for the purpose of determining whether they are driving in violation of Utah's driving under the influence law (UCA 41-6-44.10). The driver may refuse, but will face a license revocation for 18 months for a first offense and 24 months for a subsequent refusal.

Once arrested, the person's vehicle is impounded if the officer is unable to release the vehicle to another responsible person. The individual's driver license is also taken. The driver is provided with a 30-day temporary license and given a written "Notice of Intent." This notice informs the driver that he or she has 10 days from the date of arrest to request in writing a driver license hearing. The Driver License Division must schedule that hearing within 30 days of the arrest once it receives the written notification from the driver.

## Type of DUI Arrests

Law enforcement agencies are required to report all DUI arrests to the Driver License Division. The following tables detail the type of DUI arrest, the gender of the driver, the type of arresting agency, the month of arrest and the county of arrest. Additional tables list the age range of offenders and the Blood Alcohol Content (BAC) if known.

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<sup>3</sup> The State Tax Commission distributes funds in December of each year based on the following formula: percentage of state population (25%), percentage of statewide convictions for alcohol-related offenses (30%), percentage of all state stores, packaging agencies, liquor licenses, and beer licenses (20%), and 25% for confinement and treatment purposes based upon the percentage of the state population.

There are few differences between this year’s data and last. The majority of DUI drivers are still males, although the number of females arrested increased by just over one percent. The average age of a DUI offender is 32, with drivers as young as 15 and up to 93 arrested for DUI. The average BAC is .14. Drivers who are under a no alcohol license can be arrested for any measurable amount of alcohol in the system. The highest BAC reported was .39.

The majority of DUI arrests take place along the Wasatch Front, with Salt Lake County responsible for over 37 percent of all DUI arrests. More than half of all arrests are made by local law enforcement agencies, with the Utah Highway Patrol responsible for almost a third of arrests, followed by Sheriff’s Offices with just over 16 percent of all DUI arrests. May and August were some of the busiest months for making DUI arrests, while the fewest arrests occurred in June.

<i>DUI Arrests</i>	<i>FY 2003</i>	<i>FY 2004</i>
Not a Drop (Youth)	859	818
Refusal to Submit to a BAC Test	1,850	1,865
Drug or Metabolite	1,039	1,050
Commercial Driver (.04 limit)	24	30
Regular Alcohol (per se)	10,719	10,698
<b>TOTAL</b>	<b>14,491</b>	<b>14,461</b>

Source: Utah Driver License Division, Utah Department of Public Safety

<i>DUI Arrest by Agency Type</i>	<i>FY 2003</i>	<i>Percent</i>	<i>FY 2004</i>	<i>Percent</i>
Sheriffs Offices	2,189	15.11	2,433	16.83
City Police/Other	7,892	54.46	7,601	52.56
Highway Patrol	4,410	30.43	4,427	30.61
<b>TOTAL</b>	<b>14,491</b>	<b>100%</b>	<b>14,461</b>	<b>100%</b>

Source: Utah Driver License Division, Utah Department of Public Safety

<i>DUI Arrests by Gender</i>	<i>FY 2003</i>	<i>Percent</i>	<i>FY 2004</i>	<i>Percent</i>
Male	11,740	81.02	11,587	80.13
Female	2,688	18.55	2,832	19.58
Unspecified	63	0.43	42	0.29
<b>TOTAL</b>	<b>14,491</b>	<b>100%</b>	<b>14,461</b>	<b>100%</b>

Source: Utah Driver License Division, Utah Department of Public Safety

SECOND ANNUAL DUI REPORT TO THE UTAH LEGISLATURE

<i>DUI Arrests by Age</i>	<i>FY 2003</i>	<i>Percent</i>	<i>FY 2004</i>	<i>Percent</i>
Unknown	5	0.03	4	0.03
15-20	1,625	11.21	1,651	11.41
21-24	2,952	20.37	2,780	19.22
25-36	5,032	34.73	5,182	35.83
37-48	3,444	23.77	3,364	23.27
49+	1,433	9.99	1,480	10.25
<b>TOTAL</b>	<b>14,491</b>	<b>100%</b>	<b>14,461</b>	<b>100%</b>
Source: Utah Driver License Division, Utah Department of Public Safety				

<i>DUI Arrests By Month</i>	<i>FY 2003</i>	<i>Percent</i>	<i>FY 2004</i>	<i>Percent</i>
July	1,137	7.85	1,171	8.10
August	1,256	8.67	1,318	9.11
September	1,151	7.94	1,174	8.12
October	1,231	8.50	1,179	8.15
November	1,257	8.67	1,184	8.19
December	1,279	8.83	1,136	7.86
January	1,276	8.81	1,211	8.37
February	1,119	7.72	1,200	8.30
March	1,279	8.83	1,295	8.96
April	1,150	7.94	1,213	8.39
May	1,285	8.87	1,309	9.05
June	1,071	7.39	1,071	7.40
<b>TOTAL</b>	<b>14,491</b>	<b>100%</b>	<b>14,461</b>	<b>100%</b>
Source: Utah Driver License Division, Utah Department of Public Safety				

SECOND ANNUAL DUI REPORT TO THE UTAH LEGISLATURE

<i>DUI Arrests By County</i>	<i>FY 2003</i>	<i>Percent</i>	<i>FY 2004</i>	<i>Percent</i>
Beaver	58	0.40	110	0.76
Box Elder	186	1.28	221	1.53
Cache	385	2.66	396	2.74
Carbon	169	1.17	152	1.05
Daggett	11	0.08	13	0.09
Davis	1,452	10.02	1,569	10.85
Duchesne	195	1.35	130	0.90
Emery	133	0.92	93	0.64
Garfield	54	0.37	50	0.35
Grand	212	1.46	149	1.03
Iron	295	2.04	286	1.98
Juab	166	1.15	177	1.22
Kane	125	0.86	98	0.68
Millard	110	0.76	106	0.73
Morgan	34	0.23	33	0.23
Piute	10	0.07	4	0.03
Rich	16	0.11	17	0.12
Salt Lake	5,167	35.66	5,360	37.07
San Juan	123	0.85	125	0.86
Sanpete	125	0.86	116	0.80
Sevier	187	1.29	185	1.28
Summit	239	1.65	334	2.31
Tooele	564	3.89	541	3.74
Uintah	374	2.58	446	3.08
Utah	1,560	10.77	1,447	10.01
Wasatch	217	1.50	254	1.76
Washington	654	4.51	649	4.49
Wayne	15	0.10	16	0.11
Weber	1,655	11.42	1,384	9.57
<b>TOTAL</b>	<b>14,491</b>	<b>100%</b>	<b>14,461</b>	<b>100%</b>
Source: Utah Driver License Division, Utah Department of Public Safety				

<i>Blood Alcohol Content</i>	<i>Count FY 2003</i>	<i>Percent</i>	<i>Count FY 2004</i>	<i>Percent</i>
BAC results not yet submitted	2,757	19.03	3,909	27.03
.01 - .07	1,017	7.02	813	5.62
.08 - .10	1,609	11.10	1,425	9.85
.11 - .15	2,864	19.76	2,589	17.90
.16 - .20	1,914	13.21	1,788	12.36
.21 - .25	740	5.11	683	4.72
.26+	281	1.94	286	2.00
Refused BAC test	2,483	17.13	1,865	12.89
No test/result unk.	n/a	n/a	831	5.75
Drug Only	826	5.70	272	1.88
<b>TOTAL</b>	<b>14,491</b>	<b>100%</b>	<b>14,461</b>	<b>100%</b>

### Relative Fatality Risk for Drivers in Single Vehicle Crashes by Blood Alcohol Content

As a driver’s blood alcohol content increases, so does the increased risk of experiencing a fatal crash. Utah’s average BAC of .14 at time of arrest indicates that these drivers pose a serious threat to themselves, any passengers, other drivers on the road, and even to pedestrians.

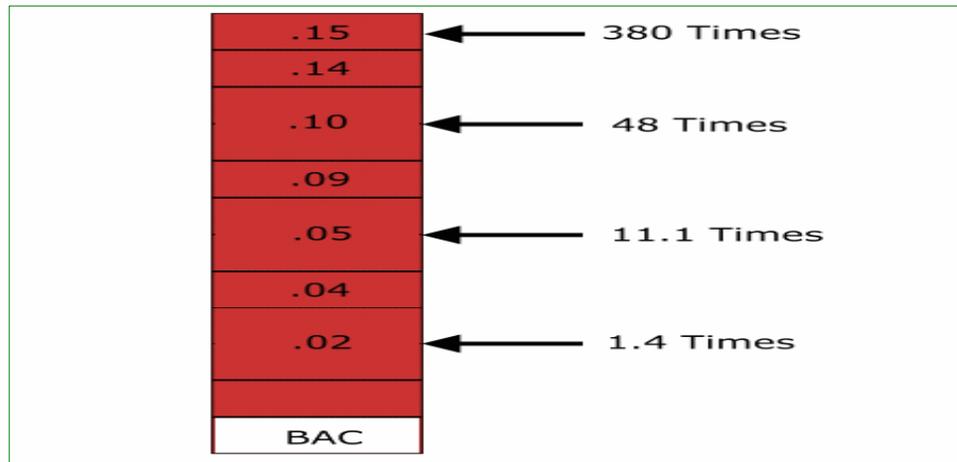


Chart source<sup>4</sup>

<sup>4</sup> Zador, P. L., Krawchuk, S.A., & Voas, R.B. (2000). “Relative Risk of Fatal Crash Involvement by BAC, Age, and Gender” (Report HS-809-050). Washington, DC: U.S. Department of Transportation, National Highway Traffic Safety Administration.



## In the Courtroom

A DUI involves many agencies. There is the law enforcement agency that makes the arrest, the Drivers License Division that handles the driver license hearing, the prosecutor who screens the case, and the court (either justice or district) that hears the case. Depending on the outcome, the offender may become involved with the correctional system and/or the treatment system.

At each juncture in the system, reports and data are generated making the tracking of DUI cases complex. Legislation passed in 2002 attempted to improve DUI information by requiring the courts to track DUI data, make DUI information available electronically to all agencies, and report that data annually in this report.

DUI offenses are either classified as misdemeanors or felonies depending on the type of offense and whether it is a repeat offense. Misdemeanors are handled in local Justice Courts, which are managed and funded by local governments. Felonies are handled in state District Courts. In FY 2004, there was a 9.47 percent increase in District Court DUI cases processed and an 8.39 percent increase in Justice Court DUI filings over the previous year.

<i>DUI Court Filings</i>	<i>FY 2003</i>	<i>FY 2004</i>
District Court Cases Processed	2,293	2,533
Justice Court	9,450	10,316

Source: Administrative Office of the Courts and Bureau of Criminal Identification, Utah Department of Public Safety

### Justice Court Electronic Reporting Capability

Utah's DUI laws have special provisions for repeat DUI offenders. Provisions such as limits on plea bargains means that a repeat DUI offender faces prison time on the third offense—but only if the court knows that this is the third offense.

In order to prevent repeat offenders from slipping through the system, state law required all Justice Courts (137 currently) to electronically report DUI data to the state by February 2004. In FY 2003, only 30 Justice Courts had met this requirement. By the end of FY 2004, 80 Justice Courts were compliant, with another 20 in the testing phase. Overcoming incompatible data systems has been a challenge for some Justice Courts.

While significant progress has been made by Justice Courts to meet the electronic reporting requirement, the slow rate of compliance has many officials and DUI advocates concerned. An inquiry earlier this year by Rep. Ty McCartney as to the electronic reporting compliance rate of Justice Courts found that less than half were compliant, even though all certified to the Utah Judicial Council they were compliant as part of their court recertification in February.

The Administrative Office of the Courts learned that some Justice Courts believed they were reporting electronically. These courts took quick corrective action. Other courts explained that they were reporting electronically, but that the reports were rejected by the state’s Bureau of Criminal Identification (BCI) for a variety of reasons, one being that their database was incompatible with BCI’s database.

The following table shows Justice Court compliance during fiscal years 2003 and 2004. As of October 1, 2004, there were only eight Justice Courts that were still working on electronic reporting. Courts that are not reporting electronically must still submit their reports to BCI in a hard copy format. The reports are then entered manually into the database by BCI.

<i>Justice Court DUI Electronic Data Reporting Capability</i>	<i>FY 2003</i>	<i>FY 2004</i>
Reporting Electronically	30	80
In the Testing Phase	n/a	20
Not Reporting Electronically	n/a	37
Source: Bureau of Criminal Identification, Utah Department of Public Safety		

### Justice Court Filings and Outcomes

During FY 2004, Utah’s 137 Justice Courts handled 10,316 DUI cases. The following table details the DUI cases filed in Justice Courts and their outcomes. This table does not accurately represent the DUI conviction rate for the Justice Courts as it includes cases filed in the previous fiscal year that were not resolved until this fiscal year. The table also shows that 2,033 cases are still pending resolution.

<i>Justice Court DUI Filings and Outcomes</i>	<i>FY 2004</i>
Total DUI Charges Filed	10,316
Guilty	6,212
Dismissed	2,071
Cases Pending	2,033
Source: Utah Administrative Office of the Courts	

## District Court DUI Case Outcomes

During FY 2004, Utah’s eight District Courts handled 2,533 DUI cases. Of the cases processed through the District Court, 77 percent resulted in a guilty plea or verdict. In only five cases the defendant was found not guilty. In another 15.1 percent of the cases, the case was either dismissed (377 cases) or declined for prosecution (5 cases). The following table identifies how cases were handled in District Court by judicial district. It should be noted that this table is not an accurate depiction of the District Court’s DUI conviction rate as it only examines cases that were disposed of during the fiscal year. Pending cases are not included in the data analysis.

<i>District Court Filings and Outcomes FY 2004</i>									
	<i>1<sup>st</sup></i>	<i>2<sup>nd</sup></i>	<i>3<sup>rd</sup></i>	<i>4<sup>th</sup></i>	<i>5<sup>th</sup></i>	<i>6<sup>th</sup></i>	<i>7<sup>th</sup></i>	<i>8<sup>th</sup></i>	<i>TOTAL</i>
Bail Forfeiture	1								<b>1</b>
Deceased			2	4	1				<b>7</b>
Declined			1	1				3	<b>5</b>
Dismissed	58	87	85	67	30	23	12	15	<b>377</b>
Diversion				1				1	<b>2</b>
Guilty	89	603	405	488	113	62	71	115	<b>1,946</b>
Guilty-Mentally Ill		1						1	<b>2</b>
No Contest	1	16	5	54	2		3	1	<b>82</b>
Not Guilty			2	2			1		<b>5</b>
Plea in Abeyance		15	5	28	5	4	1		<b>58</b>
Remanded		1	9	2					<b>12</b>
Transferred	1	8	22	2			3	1	<b>37</b>
<b>TOTAL Cases</b>	<b>150</b>	<b>731</b>	<b>536</b>	<b>649</b>	<b>151</b>	<b>89</b>	<b>91</b>	<b>136</b>	<b>2,533</b>
Source: Utah Administrative Office of the Courts									

## Repeat Offenders

The District Court also tracks how repeat DUI offenders are handled. In the following table, the first column lists if the offender was charged as a first-time offender or a repeat offender. The second column indicates how many of those in the first column actually met that criterion. The last column shows how the offender was sentenced.

The table shows that of the 625 DUI offenders charged as a first-time offender, only 536 actually were first-time offenders. There were, however, 690 offenders who were sentenced as first-time offenders. Discrepancies between charges and sentencing are not unusual. An offender’s sentence is dependent upon the conviction, which may or may not be the same as the offense charged due to plea bargains or court procedural issues.

The table does not add up to the 2,533 cases processed because the following cases were not included: bail forfeiture, decease, declined, dismissed, not guilty, remanded, and transferred.

<i>District Court Repeat Offender Data FY 2004</i>			
	<i>Offense was charged as</i>	<i>Offense was actually</i>	<i>Offense was sentenced as</i>
1 <sup>st</sup> Offense	625	536	690
2 <sup>nd</sup> Offense	173	222	220
3 <sup>rd</sup> Offense	211	166	166
4 <sup>th</sup> Offense	26	37	27
5 <sup>th</sup> Offense	6	14	8
6 <sup>th</sup> Offense	2	5	2
7 <sup>th</sup> Offense	3	9	5
8 <sup>th</sup> Offense	6	5	4
9 <sup>th</sup> Offense	3	3	2
10 <sup>th</sup> Offense	0	2	2
Unknown	1,034	1,091	963
<b>TOTALS</b>	<b>2,089</b>	<b>2,089</b>	<b>2,089</b>
Source: Utah Administrative Office of the Courts			

## Court Sanctions

The District Court also tracks other DUI related case information such as BAC reported, screening and assessment ordered and ignition interlock ordered. Last year, data was only available for the last six months of FY 2003; therefore, comparative data is not listed here.

The following table shows that in 30.5 percent of the cases the blood alcohol content was known. Another 84 individuals refused to submit to a BAC test and 29 individuals were charged with driving under the influence of drugs. More information about BAC levels is in Section 2 of this report.

The table also shows that judges ordered ignition interlock devices in 437 cases. More details about the use and application of these devices are provided in Section 5. In just over half of the cases an educational series was ordered. The results of a study of Utah’s *PRIME for Life* alcohol education program are included in Section 6.

DUI offenders were also notified in 100 percent of the cases that they can be subject to enhancements. This rate is a substantial improvement over last year’s 18 percent and is due to the Judicial Council’s adoption of a written enhancement notification form.

<i>District Court DUI Data</i>	<i>FY 2004</i>
Blood alcohol content known	774
Substance abuse screening and assessment ordered	60%
Substance abuse treatment ordered	55%
Educational series ordered	51%
Ignition interlock ordered	437
Supervised (non-court) probation	797
Electronic monitoring	148
Enhancement notification	100%
Source: Utah Administrative Office of the Courts	

The Driver License Division also tracks other DUI sanctions. The following table lists the average sanctions applied against DUI offenders. Not all offenders will be ordered to serve a jail sentence or perform community service hours. However, all DUI convictions will involve a fine and a surcharge. For a first offense the minimum fine is \$700. For a second offense within 10 years the fine is \$800. For a third offense or subsequent offense the fine is \$1,500.

<i>Average Jail Sentences, Community Service and Fines</i>	<i>FY 2004</i>
Average Jail Sentence	133.42 days
Average Time Suspended	128.38 days
Average Time Served	21.62 days
Average Community Service Hours	72.76 hours
Average Fine for Other Alcohol/Drug Related Convictions	\$1,268.09
Average Fine for DUI Convictions	\$1,460.46
Source: Utah Driver License Division, Utah Department of Public Safety	

## Courts Recommendation

**Continue to improve Utah’s DUI databases.** Law enforcement agencies, court personnel and driver license personnel must populate the DUI database with complete and accurate information on offenders. Justice Courts, in particular, must improve their electronic reporting capabilities.

Driver  
License

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## Driver License Control

In one month alone, the Utah Driver License Division held 1,417 license hearings, conducted 2,667 road tests, issued 40,414 driver licenses, and provided 6,982 identification cards. While license hearings do not appear to be a significant portion of the division's activities, the hearings do play a considerable role in DUI enforcement.

The Driver License Division is required by statute to suspend or revoke the license of a person that has been convicted or sanctioned for one of the following:

- Driving under the influence
- Driving with any measurable controlled substance or metabolite in the body
- Refusal to submit a chemical test
- Automobile homicide
- “No-alcohol” conditional license (the driver may not have any alcohol in his or her system)

For alcohol-related reckless driving, the Division can suspend driving privileges only upon recommendation by a judge. For the first-time DUI offender, the license is suspended for 90 days. A subsequent DUI offense will result in a one-year revocation. If the driver refused to submit to a chemical test the license can be revoked for 18 months for the first offense and 24 months for the second offense.

The Division has 14 full-time hearing officers that are responsible for holding a hearing within 30 days of the DUI offender's arrest if the offender requests in writing a hearing within 10 days of the arrest. Another handful of examiners also serve a dual function as a hearing officer. The role of the hearing officer is to determine whether there is sufficient information to warrant the suspension or revocation of the individual's license.

The driver license hearing is not an official judicial proceeding so it is not held to the same evidentiary standards as a court hearing. However, the hearings are recorded and offenders can be represented by legal counsel. It is estimated that many offenders do choose to bring an attorney to the hearing because it is often the first opportunity to learn details about the arrest and what evidence may be presented at a future court trial.

The Division is unable to take any action against a driver if the arresting officer does not appear at a hearing. To improve appearance rates, the Division offers a telephonic option, whereby officers can call in for the hearing. Drivers may also use the telephonic option.

A study of the effectiveness of Utah’s law allowing for telephonic testimony found a 20 percent reduction in the number of “no actions” taken due to the officer’s failure to appear.<sup>5</sup> The study also found that law enforcement officers surveyed were not aware of the telephonic capabilities and that some law enforcement officials do not encourage officers to become proficient in administrative license hearing proceedings or attend hearings due to strained resources.

The study’s authors point out that the time officers spend in a hearing could reduce or eliminate the amount of time required of the arresting officer during judicial proceedings if the defendant decides to plead guilty because of strong testimony by the arresting officer during the hearing. But more importantly, the absence of the arresting officers at hearings automatically reinstates driving privileges to the accused, forfeiting the chance to swiftly remove unsafe drivers from the roadways.

<i>Alcohol Hearing Statistics for FY 2004</i>						
<i>ACD Code</i>	<i>Total # of Hearings</i>	<i>No Officer</i>	<i>No Officer Telephonic</i>	<i>Other No Action</i>	<i>Total No Action</i>	<i>Total Telephonic</i>
Per Se	3,818	822	20	635	1,477	1,142
Not a Drop	163	28	1	25	54	52
Refusal	660	104	5	141	250	229
<b>TOTAL</b>	<b>4,461</b>	<b>954</b>	<b>26</b>	<b>801</b>	<b>1,781</b>	<b>1,423</b>
Source: Utah Driver License Division, Utah Department of Public Safety						

## Driver License Recommendations

**Train law enforcement officers on the use and availability of telephonic driver license hearings.** Law enforcement officers must become familiar with how to access and use the telephonic option for driver license hearings so that impaired drivers will lose their driving privileges.

**Pass legislation to consolidate and create categories of no alcohol restricted drivers.** The Legislature can improve the application of the no alcohol license provisions by consolidating them into one section of the code. Additionally, the law should prevent all DUI offenders from avoiding this restriction by creating specific offender categories that include those who refuse to take a BAC test.

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<sup>5</sup> Wiliszowski, CH and RK Jones, and JH Lacey, “Examining the Effectiveness of Utah’s Law Allowing for Telephonic Testimony at ALR Hearings,” June 2003.



## Ignition Interlock Devices

The print-out from the ignition interlock device was clear. The driver, a 45-year-old convicted DUI offender, had attempted to start his car on four different occasions but it wouldn't start. Within the course of a couple of hours, he put the keys in the ignition and then blew into the device installed in his vehicle. Each time it registered that he had alcohol in his system. Each time, the car wouldn't start, preventing the man from becoming a potential danger on the road.

Repeat offenders constitute a large portion of the drinking and driving problem. Even those offenders who have had their license suspended or revoked as a result of a DUI may continue to drive without a license. The use of ignition interlock devices (IIDs) is one method of preventing offenders who have alcohol in their system from operating a vehicle.<sup>6</sup>

Utah's DUI laws state that a judge may order IID for a first offense and shall order it for three years for a second or subsequent offense. To determine if judges were making those orders, the Utah Commission on Criminal and Juvenile Justice, at the request of the USAAV DUI Committee, conducted a survey to better understand judges' perceptions regarding IIDs as well as the circumstances surrounding their use. A total of 90 urban judges and 49 rural judges completed the survey, an 81 percent response rate.<sup>7</sup>

The survey revealed several differences between how rural judges and urban judges order IID. It appears that these differences can be attributed to primarily three areas: 1) availability of IID, 2) a judge's familiarity with IIDs, and 3) a judge's familiarity of the laws surrounding IID use and application. Additionally, rural judges were significantly less likely to order IIDs because they lack a mechanism to ensure compliance.

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<sup>6</sup> Haddon, Mike and Julie Christensen, "Ignition Interlock and DUI Offenses: A Survey of Utah Judges" *Utah Justice Research Brief*, September 2004, p.1.

<sup>7</sup> There are 115 judges in urban areas and 58 judges in rural areas.

<i>Ignition Interlock Device Key Survey Findings</i>
IIDs imposed more often for misdemeanor DUI offenders.
92% of urban judges and 28.3% of rural judges reported IID available.
Rural judges less likely to order IID due to lack of availability in their area
90% of urban judges and 75.5% of rural judges order IID when required by law.
81.6% of all judges order IID for a second or subsequent DUI conviction.
72.9% of all judges order IID for a BAC of .16 or higher.
11.5% of all judges reporting little or no knowledge of IID laws.
74.5% of all judges agreed that IIDs do not address the underlying problems associated with drinking and driving.
Source: Utah Commission on Criminal and Juvenile Justice

The fact that nearly three-quarter of judges agreed that IIDs do not address the underlying problems associated with drinking and driving is consistent with other IID research. The research suggests, however, that IIDs may be effective in controlling behavior in the short-term while other interventions are taking place. The Utah Sentencing Commission’s DUI Best Practices Sentencing Guide also concurs that IIDs have an important role in DUI sanctions, but should be applied with other sanctions and treatment.

## Ignition Interlock Recommendations

**Train judges and prosecutors on the use and application of ignition interlock devices.** Both professions require additional training on Utah’s ignition interlock laws and their application. They also need to become more familiar with how ignition interlock devices work to stop impaired drivers.

**Increase the availability of ignition interlock devices in rural areas.** Private providers need to respond to the increased need for these devices so that judges may order them when the law requires.

## Alcohol Education and Treatment

Those who work with DUI offenders tend to agree that repeat offenders have a substance abuse problem. Without treatment, there is a strong probability that the offender will drink and drive again. Utah's DUI laws require that a DUI offender be screened to determine if the individual has a potential substance abuse problem. If the screening is positive, the offender is referred for a more in-depth clinical assessment to determine if treatment or an alcohol education program is needed.

In Salt Lake County, the screening and assessment takes place at a new Assessment and Referral Service established by the county in conjunction with the University of Utah psychiatry department. Here, DUI offenders receive an objective analysis of their problem and are given recommendations for treatment. Prior to the establishment of this center, DUI offenders would often be recommended to attend treatment at the same agency that provided the screening and assessment. It then became unclear as to whether the level of service recommended was necessary.

### Alcohol Education

Utah drivers sentenced to substance abuse education attend the *PRIME for Life* program developed by the Prevention Research Institute. The 16-hour curriculum presents research-based information about the risks associated with alcohol and drug use that help participants identify lifestyle choices to reduce their personal risks<sup>8</sup>.

A nine-month study of participants from November 2002 to August 2003 indicated that the program had an impact on changing beliefs about alcohol use, increased participant's understanding of the risks associated with alcohol use, and contributed to an increased desire to change personal drinking behavior.

Providers widely agree that DUI education prepares people for treatment, speeds up their involvement in treatment and clarifies their self perception that they really need treatment. Therefore, ordering an offender to attend an education program and then attend treatment has the potential to improve treatment outcomes.

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<sup>8</sup> *PRIME for Life*, Utah, December 2003, Prevention Research Institute, p 1.

<i><b>PRIME for Life Participants and Outcomes</b></i>	
Male	80%
Female	20%
Caucasian	73.7%
Hispanic	17.1%
African-American	1.9%
Other Race/Ethnicity or No Answer	7.3%
First-Time DUI Offense	64%
Multiple DUI Offenses (16% did not answer)	20%
Described self as having alcoholism	18.3%
Have used drugs in the past year	35.4%
After completing the class, intends not to use drugs in the future	73.8%
Class taught participants things that will work (on a 1-5 scale)	4.34
Class changed participant's thinking about drinking (on a 1-5 scale)	4.2
Class changed participant's thinking about drug use (on a 1-5 scale)	3.98
Class was a waste of time (on a 1-5 scale)	1.73
Source: PRIME for Life, Utah, December 2003, Prevention Research Institute	

## DUI Courts

In Judge Michael Kwan's courtroom in Taylorsville, DUI offenders are given the opportunity to enter a plea in abeyance if they agree to complete a treatment program. A few offenders reject the program outright, unwilling to participate in the rigors and demands of a treatment program. Others do take the opportunity and successfully complete treatment. Offenders who fail treatment will have the conviction restored on their record. Those who complete the program and whose pleas are dismissed are still held accountable for the offense and can be sentenced as a repeat offender if they commit another DUI.

On the other end of town in Salt Lake City, Prosecutor Sim Gill takes a somewhat different approach to DUI, but with the same intent. He also requires offenders to enter treatment, but a plea in abeyance is not offered. The DUI conviction goes on their record and increased penalties will apply if treatment is not completed.

The aim of both courts is to reduce DUI's by getting offenders into treatment. Under SB 20, DUI Amendments, which was passed this year, the plea in abeyance approach is permissible for certain Class B DUI's if the offender enters an education or treatment program. The plea in abeyance will also count toward the enhancement of any future DUI offenses. The plea in abeyance provision will sunset on June 30, 2006 unless legislative action is taken.

A study of both courts is currently being conducted by the Utah Commission on Criminal and Juvenile Justice, with findings to be reported next year.

## New Technologies

DUI offenders that are participating in court-order treatment services may no longer have to urinate into a cup in order for treatment provider to determine if offenders are still consuming alcohol. A device call the Secure Continuous Remote Alcohol Monitor (SCRAM) uses new technology to hold DUI offenders accountable.

The device, worn on the offender's ankle, continuously monitors the offender's alcohol use and reports that information to the provider. Because alcohol is expelled from the body through the skin, the device is able to measure the alcohol as it is excreted. If offenders drink, a printout will show when they started drinking and their blood alcohol content during the drinking episode. Such information aids treatment providers in developing strategies to focus on the offender's drinking patterns and forces the offender to confront his or her problem.

The use of the device has been limited due to lack of familiarity with it and, in some cases, the expense which is \$10- \$12 per day. The device, however, can be beneficial for offenders who have a problem with alcohol and are enrolled in a treatment program.



## A Study of Utah’s DUI System

When researcher Dr. Derrick Tollefson began combing through the state’s DUI files, he couldn’t believe what he saw—or what he didn’t see. Much of the data was missing. It was unclear if the missing data was the result of random data entry errors or overall systematic data entry errors. Despite the data problems, Dr. Tollefson was urged by the study’s principal investigator Dr. Caren Frost to press on and to mine as much data as possible from Utah’s various DUI databases in order to develop a profile of impaired Utah drivers.

This section pulls from their research study, “Final Report on a Retrospective Evaluation of the Adjudication and Sanction Phases Associated with Driving Under the Influence,” that was funded by the Department of Public Safety and completed July 2004. The study covered the period of 1991 to 2001. Also contributing to the study were Mary Phillips, MEd, co-investigator, and Joslin Werstak.

<i>A Profile of the Average DUI Offender in Utah</i>
Majority of offenders are male.
Average age is approximately 33 in District Court and 35 in Justice Court.
English was spoken by the offender.
Most were charged with a class B misdemeanor.
The BAC on average was double the legal limit.
<i>Key Findings of the Study</i>
Age is not related to likelihood of re-offense.
BAC level is not related to re-offense.
If an offender is not referred to treatment, he/she is more likely to re-offend.
If counsel represented an offender, he/she is less likely to re-offend.
No one element was a strong predictor of re-offense.

The study also considered the various DUI sanctions and their application to offenders in both District and Justice Courts. The following two tables identify which age group is more likely to receive a specific sanction and to exhibit certain behaviors.

<i>Likelihood of Sanctions and Behaviors for DUI Offenders in District Court by Age Groups</i>				
<i>Sanction</i>	<i>20-25</i>	<i>26-35</i>	<i>36-45</i>	<i>46+</i>
Community service				■
Ignition interlock device	■			
Jail time				■
Alcohol education		■	■	
Restitution		■		
Random drug testing	■		■	
Refused BAC test		■		
Take BAC test	■			

<i>Likelihood of Sanctions and Behaviors for DUI Offenders in Justice Court by Age Groups</i>				
<i>Sanction</i>	<i>20-25</i>	<i>26-35</i>	<i>36-45</i>	<i>46+</i>
Court probation			■	
Fines	■			■
Ignition interlock device			■	
Victim Impact Panel	■			
Jail time				
In-patient treatment	■			
Treatment compliance				■
Restitution	■	■		
Random drug testing	■			
Refused BAC test	■			

For the qualitative analysis of the system, researchers interviewed 34 people: eight judges, five prosecutors, six defense attorneys, 10 private providers and five individuals arrested for DUI. Based on these interviews, the following profiles of first-time and repeat DUI offenders were created.

<i><b>DUI Offender Profile – First Conviction</b></i>
Offenders reported the first arrest was not the first time driving impaired.
The stigma and trauma of the first arrest does prevent some offenders from drinking and driving again.
An assessment was recommended for all first-time offenders to determine the extent of their alcohol problem.
No demographic profile of a first-time offender was evident.
<i><b>DUI Offender Profile – Repeat Conviction</b></i>
Many repeat offenders fail to take responsibility for their actions that led to their arrest.
Agreement that repeat offenders have a substance abuse problem.
Typically have a higher BAC, which may also indicate a tolerance to alcohol and an alcohol abuse problem.
May have weak social ties to family.

## Researchers' Recommendations

- Educate law enforcement and the legal system about the value of evaluating the DUI system.
- Educate stakeholders about the usefulness of recording data they are required to store.
- Assign every case a unique identifier.
- Develop and use standardized forms to collect information across the state.
- Train all individuals involved with the DUI system about the importance of accurate data entry.
- Collect data on race/ethnicity, gender and age for all cases at all levels.
- Collect employment type, number of children, marital status, and income.
- Explore the possibility of standardizing code used in prosecutor filings and convictions.
- Standardize the meaning of vocabulary used in sentencing and compliance and educate all parties.
- Develop an electronic data link between providers and courts.