

**Advisory Council on Traffic Safety**  
**March 6, 2015**  
**160 North LaSalle, 6<sup>th</sup> Floor Hearing Room**  
**Chicago, IL**

**Meeting Minutes**

**I. Introduction by Secretary White**

Secretary White called the meeting to order at 10:30am, provided background on the creation of the Advisory Council and introduced the members that were present: Senator Steve Stadelman; Representative John D'Amico; Representative Michael McAuliffe; David Bradford, Executive Director of Northwestern University's Center for Public Safety; Lt. Bill Langheim, Illinois State Police; Jeff Heck, Director of the Office of Quality Compliance and Review at the Illinois Department of Transportation; Deborah Hersman, President and CEO of the National Safety Council; and Kari Kinnard, Regional Program Manager of the National Highway Traffic Safety Administration. Members not in attendance: Senator Darin LaHood. Special Advisor Marty Dolan was also in attendance.

**II. Comments from Membership**

Secretary White commented that he had two issues to bring before the Advisory Council including the expansion of the use of breath alcohol ignition interlock devices (BAIID) and prosecution of DUI offenders by municipalities. He explained that Illinois has one of the most comprehensive BAIID laws in the nation and the devices have been very effective, so their use should be increased. Additionally, he stated the intent is not to take away the power of municipalities to prosecute DUI offenders, but rather to make sure there is truth in sentencing. Secretary White announced that, based upon the suggestions provided at this meeting, staff would prepare written proposals to be presented at the next meeting and the members may vote on them at that time. He then turned the meeting over to Brenda Glahn, Assistant General Counsel in the Secretary of State's office (SOS), for further background of the issues to be discussed.

Ms. Glahn first discussed expansion of the use of BAIID. She explained that, historically, the statutory summary suspension (SSS) was used as a way to prevent DUI's. Over time, the suspension periods grew longer and it became clear that people were driving regardless. Since that time BAIID's have become available and we know that they work. Currently on SSS, the driver gets a BAIID, but it is more of a voluntary program. The recommendation for discussion is to make BAIID's mandatory. Ms. Glahn stated that, oftentimes, the question that arises is what happens if the offender does not own a vehicle. Thoughts on this question were of particular interest for this discussion.

Ms. Glahn then spoke to the second issue, prosecution of DUI's by municipalities. She explained that convictions for DUI's are sent to SOS for processing of the suspension into the computer system. In instances where DUI's are reduced to non-alcohol or non-moving offenses, they have no impact on a person's driving record. SOS recommended that

municipalities have some restrictions on reducing DUI charges. Additionally, when a SSS is rescinded, SOS receives that order from the court for processing. Oftentimes, the court provides no reason for the rescission or simply marks a box labeled "other" without any further information to the basis of the rescission. SOS further recommended that the courts be required to provide a factual basis for a rescission and that SOS be prohibited from entering a rescission to a driving record without a factual basis.

No other members had comments at this time.

### **III. Witness Testimony**

Sam Canzoneri, Executive Director of MADD Illinois - provided a written statement (see attached).

Rita Kreslin and Cathy Stanley from the Alliance Against Intoxicated Motorists (AAIM)  
Rita and Cathy provided testimony and a written statement as follows:

Throughout the Chicago suburbs, several towns and villages use privately retained village attorneys to prosecute DUI's. They are allowed to do so by the authority of the elected state's attorney in the particular county. Despite tough DUI laws in Illinois and the automatic penalties imposed by the Statutory Summary Suspension, municipal attorneys regularly make deals that allow defendants arrested for DUI to plead to a lesser offense. Because of this practice, many individuals arrested for DUI, even though testing well over the legal limit receive reduced sentences. Along with the reduced sentences, the SSS is rescinded, and defendants are allowed to keep their driver's license.

Based upon research, AAIM's concern is that the current DUI laws are being circumvented and justice is not being served, putting Illinois citizens at risk.

AAIM's Court Monitoring Program has been working with Secretary White's office to analyze DuPage and McHenry County DUI dispositions. These reports highlighted summary suspension cases filed from 2008-2014 and the percentages of those rescinded. The reports showed that each town had a percentage of rescinded cases where a breath test was over a .10 and above. Additionally, reports noted the percentage of DUI charges that were reduced not just to reckless driving, but other unrelated charges such as leaving the scene of a crash and unlawful damage to the highway, even when there was no damage.

Another observation is that fees collected from DUI defendants are determined by each individual municipality. Typically, fees imposed by municipal prosecutors are substantially higher than those imposed by the state's attorney's office. AAIM is concerned that the safety of citizens and changing driver behavior is not the number one concern in many towns. One of the consequences of drunk driving is license suspension, and plea deals with steeper fines should not allow offenders to escape the consequences of a sentence on the DUI with reduced charges. The best deterrent to impaired driving is the loss of driving privileges, not the cost of a fine that varies from town to town.

A key problem is the ease with which a prosecutor, municipal or state, is able to create a legal fiction to present agreed rescissions. AAIM has one proposal that hopefully would

make an immediate impact on this issue: add a signature line to the bottom of the Warning to Motorist document, because attorneys often stipulate that the warning was not given. Having the defendant's signature at the bottom of the warning to motorists would all but eliminate this defense. If the defendant refuses to sign the document, then the officer can document that as well. While this is not a perfect solution, AAIM feels it should substantially drop the number of claims that the warning was not read.

Beyond a quick fix, the question becomes this: Would public safety and justice be better served if two particular practices be prohibited. The first is the practice of municipalities being allowed to prosecute misdemeanor DUI's. The second is the legal authority of the court system to handle petitions to rescind statutory summary suspensions. The following are some suggestions to consider in an attempt to change the way DUI's are prosecuted in Illinois.

1. AAIM agrees with Secretary's suggestion to move all DUI's prosecutions to the state's attorney's office. (Note: Secretary White did not make this suggestion.) The court monitoring research showed that the state's attorney's offices were less likely to grant rescissions or reduce a charge absent a true legal or factual justification, thereby promoting justice and public safety goals.
2. An additional alternative would be to move the SSS to the purview of the Secretary of State. This would prevent the SSS hearing from being negotiated as part of the criminal case, regardless of who prosecutes the offense.

Comment: We understand that this second proposal is not realistic at this point and time for fiscal and practical reasons. However, given the questions we have been asked to voice our opinion, we felt it was important to express the idea for future consideration. This issue along with other issues surrounding DUI enforcement, prosecution, civil sanctions, and sentencing need to be thoroughly studied, discussed and brought to the consensus in a State-wide effort such as a task force, not unlike the Secretary's task force that addressed teen driving issues some years ago with great success.

If however, municipal attorneys are allowed to continue to prosecute misdemeanor DUI's and the summary suspension hearings are not moved to the Secretary of State, AAIM supports legislation to amend the court statute giving municipal attorneys their authority. The municipal attorney should not be able to agree to rescind a person's suspension as part of a negotiated plea. AAIM suggests statute be amended, only allowing an agreed rescission upon the approval of the states attorney's office.

3. Streamline the processing with electronic submission of both the Sworn report, from law enforcement to the SOS, and the Confirmation Letter from the Secretary of state to the court. The quality and quantity of electronic transmission of information has greatly increased since the SSS law was first enacted. Technology could be used to combat possible errors that form the basis of these rescissions that are based upon confirmation issues. As noted in the Chicago Tribune, despite the best efforts to ensure that this paperwork is filed within the appropriate deadlines, there remains a significant problem adopting electronic technologies, as so many other states already have, would reduce errors whether they originate with law enforcement, the courts the US Mail or the SOS.

In closing, we want to express our appreciation for including us in the process of working to improve on traffic safety issues in Illinois. We believe there are many issues within this bigger problem of driving under the influence, beginning with the statutory summary suspension, all the way through to sentencing, and including the licensing issue. Moving forward, AAIM would like to see the issue of DUI drugs addressed, particularly the current legislation proposal to eliminate all aspects of the drug per se law under (a)(6). We also hope that at some point, the Secretary will also address the need for law enforcement and prosecutor trainings. Training in DUI detection and SFSTs helps to avoid common mistakes made in DUI investigations and preparing for trial and the prosecution of these offenses. AAIM asks Secretary White and the Advisory Council to consider finding a way for all Illinois traffic safety partners to come together as a community to address the issues collectively. Rather than looking at discrete issues in a piecemeal fashion, we suggest conducting a study geared toward a comprehensive review and re-evaluation of all laws related to DUI in order to achieve long term goals of saving lives.

At the conclusion of AAIM's testimony, Representative D'Amico asked for an explanation of the issue with the warning line on tickets. Rita Kreslin explained that it has been their experience that some officials write in their own signature line to confirm that the driver has been read their warning. She added that, oftentimes, plea deals occur because the attorneys argue that the defendant was not read the warning. Rep. D'Amico asked if adding a signature line would hold up in court and Ms. Kreslin responded that it would help a lot in defense of a claim that a defendant was not read the warning. She added that agreements regarding failure to read the warning statement are handled outside of the courtroom and usually never go to a hearing.

Ms. Glahn further explained that there are five options to choose from when selecting the reason for rescinding a SSS. While adding this signature line would only address abuse of one of those five options, it would take away the low-hanging fruit. Cathy Stanley stated it would be her preference to have this option removed and require defendants to go before the courts. Ms. Kreslin added that having a supervisor sign off would help prevent misuse. She also mentioned that officers in Kane County are already adding this signature line on their own accord. Ms. Stanley said she felt that state's attorneys are more focused on road safety while village attorneys have to also deal with the issue of revenue for their towns. She reiterated that increased training is also important, including for judges because DUI is a criminal offense and it seems that, in the court system, it is often thought of as a traffic offense. Ms. Kreslin commented that another reason it is important to train officers is to prepare them for trial. It was noted that McHenry County has made huge improvements since AAIM met with them.

Lt. Langheim from the Illinois State Police (ISP) asked whether the officer's report notes that he/she read the warning statement in those cases that were thrown out. Ms. Stanley responded that this was the case. Lt. Langheim explained that, as officers, it is important to make sure that is included in the reports. Ms. Stanley explained that the petition to suspend has become a deal maker because the driver gets a license suspension, but they are able to drive again. She mentioned that the Horizontal Gaze Nystagmus (HGN) report is also used in this way by turning it around on an officer to get a case thrown out and reiterated that these are reasons why more training is so important. She gave examples of two officers that have excellent training and usually do not have cases thrown out because their reports are so thorough: Officer Walters in Cook County and ISP Sergeant Hart.

Senator Stadelman asked for statistical data on how common it is for village attorneys to prosecute misdemeanor DUI's versus the state's attorneys. Ms. Stanley responded that she did not have numbers readily available, but that those cases are usually handled by village attorneys and her assumption was that there was likely an agreement made many years ago due to resource issues. Ms. Kreslin added that it is not their intention to prohibit municipalities from prosecuting these cases, but rather to get the state's attorneys more involved so there is a little more oversight in order to get a handle on situations that they feel are a little out of control. Senator Stadelman asked whether the fines in these cases are adding up to a significant amount. Ms. Stanley responded that it is definitely a significant amount, and in fact, in 2009 they found that many cases were being rescinded even when there was a blow test. Senator Stadelman then asked if someone from SOS could address current technological limitations. Ms. Glahn explained that currently, a sworn report/warning to motorists is a paper form with 6 carbon copies. Copies are given to the police officer, the offender, the court and SOS. She added that SOS is not sure where the breakdown is occurring if the order is not received, but that ISP has recently implemented the electronic program from Iowa called TRaCS and, in the future, this system might have the potential to be utilized for electronic filing of these types of documents. Lt. Langheim added that ISP is implementing the TRaCS program on April 1.

Dave Bradford asked who signs and accepts the negotiated plea bargains between attorneys and how many are rejected. Ms. Stanley answered that very few are rejected and circuit court judges sign and accept the plea bargains (these individuals are not employed by the municipalities, but rather by the court system). Deborah Hersman commented that, according to MADD statistics, Illinois had 34,000 DUI arrests in a recent year, which resulted in 14,000 convictions. For comparison, Wisconsin had 30,000 DUI arrests and 26,000 convictions. Ms. Glahn added the disparity with Wisconsin might be related to court supervisions. Ms. Kreslin suggested that AAJM could add this data to their court reports showing who prosecuted the case and if it resulted in a conviction. Ms. Stanley offered to collect this data for DuPage County and will send it to SOS for distribution to the Advisory Council members.

#### State's attorney's offices in Adams, Kane and DuPage Counties

Joseph Cullen, Kane County Assistant State's Attorney, provided testimony that Kane County represents 500,000 people, 26 police agencies and has seven local municipal counties that prosecute their DUI cases. In 2013, they had three municipalities prosecute misdemeanor DUI cases and in 2014, four additional municipalities began prosecuting these cases. These cases are for misdemeanor DUI arrests that are for first time offenders, BAC under .20, no children under sixteen in the car and no accidents with injuries, dismemberment or bodily harm. He added that in 2014, Kane County had a total of 1,300 DUI arrests.

Jennifer Cifaldi from Adams County, with a population of 60,000 people, testified that they do not allow for any municipal prosecutions of DUI offenses. Adams County's DUI conviction rate is 94.5% (highest in the state), but that they are unique because they started the DUI search warrant program 7-8 years ago. Ms. Cifaldi stated they do not reduce cases unless they simply do not exist and gave an example of an individual who had an epileptic episode while driving. In 2014, their refusal rate for the blow test was only three percent, which she credited to added training of police officers. She also said they do not do rescissions unless there was a legitimate mistake by an officer (i.e. the offender was not on a public roadway). She stated they decided to start the search warrant program when their DUI arrests for 2007 reached 500 and the program has worked because in 2014, they had only 174 DUI arrests. Ms. Cifaldi recommended

that state's attorneys and municipal prosecutors be required to keep a record of their statistics because, if there is a "report card", people will pay more attention to their records. She questioned how municipal prosecutors can be sure they are prosecuting a first time offender since the individual may have had a plea in the past. She recommended additional training and seizure of vehicles, which could result in additional revenues for municipalities when those vehicles could later be sold at auction. Ms. Cifaldi commented that, in Adams County, ISP has handled more DUI drug arrests lately versus alcohol arrests and that BAID's will not be useful if a driver is high on marijuana.

Rick Veenstra testified on behalf of the DuPage County state's attorney's office which represents a population of 930,000 people. He said 50% of their towns have retained local prosecutors for DUI's, two-thirds of the misdemeanor DUI offenses are prosecuted by municipalities and one-third are handled by the state's attorney's office. He added that Naperville has inside counsel and all of the other towns have retained outside counsel to handle these cases. Marty Dolan asked for an explanation of how Adams County gets a blow test so often, for an overview of the search warrant program and whether the program has been challenged. Ms. Cifaldi explained that, in instances where a driver denies a blow test, the officer explains they have probable cause and will apply for a search warrant. She indicated that most of the time, drivers will comply with the blow test, and if not, the officer calls her and emails a copy of the search warrant. Ms. Cifaldi then contacts a judge for approval. Once the judge approves, the officer goes to the judge's home and obtains their signature on the search warrant. A different officer takes the driver to the hospital lab and they conduct a blood draw. If the driver still refuses the blood draw, they charge the person with a felony for obstruction of justice. Ms. Cifaldi commented that DUI is the only crime where a defendant is allowed to decide whether to give over evidence. She noted that people do have the right to refuse and there are sanctions for that. When people do refuse, they are charged with a felony for obstructing justice and those individuals have always pleaded down to a DUI (which was the goal in the first place). She noted that they did get a constitutional challenge on the felony obstruction of justice charge, but the judge threw it out and the decision was not appealed.

Mr. Bradford asked the representatives from DuPage and Kane counties to provide an explanation on how Illinois benefits from municipal prosecutions. Mr. Cullen stated that local municipalities have the right to prosecute DUI's if they have local ordinances and his office does not have the legal authority to prohibit them. He further explained that it benefits his office in that they can use their limited resources for other important things. Mr. Veenstra echoed Mr. Cullen's comments and referenced *Palatine v. Regard* 136 Ill. 2d 503 (1990), which allowed municipalities to prosecute DUI's.

Ms. Cifaldi then asked those representatives if their city ordinances provide the ability to impose jail time. Both said that they do and Mr. Cullen added that they have an agreement that the municipalities do not prosecute second or higher DUI offenses. Ms. Glahn asked if they have weekly meetings with the municipalities to ensure they are staying within those parameters. Mr. Cullen responded that the police officers decide whether to charge based on their ordinance or state statute and that officers have no real interest in not enforcing the law. Mr. Bradford asked for clarification on whether the cases prosecuted by municipalities are held in circuit court or municipal court, both representatives responded that all were handled in circuit court.

Ms. Hersman asked if DuPage and Kane counties have seen a lot of DUI offenses related to drugs rather than alcohol offenses and the representatives explained that they are much lower than in Adams County, but the number is steadily increasing. She also asked if all officers are trained on detecting drug impairment to which they responded that they are not specifically trained on drug impairment. She stated that drug impairment goes beyond marijuana and noted that prescription drugs have become a huge problem. Mr. Veenstra suggested that it might be useful to consider monitoring devices that monitor things other than alcohol.

#### Larry Davis – Illinois State Bar Association

Mr. Davis stated ISBA has been working with SOS, AAIM and MADD to discuss solutions to these concerns and referenced a memo (see attached) which outlines ISBA's recommendations for future legislation. Overall, he felt there was some degree of consensus. He reviewed his proposals:

1. Elimination of the hard time penalty – He asked the Advisory Council to consider the motivations for rescission of SSS. He said that negotiations occur in court and one of the major reasons that rescissions occur is the lack of driving options during suspension. He explained that first offenders receive a 6-12 month suspension and face thirty days of no driving privileges, while second offenders receive a 1-3 year suspension and face no driving privileges that entire time. Mr. Davis added that many DUI offenders cannot go thirty days without driving. He also stated that sometimes a DUI case is not as strong, but people will still plead just to get their driving privileges back. He thought this change would reduce the number of rescissions and would also reduce the number of offenses of driving with a suspended license. Mr. Davis also mentioned HB 1446 (Rep. Nekritz) which ends the Illinois lifetime revocation law after four DUI's and allows for hardship relief with BAIID requirements.
2. Permit revisions –For those eligible for full reinstatement, Mr. Davis stated there is no reason to have time or purpose restrictions on a person's license if they are eligible for full reinstatement and recommended giving the person a probationary license instead. For those individuals eligible for restricted permits, the recommendation is to define the current guideline of "undue hardship" more broadly.
3. Expand BAIID to violations not covered by law – Currently, BAIID is not a requirement for offenses of reckless homicide where the cause is from alcohol, DUI's involving great bodily harm, or multiple DUI offenses unless they occur within ten years of each other.
4. Changes to the Administrative Hearings Department at SOS, including increasing fees for administrative hearings, streamlining the process and increasing BAIID fees.

#### **IV. Testimony From Unscheduled Witnesses**

None.

#### **V. Membership Discussion of the Topics**

Ms. Glahn noted that SOS will internally discuss the suggestions presented today and will bring back proposals and any legislation that can be drafted for the next meeting. Jeff Heck commented that he attended this meeting on behalf of IDOT Secretary, Randall Blankenhorn. He also pointed out that, in regard to the comments on IDOT grants, the

National Highway Safety Administration is probably also responsible for those grants and should get credit for that as well.

**VI. Adjournment**

The Advisory Council adjourned at approximately 12:30pm.