



# SAFETY Network

October 2009

[www.michigan.gov/ohsp](http://www.michigan.gov/ohsp)



## Teens get Driving Skills for Life through unique program

Nearly 100 teens received behind-the-wheel instruction from Michigan State Police driving instructors August 1 during a unique program sponsored by the Ford Motor Company Fund and the Office of Highway Safety Planning (OHSP).

OHSP was awarded \$20,000 to implement the Driving Skills for Life (DSFL) program that included hands-on instruction in skid control, evasive maneuvering, controlled braking, and emergency off-road recovery. Training also involved a session on the interactive DSFL Web site.

DSFL is designed to assist young drivers improve their skills in four key areas that are critical factors in more than 60 percent of teen vehicle crashes: hazard recognition,

vehicle handling, space management, and speed management.

Ford and the Governors Highway Safety Association established DSFL in 2003 to teach teens the necessary skills for safe driving, beyond what is taught in traditional driver's education classes.

While many teens attended because their parents signed them up, all seemed to enjoy the session. The coordinator of the program received nearly twenty phone calls and e-mails from parents the week following the event, stating it was a great program and their teens definitely learned something.

## OHSP to address distracted driving, speeding, and impaired driving in 2010

The Office of Highway Safety Planning (OHSP) enters 2010 with an emphasis on driving fatalities downward toward a goal of zero fatalities on Michigan roadways. OHSP has a long history of successful partnerships with committed traffic safety professionals across the state and the nation. Capitalizing on this "strength in numbers" philosophy will enable OHSP to make the most out of its efforts to decrease traffic deaths and injuries.

Over this next fiscal year, OHSP will be devoting a great deal of time and attention to the development of public information and education campaigns to address those traffic safety issues that not only show up in the data but have caused safety concerns among the motoring public. These issues include speeding, distracted, drowsy, and aggressive driving. OHSP will develop campaigns to address the dangers of text messaging and cell phone use while driving, particularly among young drivers.

Child passenger safety will continue to be promoted through public education, training, and car seat distribution programs. OHSP will launch a second phase of booster seat education for parents and caregivers and will expand distribution of car seats to the state's low income populations.

High-visibility traffic enforcement will remain a key strategy in FY 2010. As seat belt use *Continued on page 2 >*

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## 2008 Drunk Driving Audit reveals decreases in alcohol-related offenses, but increase in drug involvement

The 2008 Michigan Drunk Driving Audit shows declines across the state in alcohol-related crashes, injury crashes, injuries, and overall arrests, but notes increases in crashes and deaths involving drugs.

Overall, fatalities resulting from alcohol and/or drug-related crashes decreased slightly from 381 in 2007 to 379 in 2008. However, traffic deaths involving drugs jumped 43 percent from 98 in 2007 to 140 in 2008. Some of this increase can be attributed to increased testing as a provision in Michigan's .08 BAC drunk driving law made driving with any trace of drugs such as heroin, marijuana, or cocaine in a person's system illegal.

The number of people injured in crashes involving alcohol and/or drugs also declined last year, dropping from 7,159 in 2007 to 6,248 in 2008.

The Drunk Driving Audit, an annual report issued by the MSP Criminal Justice Information Center, includes arrest activity by law enforcement agency for each county, as well as crash, injury, and fatality information by county. The report is a collaborative effort between the MSP and the Michigan Department of State.

In 2008, 47,251 alcohol and drug-related driving arrests were made, a drop of more than 2,600 from 2007. More than three times as many men as women were

arrested for impaired driving offenses, with 35,508 men arrested compared to 11,743 women.

Of those arrests, 45,162 resulted in operating under the influence of liquor or impaired driving convictions. Some of these convictions may include arrests made in prior years.

The 2008 Drunk Driving Audit is available online. To view the entire report, visit [www.michigan.gov/msp](http://www.michigan.gov/msp), then click on Publications, Forms & Statistics. Next, click Statistical Information and then choose Drunk Driving Audit.

## Smith and Jarema honored with MADD Life Saver awards

Macomb County Prosecuting Attorney Eric Smith and Charlevoix County Prosecuting Attorney John Jarema were presented Mothers Against Drunk Driving Life Saver Awards for Prosecutors during the prosecutors' annual state conference in July.

During Smith's tenure as Macomb County prosecutor, he has been relentless in ensuring offenders are held accountable to the fullest extent of the law. Nominators singled out the upcoming trial of Frances Dingle who has been charged with four counts of second degree murder as an example of this dedication. Dingle allegedly had a BAC of .23 when she broadsided a car carrying four teenagers on March 16, 2009.

In Charlevoix County, Jarema has been involved in the development and implementation of a sobriety court at the district court and a juvenile drug court at the probate court. He has also been instrumental in the formation of the multi-jurisdictional drug death team and instituted a program



*Prosecuting Attorney Eric Smith of Macomb County and Prosecuting Attorney John Jarema of Charlevoix County were presented Mothers Against Drunk Driving Life Saver Awards for Prosecutors during the prosecutors' annual state conference in July.*

where families can have confidential drug testing conducted on their teens through a local substance abuse agency with funds generated through fees for drunk driving offenses.

These funds have also helped several schools and agencies obtain passive alcohol sensor flashlight/breathalyzers for early detection and prevention of drunk driving.

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approaches 100 percent, focus will shift toward impaired driving, where much room for improvement still exists. Strict zero-tolerance enforcement supported by effective public messaging strategies have proven to change driver behavior and will continue to be employed. Support for the prosecution, adjudication, and treatment of drunk drivers is also an essential component to address this issue.

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## Manistee woman Saved by the Belt in three-vehicle crash

A Manistee woman's decision to buckle up saved her from serious injury in a July crash and garnered her a Saved by the Belt award from the Office of Highway Safety Planning and AAA Michigan.

On July 28, 2009, Lindsay Merkey was stopped behind a vehicle waiting to turn left off of US-31 in Manistee Township when a third vehicle failed to brake and struck the rear of her car. This pushed Merkey's vehicle into the vehicle in front of her, causing the air bags to deploy. Merkey's Buick Century then bounced into the southbound lanes of US-31 where it was struck once again, this time head-on by a southbound car.

Merkey's vehicle sustained extensive damage and as the airbags deployed during the initial crash they offered no protection during the final head-on collision, according to the nomination submitted by First Lieutenant Brian Postma of the Michigan State Police Manistee Post. Only the seat belts prevented Merkey from

being ejected through the windshield or seriously injured.

Saved by the Belt award recipients receive a travel mug provided by AAA, along with a certificate. Recipients are also provided the option to share their story to help promote the use of seat belts and child safety restraints through media releases provided to local media by OHSP.

More information and copies of the nomination form can be downloaded from OHSP's Web site at [www.michigan.gov/ohsp](http://www.michigan.gov/ohsp). Questions concerning the Saved by the Belt program may be directed to Lynn Sutfin, OHSP's Public Information and Marketing Coordinator, at (517) 333-5754 or [sutfin@michigan.gov](mailto:sutfin@michigan.gov).



## Hospitals receive free car seats for Child Passenger Safety Week

To aid in providing car seats to families in need, the Michigan Office of Highway Safety Planning (OHSP) provided 120 car seats to the state's four children's hospitals to share with families during Child Passenger Safety Week, September 12 - 18.

Children's Hospital of Michigan in Detroit, C.S. Mott Hospital in Ann Arbor, DeVos Children's Hospital in Grand Rapids, and Bronson Methodist Hospital in Kalamazoo each received seats purchased using federal traffic safety funds through a grant with the Michigan Department of Community Health.

Just-released results from a 2009 observation survey of booster seat use in the state notes an increase in use. When the booster seat law was enacted in July 2008, only 37 percent of children ages four to seven were using booster seats and one year later that number grew to 51 percent.

Michigan's car seat law requires all children to ride in a car seat or booster seat until they reach eight years old or 4'9" tall, whichever comes first. New this year, the law also mandates children under age four to ride in a car seat and in the back seat of a car or truck if a back seat is available.

Since 2003, the number of children ages 0-7 years killed while riding in cars has dropped 56 percent. Last year, 14 Michigan children ages birth to seven were killed or seriously injured in traffic crashes where they were not in a car seat or in an ill-fitting or improperly installed car seat.

When used correctly, car seats are 71 percent effective in preventing death and 50 percent effective in preventing injuries.

Parents and caregivers who attend a car seat check will learn how to safely transport children by using the appropriate car seat or seat belt correctly. A certified child passenger safety technician will give one-on-one guidance to the parents on correct installation and use of their child's seat.

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## How the *Melendez-Diaz v. Massachusetts* decision could affect Michigan OWI cases

By Kenneth Stecker

Traffic Safety Resource Prosecutor, Prosecuting Attorney's Association of Michigan

Crime laboratory reports are key pieces of evidence in a large number of criminal trials throughout Michigan. Crime laboratories analyze a wide array of materials that determine the guilt of the defendant: the identification of illegal drugs, biological evidence such as hair, blood, urine, and semen, the results of the bodily alcohol content of drunken drivers, ballistic tests, fingerprint identification, autopsy reports, and much more.

In 2004, in *Crawford v. Washington*, 541 U.S. 36 (2004), the United States Supreme Court revolutionized the Confrontation Clause of the Sixth Amendment to the United States Constitution. In *Crawford*, the court ruled that the government may not introduce a testimonial statement made by a witness unless it shows that the witness is unavailable and that the defendant had a prior opportunity to cross-examine the witness. This decision had an immediate, profound effect upon the ability of prosecutors to prove their cases through the use of evidence which had previously been admissible via various exceptions to the hearsay rule.

On June 25, 2009, following the ruling in *Crawford*, in *Melendez-Diaz v. Massachusetts*, the United States Supreme Court ruled that it was a violation of the Sixth Amendment right of confrontation for a prosecutor to submit a chemical test report without the testimony of the lab analyst.

### SUMMARY OF THE FACTS:

Luis Melendez-Diaz was arrested while making a cocaine sale in a parking lot in Massachusetts. At trial, bags of the cocaine alleged to have been distributed by Melendez-Diaz were introduced into evidence along with drug analysis certificates prepared by the lab technician who analyzed the drugs and identified them as cocaine. A jury convicted Melendez-Diaz

of distributing and trafficking cocaine. Melendez-Diaz appealed, arguing that the state's introduction of the drug analysis certificates violated his Sixth Amendment right to confront witnesses against him under the court's ruling in *Crawford v. Washington*.

The Massachusetts Court of Appeals rejected Melendez-Diaz's claims in an unpublished opinion, referring to them in a short footnote as "without merit." The Massachusetts Supreme Court also denied his appeal. The United States Supreme Court granted certiorari.

### ISSUE:

Is a state forensic analyst's laboratory report prepared for use in a criminal prosecution "testimonial" evidence subject to the demands of the Sixth Amendment's Confrontation Clause as set forth in *Crawford v. Washington*?

### RULING:

The Supreme Court held that a state forensic analyst's laboratory report that is prepared for use in a criminal prosecution is subject to the demands of the Sixth Amendment's Confrontation Clause. With Justice Antonin G. Scalia writing for the majority and joined by Justices John Paul Stevens, David H. Souter, Clarence Thomas, and Ruth Bader Ginsburg, the court reasoned that the laboratory reports constitute affidavits which fall within the "core class of testimonial statements" covered by the Confrontation Clause. Therefore, when Mr. Melendez-Diaz was not allowed to confront the persons who created the laboratory reports used in testimony at his trial, his Sixth Amendment right was violated.

Justice Thomas wrote a separate concurring opinion, emphasizing that he thought the Confrontation Clause was only implicated by statements made out-

side the courtroom when they are part of "formalized testimonial materials." Justice Anthony M. Kennedy dissented and was joined by Chief Justice John G. Roberts, and Justices Stephen G. Breyer and Samuel A. Alito. He criticized the majority for dispensing with the long held rule that scientific analysis could be introduced into evidence without testimony from the analyst who produced it.

### How *Melendez-Diaz* may apply to OWI breath and blood-test cases in Michigan?

#### BREATH-TEST CASES:

The two key admissible documents in an OWI breath-test case are the: (1) BAC DataMaster Evidence Ticket (i.e. identifying defendant, defendant's address, DOB, license number, date, time of the test(s), BAC level, operator's name, officer's signature, start observation time, and the instrument serial number) and (2) Evidential Breath Testing Logs (i.e. identifying the day of the simulator test, operator ORI number, equipment accuracy number, instrument location, instrument number, alcohol standard control number).

- (1) BAC DataMaster Evidence Ticket precludes admission without the presence at trial of the officer who operated the DataMaster when defendant blew into it producing his or her test result(s). This procedure of calling the breathalyzer operator to testify will not change.
- (2) Evidential Breath Testing Logs has been litigated post-*Crawford* in Michigan.

In *People v. Hagadorn*, No. 269825 (Mich. App., decided April 21, 2007), the Court ruled that the DataMaster logs are not testimonial, thus their admissibility is not governed by *Crawford*.

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Nevertheless, law enforcement and prosecutors should anticipate that this issue will be raised under *Melendez-Diaz*. The defense will most likely argue admission of the evidential breath testing logs without the technician's presence at trial violates the right to confront the witness. The defense will most likely argue that the evidential breath testing logs are plainly affidavits made for the purpose of establishing or proving some past fact and are functionally identical to live, in-court testimony doing precisely what a witness does on direct examination. Additionally, the documents are made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial; thus, defense counsel will argue, the breathalyzer operator must be available for in-court confrontation.

Law enforcement should be aware when they are called to testify on this issue that the breathalyzer logs do not mention a specific OWI defendant in any way. They do not name a defendant, they do not show a BAC level, and further, the instrument is inspected, verified for accuracy, and certified by a Class IVB operator of the instrument manufacturer's authorized representative every 120 days regardless whether a defendant is arrested for OWI.

## **BLOOD-DRAW CASES:**

The one admissible document in an OWI blood-draw case is the report from the state crime lab showing BAC level or controlled substance level. *Melendez-Diaz* is almost directly on point and precludes admission without the presence at trial of the analyst for all the reasons the laboratory report in *Melendez-Diaz* is distinct from the evidential breath testing logs. The Michigan State Police crime laboratory report in an OWI case is specific to a particular defendant, it identifies him or her by name, it identifies the substance connected to him, i.e., found in his or her blood or urine, it is only produced because defendant was being prosecuted and would not have been produced if defendant had not been arrested, and when it was produced the "past crime" had already happened. This will not change anything that prosecutors have been doing all along in OWI cases.

An OWI blood-draw case generally is brought using the arresting officer, the person who did the blood draw, and the analyst, but nobody else in between who handled the blood vial (i.e. the person who drove it to the laboratory, if it wasn't mailed) and any other missing links in the chain of custody. A defense attorney may insist that all the witnesses forming the entire chain of evidence must be present at trial, and that would affect the way some offices are prosecuting OWI

cases. For example, if the prosecutor asks the analyst how the lab comes into possession of the blood vial and the analyst starts to answer that "officer so-and-so usually drives over a basketful of vials twice a week so I assume that's how we got this sample," that could arguably be objectionable under *Melendez-Diaz*.

Therefore, it is imperative that when law enforcement is doing an OWI blood draw, that law enforcement thoroughly document who was involved in handling the evidence just in case the defendant and his/her attorney raises the *Melendez-Diaz* case.

*For more information on these cases and statutes and PAAM training programs, contact Kenneth Stecker, Traffic Safety Resource Prosecutor, at (517) 334-6060 or e-mail at steckerk@michigan.gov. Please consult your prosecutor before adopting practices suggested by reports in this article. The court decisions in this article are reported to help you keep up with trends in the law. Discuss your practices that relate to these statutes and cases with your commanding officers, police legal advisors, and the prosecuting attorney before changing your practices in reliance on a reported court decision or legislative change.*

## **NETS launches interactive, Web-based tool kit to promote Drive Safely Work Week**

Regardless of job title or rank, getting home safely is the most important thing any employee will do all day.

Traffic crashes are the number one cause of death and injury in the workplace. In addition to the pain and suffering caused, traffic crashes cost employers more than \$60 billion annually in the United States alone. Studies by the National Highway Traffic Safety Administration have concluded that 80 percent of all crashes and

65 percent of near-crashes are due to some form of driver inattention.

To combat the issue, the Network of Employers for Traffic Safety is sponsoring Drive Safely Work Week October 5-9, a national workplace traffic safety campaign to educate employees on targeted issues in safe driving.

This year's campaign theme, "Drive Focused-Drive Smart-Get Home Safely" focuses on the issue of distracted driving.



NETS has created a Web-based campaign kit that includes messages, graphics, fact sheets, activities, and a distracted driving self-assessment that can be distributed via e-mail to employees. By answering a series of questions on driving behavior, employees can discover how their driving habits rate on a scale developed by a panel of driving-safety experts.

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## Annual drunk driving crackdown results in fewer drunk driving arrests

Drunk drivers arrested during the recent *Over the Limit. Under Arrest.* crackdown are just beginning to deal with the ramifications of their arrest; however, the positive news is that more people heeded the campaign's warnings resulting in fewer drunk drivers on the road and fewer arrests.

This year, officers made more than 13,000 traffic stops compared to 11,770 last year, yet arrested 200 fewer drunk drivers. During this year's three-week enforcement period, August 21-September 7, 552 motorists were arrested for drunk driving, while 770 were arrested in 2008.

The annual *Over the Limit. Under Arrest.* drunk driving crackdown also netted 67 drug-related arrests, 108 open intoxication citations, 248 seat belt and child seat citations, and 32 other alcohol-related arrests.

The Michigan Office of Highway Safety Planning coordinated the *Drunk Driving. Over the Limit. Under Arrest.* crackdown by administering federal traffic safety funds to more than 300 agencies in 54 counties including: Allegan, Alpena, Barry, Bay, Berrien, Branch, Calhoun, Cass, Cheboygan, Chippewa, Clare, Clinton, Delta, Eaton, Emmet, Genesee, Grand Traverse, Hillsdale, Huron, Ingham, Ionia,

Isabella, Jackson, Kalamazoo, Kent, Lapeer, Lenawee, Livingston, Mackinac, Macomb, Marquette, Mason, Mecosta, Menominee, Midland, Monroe, Montcalm, Muskegon, Newaygo, Oakland, Oceana, Ogemaw, Osceola, Ottawa, Saginaw, Sanilac, St. Clair, St. Joseph, Shiawassee, Tuscola, Van Buren, Washtenaw, Wayne, and Wexford.

During the crackdown, six drunk driving victims and their families across the state were recognized and remembered as law enforcement officers across the state dedicated patrols to them.

Officers will again work federally funded overtime enforcement during Halloween weekend. Timeframes for stepped up enforcement are selected based on crash data, agency participation and officer availability.

Preliminary results show there were 14 traffic fatalities in Michigan over the Labor Day holiday weekend, two of which involved alcohol, according to the Michigan State Police, Criminal Justice Information Center. In comparison, 12 people died in traffic crashes during the 2008 Labor Day holiday weekend, four of which involved alcohol.

## Deer crash coalition unveils new Web site

As Michigan enters the two highest months for deer-vehicle collisions — October and November — the Michigan Deer Crash Coalition (MDCC) has launched a new Web site, [www.michigandeercrash.org](http://www.michigandeercrash.org), to provide motorists with tips for preventing these types of crashes.

The MDCC encourages motorists to "think deer" whenever they are behind the wheel, and drive defensively as a deer can appear at any moment. Motorists are also reminded to fasten their seat belts as buckling up is their best defense in a crash.

As an additional reminder, October has been proclaimed as "Michigan Car-Deer Crash Safety Awareness Month" by Governor Jennifer M. Granholm.

According to the Michigan State Police Criminal Justice Information Center, there were 61,010 deer-vehicle crashes in 2008, down from the 61,907 crashes reported in 2007. However, officials note that many crashes also go unreported, so actual crash numbers are much higher. These types of crashes account for at least \$130 million in damages annually.

More than 19 percent of all crashes in Michigan involve deer. Last year, 12 motorists were killed and 1,648 were injured as the result of a vehicle-deer crashes, compared to 11 fatalities and 1,614 injuries the previous year.

Nearly half of all car-deer crashes occur in the October-to-December mating season when deer are very active, and crashes spike again in spring when the season's first grass appears along highway rights-of-way.

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## Nominations sought for GTSAC traffic safety awards



Nominations are being accepted for the 2009 Governors Traffic Safety Advisory Commission (GTSAC) awards.

Each year the GTSAC honors organizations, programs, and/or individuals by presenting awards for outstanding contributions to traffic safety in Michigan.

Individuals or organizations may be nominated by a person who is familiar with the activities for which the nominee is being considered. A person/organization may only be nominated in one category. No self nominations are accepted, however, a person may nominate a program, organization, or activity they are involved in.

Nominees must be a Michigan resident or an organization located in the state. All entries must be postmarked on or before November 13, to be considered.

Entries will be judged by representatives of the GTSAC. Awards will be presented on March 31, 2010, at the Michigan Traffic Safety Summit in East Lansing.

Nomination forms are available at [www.michigan.gov/ohsp](http://www.michigan.gov/ohsp).

**SAVE THE DATE:** TRAFFIC SAFETY SUMMIT IS MARCH 30-APRIL 1



The Michigan Traffic Safety Summit is being held March 30 - April 1, 2010, at the Kellogg Center in East Lansing.

More information about registration and hotel reservations will be available in the coming months at [www.michigan.gov/ohsp](http://www.michigan.gov/ohsp).

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**If a crash with a deer is unavoidable, the MDCC recommends drivers:**

- >> Don't swerve
- >> Hold onto the steering wheel with both hands
- >> Brake firmly and come to a controlled stop
- >> Move vehicle well off the roadway after the collision

**Additional tips include:**

- >> Slow down, especially if deer are seen along the roadway
- >> Watch for deer, especially at dawn and dusk when they are most active

- >> Deer often travel in herds, if one deer is spotted, assume more deer are nearby
- >> Be alert all year long, especially on two-lane roads

MDCC members are: AAA Michigan, Insurance Institute of Michigan, Michigan Department of Natural Resources, Michigan Department of State, Michigan Department of Transportation, Michigan Sheriffs' Association, Office of Highway Safety Planning, SEMCOG (Southeast Michigan Council of Governments), State Farm Insurance, and Traffic Improvement Association.

## What's Ahead

### OCTOBER

**International Walk to School Month**

[www.walktoschool.org](http://www.walktoschool.org)

5-9 **Drive Safely Work Week**

[www.trafficsafety.org/drivesafelyworkweek](http://www.trafficsafety.org/drivesafelyworkweek)

8 **Walk to School Day**

[www.walktoschool.org](http://www.walktoschool.org)

18-24 **National Teen Driver Safety Week**

[www.chop.edu/youngdrivers](http://www.chop.edu/youngdrivers)

19-23 **National School Bus Safety Week**

[www.napt.org](http://www.napt.org)

### DECEMBER

**National Drunk & Drugged Driving (3D) Prevention Month**

[www.stopimpaireddriving.org](http://www.stopimpaireddriving.org)

16-1/3 **Drunk Driving. Over the Limit.**

**Under Arrest. National Crackdown**

[www.stopimpaireddriving.org](http://www.stopimpaireddriving.org)

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