

MODULE A-3
COPING WITH HOSTILITIES
AND
EXPLANATION OF TEXAS LAWS
(95 MINUTES)

I. PURPOSE

The purpose of this module is to breakdown hostilities, to allow participants to become involved, to explain necessary alcohol/drug traffic laws, and to begin instruction on alcohol and drugs.

II. PERFORMANCE OBJECTIVES

Participants will:

- A. Give the blood alcohol concentration necessary for intoxication in Texas.**
- B. Describe the Texas Implied Consent Law.**
- C. Be able to relate basic penalties for DWI in Texas.**
- D. Tell whether laws for driving under the influence of drugs differ from those for alcohol.**

III. ACTIVITIES AND CONTENT

A. Hostility Breakdown and Laws (60 minutes). Up to this point, the instructor has primarily led the class. This module seeks to involve all persons in the class. Most of the participants will be hostile, ashamed, overly cooperative, or apprehensive. Unless the instructor can overcome these barriers, there is little chance for successful teaching and learning. In order to alleviate these fears and hostilities while presenting cognitive information about laws with regard to alcohol/drugs and traffic safety, the technique described herein must be used.

1. Ask for volunteers to explain what happened at the time of his/her arrest; describe his/her treatment by the police; tell what his/her BAC was; ask questions about the law; or in general say anything he/she chooses about his/her arrest. While all persons should be invited and encouraged to speak, do not force people to reveal more than they desire to if they seem very reluctant to talk.
2. Listen carefully to the story being told, but do not express any value judgments about the truthfulness of the story. After the person has finished speaking, follow up by explaining any incorrect things brought out about the law or answer/explain any law related to their situation. For example:

Instructor: Who would like to tell me what happened at the time of his/her arrest? Ok, Batson, go ahead.

Batson: Well, I left the Loma Linda Club at about 1:15 a.m. and was headed home. A cop pulled me over about ten minutes later.

Instructor: Had you been drinking?

Batson: Yes, but I had only 3-4 beers.

Instructor: Why did the officer say he stopped you?

Batson: He said I did not have my headlights on. It was a full moon, and with the streetlights, I guess I did not notice and I forgot to turn them on.

Instructor: Did he ask you to take a breath test?

Batson: Yes, but I refused.

Instructor: What is the law in Texas for refusing a test? (If correct answers are given, provide positive feedback; if incorrect answers are provided or no answers are given, the instructor

should review the basic aspects of the law. These are found at the end of this module.)

Instructor: Do you have any questions, Batson?

Batson: I don't think so.

3. Ask for another volunteer and repeat the process completed in #2. This procedure should be continued until all persons who wish to speak have had the opportunity to tell their stories. In classes which have fewer than 15 persons, the instructor should seek to involve **all** participants if at all possible. For larger classes, at least 15 people should be involved. However, it may not be feasible to involve all participants because of time and the tendency for many stories to sound alike after a period of time. (***NOTE: The 1 hour suggested for this section assumed 3-4 minutes per person on average based on a typical DWI education class size.***) In addition, the instructor should space out his/her explanation of laws so that not all of the law concepts are covered with the first few people. For example, the Implied Consent Law has at least **seven** different provisions. They should not all be explained at one time in response to a person's questions or response.

This procedure allows the person to vent any hostility which may have been previously locked inside.

The instructor makes no judgmental statements and, at this point, accepts the comments at face value. Inevitably, questions concerning implied consent; BAC; levels at which a person is considered to be legally impaired; the reliability of the breath analysis versus blood analysis techniques as a measure of Blood Alcohol Concentration; and other similar questions are asked. This procedure enables the instructor to give accurate information in a non-lecture format.

If a particular question about the law is not asked by a participant, the instructor asks the question at an appropriate place.

This often leads to more discussion than participant questions as there are always several class members who have ready, although usually incorrect, answers to any questions. In all cases, be certain the following have been covered:

- a. First offense penalties
- b. Second, third, and subsequent penalties
- c. Implied Consent Law/ALR
- d. Definition of intoxication
- e. License surcharge for DWI
- f. Open Container and Open Container Enhancement

While it is important that each instructor have a working knowledge of Texas DWI laws, it is not possible to memorize every statute. However, the instructor must know where to find correct information on **all** DWI related laws.

The resource section of the module provides a synopsis of Texas alcohol/drug traffic laws. Although this may be used as a quick reference guide, it does **not** replace the need for each instructor to obtain and have ready for use copies of the following publication:

Gould Publications of Texas, Inc.

1333 North US Highway 17-92

Longwood, FL 32750-3724

(800) 717-7917

<http://www.gouldlaw.com>

E-mail: info@gouldlaw.com

This resource contains the exact wording of the laws related to DWI and alcohol/drug use related to driving and is essential should any related question arise.

In addition, a copy of the most current laws related to alcohol offenses are found in the Resources section of the manual.

Summary – *This hostility breakdown exercise will be very helpful in getting class members to participate. Generally, by the time each person has had an opportunity to speak, the group has relaxed and come to feel that there is a common bond among them and also that the class will not be the drudgery they anticipated. The instructor should remember, however, that the hostility breakdown and law explanation parts are to be **jointly** presented.*

B. Review of Laws (20 minutes)

After all persons have had an opportunity to speak, the instructor should use **PP Slides 9-14** to briefly review basic DWI laws. These slides must not be used until after completion of the hostility breakdown process previously described. To do so would stifle the involvement process crucial to the exercise. If detailed discussion and explanation of any of these laws have already taken place during the hostility breakdown exercise, very little time should be devoted to that law at this time.

(NOTE: This section does not address DUI by Minors, ALR, or Implied Consent as they relate to minors.)

- 1. Texas DWI Law** – A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place. This is the basic statute which makes it illegal to drive while intoxicated.

(NOTE: Texas law also makes it illegal to operate an aircraft or

a watercraft while intoxicated.) After briefly covering this, the instructor should then explain the definition of intoxication, operation, and public place unless they have been covered as part of the hostility breakdown exercise.

a. **Intoxication PP Slide 9 "Definition of Intoxication in Texas"**

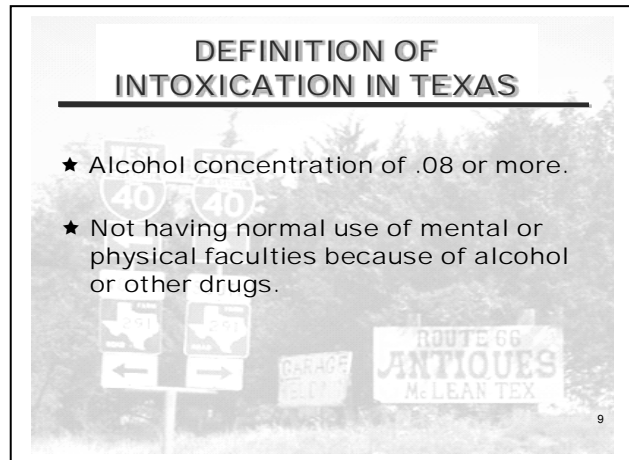
The purpose of this slide is to be sure that participants understand that there are two definitions of DWI in Texas. The instructor should briefly review each of these.

- (1) "Having a blood alcohol concentration of 0.08% BAC or more."

This means that if a person is 0.08% BAC or more, then intoxication is established. This is

referred to as "intoxication per se," and a conviction may be obtained regardless of how a person looked, acted, or talked.

- (2) "Not having normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of these substances, or any other substance into the body." This means that if a person does not have enough alcohol in his/her bloodstream to register 0.08% BAC, but he/she has alcohol or some drug or controlled substance in his/her bloodstream, then such person can be convicted of DWI if his/her normal abilities are impaired. If using PowerPoint, only the "not having normal use of



PP Slide 9

mental or physical faculties” would appear on the first slide. The instructor should ask the class if this is a definition of intoxication. The instructor should then click again to reveal “Because of alcohol or other drugs” and explain that losses not caused by alcohol or other drugs do not constitute intoxication.

2. Administrative License Revocation Law (ALR)

The purpose of this law is to provide for swift and certain removal of the license of any driver who fails (.08 or greater, or any detectable amount of alcohol for minors) a legally offered breath or blood test. It is a civil procedure, apart from a DWI charge and has been shown to reduce alcohol-related deaths in other states. The provisions of **PP Slide 10 "Administrative License Revocation (ALR)"** are:

a. Person is arrested for DWI, Intoxication Assault, or Intoxication Manslaughter.

b. Failing breath/blood test (failure is having a BAC of .08 or greater or any detectable amount of alcohol for minors).

c. Loss of license penalties:

- 90 days if no alcohol/drug enforcement contacts in last ten years.
- One year if one or more alcohol/drug enforcement contacts in last ten years.



ADMINISTRATIVE LICENSE REVOCATION (ALR)
(*FAILED TEST*)

- ★ ARRESTED for DWI, Intoxication Assault, or Intoxication Manslaughter
- ★ Test is taken and failed (.08 or greater)
- ★ Adult Penalty - Loss of license
 - ★ 90 days if no alcohol/drug contacts in last ten years
 - ★ 1 year if one or more alcohol/drug contacts in last ten years
- ★ Officer takes possession of license
- ★ Temporary license for 40 days
- ★ \$125 reinstatement fee

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PP Slide 10

(NOTE: Alcohol/drug enforcement contacts means a driver's license suspension, disqualification, or prohibition order resulting from conviction, refusal, or failure [TRC 524.001(3) (A) (B) (C)].)

- b. An appeal process is available to insure that due process is followed and that people's rights are not violated.
- c. A fee of \$125 is required to reinstate any license which has been suspended.
- d. The officer takes physical possession of the license at the time of arrest and issues a temporary license good for 40 days. (If a Commercial Driver's License, it is not effective for first 24 hours.)
- e. The arrested person must be notified that a request for hearing will stay the expiration of the temporary license until the outcome of the hearing is final. DPS must provide the person notification which extends the 40 day license.

3. Implied Consent Law PP Slide 11 "Implied Consent Law"

Under certain conditions, drivers in Texas are deemed to have given their consent to provide chemical samples for purposes of analysis. The Texas Implied Consent Law (commonly called the Breath Test Law) has a number of provisions:

IMPLIED CONSENT LAW
(REFUSED TEST)



- ★ Arrested operating motor vehicle or a watercraft of 50 hp or greater
- ★ Refuse breath or blood test
- ★ Adult Penalty - Loss of license
 - ★ 180 days if no alcohol/drug contact in last ten years
 - ★ Two years if one or more alcohol/drug contacts in last 10 years
- ★ License taken at time of arrest and 40 day temporary license issued
- ★ \$125 reinstatement fee

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PP Slide 11

- a. The first provision is that a person must “operate a motor vehicle in a public place in this

state or a watercraft of 50 horsepower or greater." The instructor should point out that the statute makes **no** mention of having or signing a driver's license.

- b. The person **must be arrested** "for an offense arising out of acts alleged to have been committed while a person was operating a motor vehicle or watercraft while intoxicated." This is similar to the "probable cause" concept used in other types of arrests. Unless the person committed some driving infraction for which he was arrested, no test can be required.
- c. The person must refuse the test.
- d. The test may be either a blood or breath test at the discretion of the officer. The arrested person is **not** permitted to choose as a matter of law. If a person takes the test offered by the officer, he or she may request an additional test within two hours and introduce this as evidence. This additional test may be only a blood analysis.
- e. Loss of license penalties (TRC 724.035):
 - 180 days – no alcohol/drug contacts in last ten years
 - Two years if one or more alcohol/drug contacts in last ten years
- f. License taken at time of arrest and a temporary 40 day license is issued
- g. \$125 reinstatement fee
- h. The fact that a person refused to submit to a chemical test may be introduced in court. (***NOTE: Stress this fact to help overcome the idea that it is always better to refuse a test.***) (If a person only had a small amount of alcohol, why would he/she not want to take a test to prove this?) The use of videotape to record the actions and behavior of a person arrested is often done in

conjunction with administration of a chemical test for intoxication. Refusal to be taped is not grounds for any license loss. Typically, persons are videotaped answering questions and performing various physical tests (walking a straight line, standing on one leg, etc.). This evidence may be used in court by either side. Only counties with more than a 25,000 population must have such video equipment and there is no requirement that this equipment must be used. **(NOTE: Senate Bill 1 in 1983 included videotaping as part of the bill, but it has not been codified. Case law has upheld this statute.)** A copy of this portion of the bill is found in the Resource Section.

- i. A request for a hearing stays the loss of license until the final results of the hearing.

(NOTE: The same hearing and reinstatement procedures apply for implied consent refusals as for ALR failures.)

4. Basic DWI Penalties in Texas

PP Slide 12 "DWI Penalties in Texas"

The purpose of this slide is to briefly cover the three basic penalty areas for a DWI (fines, license suspension, jail). Penalties related to intoxication manslaughter, intoxication assault, loss of vehicle, etc., are purposely

not covered because of time constraints and the fact that they rarely involve the persons for whom the basic DWI education class is intended. It should be emphasized that these penalties apply for drug-related DWI's as well as

DWI PENALTIES IN TEXAS			
	FINES	LICENSE LOST	JAIL
1 st	Up to \$2,000	90 days – 1 year	72 hours – 180 days
2 nd	Up to \$4,000	180 days – 2 years	30 days – 1 year
3 rd +	Up to \$10,000	180 days – 2 years	2 – 10 years

PP Slide 12

alcohol DWI offenses. If a person has questions about other penalties, the instructor should refer to the *Texas Traffic Laws* publication and discuss this outside of the class.

The instructor should cover each part of the slide on fines, license suspension, and jail time. (**NOTE: 1st offense is a Class B misdemeanor; 2nd offense a Class A misdemeanor; and 3rd offense is a 3rd degree felony.**) It should also be noted that DWI with a child passenger under age 15 is a state jail felony (jail time of 180 days to two years and fine of up to \$10,000). Information on participants' specific losses should **not** be covered at this time, as this will be part of an activity in Module D-1.

DWI Penalties in Texas:

FINES

1st – Up to \$2,000

2nd – Up to \$4,000

3rd or more – Up to \$10,000

LICENSE LOSS

1st – 90 days to one year

2nd or more – 180 days to 2 years

3rd or more – 180 to 2 years

Note: Minimum jail time is six days if the person had an open container of alcohol in their immediate possession. (Enhancement Penalty)

It is possible to avoid loss of license on a first offense DWI by successfully completing the approved DWI education program. However, this does not apply to persons under age 21, as the law requires license loss even if the DWI education program is required. The

length of a suspension for persons under age 21 is 12 months and, if court ordered, until the education program is completed.

JAIL

1st – Up to 180 days (72 hours minimum)

2nd – Up to 1 year (30 day minimum)

3rd or more – 2 to 10 years

While a person may receive probation on any number of offenses, there is a mandatory jail time of 30 days for the second offense and 2 years for third and subsequent offenses. (A person's license may be suspended if their DWI probation is revoked.)

The instructor should note that persons who choose to take probation may have avoided jail time and loss of license. Information related to other provisions of probation, including alcohol/drug evaluations, should not be presented at this time as this may reopen hostilities. An exit interview would be an appropriate place to deal with this information.

At this point, the instructor should note that legislation included more stringent penalties for persons under the age of 21 who are convicted of DWI.

- One-year loss of license even if the DWI education course is completed.
- Continued suspension until DWI education course is completed.
- To receive probation and avoid license suspension, their vehicle must have an ignition interlock device (TRC 521.342).

5. **Drivers' License Surcharge on DWI Convictions – PP Slide 13**

In 2003, legislation was passed which requires a surcharge on a drivers' license if there has been a conviction for DWI, Intoxication

Assault, or Intoxication Manslaughter. The instructor should use PP Slide 13 and the accompanying support materials to explain this surcharge. The exact wording of this law is found in the resource section of this manual (TRC 708.102).

Drivers convicted on or after September 1, 2003 for DWI, Intoxication Assault, and Intoxication Manslaughter must pay an additional \$1,000 per year for three years for a driver's license. The amount goes up to \$1,500 per year if there is a subsequent conviction within the three year period. In addition, the surcharge is \$2,000 if the BAC was .16 or higher at the time of the test.

As of September 1, 2009, an offense under this section is enhanced if a

peace officer,
firefighter, or
emergency
medical services
personnel is
killed or
seriously injured
while in the

LICENSE SURCHARGE ON DWI CONVICTIONS

1. **DWI, Intoxication Assault, Intoxication, Manslaughter Conviction**
 - a. \$1,000 per year for first conviction within a 36 month period
 - b. \$1,500 per year for subsequent convictions within a 36 month period
 - c. \$2,000 on a first or subsequent conviction if BAC was .16 or greater at time of test
2. **Surcharge if peace officer, firefighter, or EMS personnel is killed or seriously injured.**
 - a. **Serious bodily injury—2nd degree felony, 2-20 years in prison, up to \$10,000 fine.**
 - b. **Killed—1st degree felony, 5-99 years/life in prison, and up to \$10,000 fine.**

actual discharge of an official duty. If said

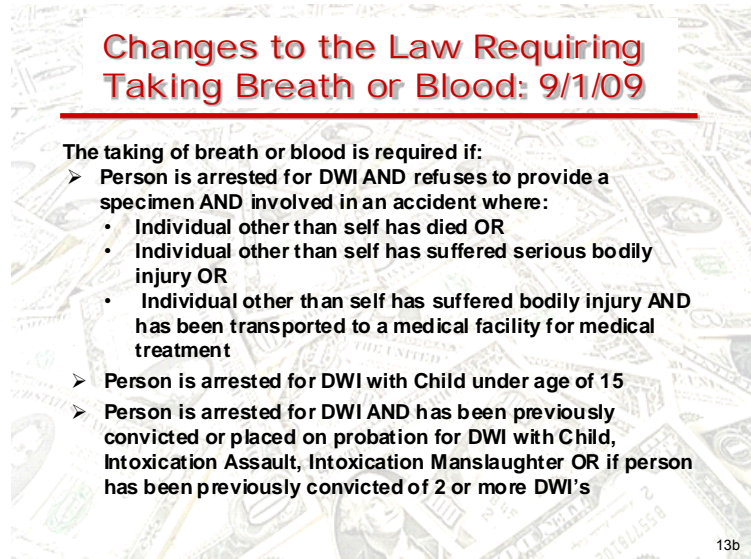
PP Slide 13a

individuals suffer serious bodily injury the range of punishment of Intoxication assault goes up to that of a 2nd Degree Felony (2-20 years in prison and up to a \$10,000 fine). If said individuals are killed, the range of punishment for Intoxication Manslaughter goes

up to that of a 1st Degree Felony (5 – 99 yrs/Life in prison and a fine up to \$10,000).

6. As of September 2009, the taking of breath or blood is required if:

(1) If person is arrested for Chapter 49 Offense Involving Operation of motor vehicle or watercraft, **and**



Slide 13b

The person refuses the officer's request to voluntarily to the taking of a specimen, **and**

The person has been involved in an accident caused by their commission of the offense, and as a direct result of the accident.

An individual has died or will die; **or**

An individual other than the person has suffered serious bodily injury; **or**

An individual other than the person has suffered bodily injury and has been transported to a hospital or other medical facility for medical treatment;

(2) The offense for which the person is arrested is an offense under 49.045 Penal Code (DWI with Child under 15).

(3) At the time of the arrest the Officer possesses or receives reliable information from a credible source that the person:

- (A) Has been previously convicted or placed on probation for an offense under 49.045 (DWI with Child under 15), 49.07 (Intoxication Assault), 49.08 (Intoxication Manslaughter); or
 - (B) Two more occasions has been previously convicted for an offense under 49.04, 49.05, 49.06, or 49.065.
- (4) The peace officer shall designate the type of specimen taken.

7. "Open Container Law" - PP Slide 14

Texas law (PC 49.031) makes it illegal to knowingly possess an open alcoholic beverage in the passenger compartment of a vehicle. "Open" is defined as any container which has any amount of alcohol, has a broken seal, or from which the contents have been partially removed. The laws apply to the driver and all passengers in a vehicle on a public highway whether the vehicle is stopped or moving. The exceptions are:

- Vehicle for hire – passenger area
- Motor home living quarters
- Locked storage area
- Trunk
- Behind last seat if no trunk

OPEN CONTAINER LAW

- ★ Vehicle on public highway (stopped or moving)
- ★ Driver or passenger
- ★ Knowingly possess in passenger area
- ★ Open, seal broken, or contents partially removed

Penalty - Class C misdemeanor - up to \$500 fine

EXCEPTIONS:

- ★ Vehicle for hire - passenger area
- ★ Motor home living quarters
- ★ Locked storage area
- ★ Trunk
- ★ Behind last seat if no trunk

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Multiple open containers of alcohol count as a single offense. The penalty for violation of the

PP Slide 14

Open Container Law is a fine of up to \$500 (Class C misdemeanor).
Note: The Consumption of Alcohol Law has been repealed.

The instructor should also explain that Texas also has an open container enhancement law. This law, however, applies only when the person is convicted of a DWI and had an open container of alcohol in the person's immediate possession. The penalty is three additional days of jail time (P.C. 49.04 (c))

The instructor is now ready to begin to provide educational information about alcohol and drugs. Exercises to do this begin here and are continued as part of Module B.

C. Pre-Instruction Estimate of Safe Drinking and Driving Levels (5

minutes) – The instructor should ask the class to estimate how many drinks (of whatever each drinks) that they can consume and still drive safely. Each person should make a mental estimate related to the amount and time of drinking. For example, 5 beers in 2 hours. The instructor may call upon several people to give their estimate, but should **not** express an opinion as to about the estimate. The same question will be asked later. Each will reassess the estimate (too high, too low, just right).

IV. EVALUATION (5 minutes) – The instructor should use the following and any other relevant questions to ascertain the level of learning related to the module. Questions may be asked verbally of the class.

A. What are the possible penalties for DWI in Texas?

(Fine, loss of license, and jail, license surcharge)

B. Give 3 provisions of the Texas Implied Consent Law.

(Operate vehicle in a public place, be arrested, breath or blood test—officer chooses, additional test in 2 hr., minimum 180-day

loss of license for refusal, evidence of refusal can be introduced in court)

C. What is the illegal BAC for driving in Texas?

(.08%)

D. Can a person be convicted of DWI with a BAC less than .08%?

(Yes, if normal faculties are impaired)

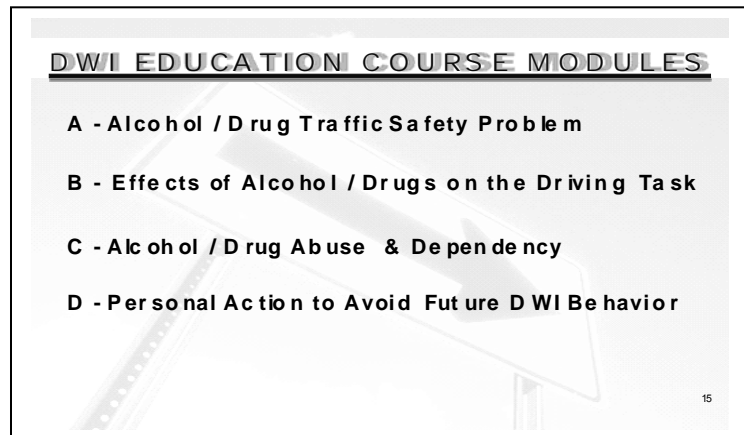
V. PREVIEW OF FUTURE MODULE (5 minutes) The instructor should use **PP Slide 15 "DWI Education Course Modules"** to briefly describe the content of what has been covered thus far and what will be covered in the future.

- **MODULE A-** “Alcohol / Drug Traffic Safety Program”

- **MODULE B-** “Effects of Alcohol / Drugs On the Driving Task”

- **MODULE C-** “Alcohol / Drug Abuse and Dependency”

- **MODULE D-**“Personal Actions to Avoid Future DWI Behavior”



PP Slide 15

(NOTE: If you are conducting your program in 3-hour segments, the following homework assignments should be made at this time. If you are conducting 4-hour segments, these assignments will come at the appropriate place in Module B-1 and will be noted there.)

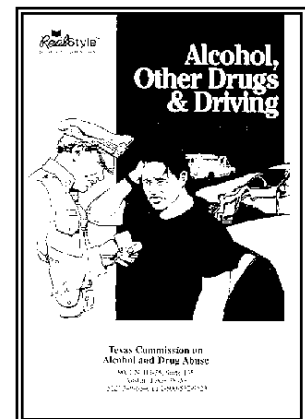
VI. HOMEWORK ASSIGNMENTS (5 minutes)

Three assignments must be given for completion by the next class session. These are:

A. Behavioral Description (BD-1) – This form (see page III-D-34) is used to help persons achieve the second purpose of the program (examine their own drinking or drug use patterns). Completion of this form forces the person to examine the circumstances leading to the DWI arrest and identify any pattern which may exist. If such a pattern does exist, it serves as a reference point for a change in future behavior. This completed form is to be returned at the beginning of the second class session. The instructor should urge participants to be as thorough as possible in completing the BD-1. Participants who have reading/writing problems should be told to either have someone else assist them in completing the BD-1 or to come 30 minutes early to the next class for assistance by the instructor.

B. Newspaper/Media Assignment – Participants should be instructed to read their local newspaper and listen to local radio and television news for any alcohol/drug-related crash stories. These will be discussed briefly at the beginning of the next class period.

C. “Alcohol, Other Drugs & Driving – A Deadly Combination!” – This assignment deals with the booklet “Alcohol, Other Drugs & Driving – A Deadly Combination!” This booklet should be given as take-home reading material. Participants should be encouraged to read the booklet and be prepared to ask any questions about it at the beginning of the next



class period. The booklet may be found in the front pocket of this instructor manual.

VI. RESOURCES

- A. PP 9-15**
- B. Synopsis of Texas Traffic Laws Relating to Alcohol/Drugs (V-A-18 through V-A-22)**
- C. “Alcohol, Other Drugs & Driving – A Deadly Combination!” booklet**

Note: If you are conducting your program in 3-hour segments, this should normally end the first segment.

TEXAS TRAFFIC LAWS RELATING TO ALCOHOL

- 1. Any person who operates a motor vehicle in a public place while intoxicated commits an offense punishable by fine, loss of license, and jail confinement.**
 - “Operation” means to be in actual physical control of a motor vehicle. Therefore, the person does not have to actually be “driving” the vehicle, but be behind the wheel in a position to do so.
 - “Motor vehicle” means a device in, on, or by which a person or property is or may be transported or drawn on a highway, except a device used exclusively on stationary rails or tracks.
 - “Public place” means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets,

highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

2. PENALTIES FOR DWI

A. First Offense:

- 1) Fine of up to \$2,000
- 2) Jail of 72 hours – 180 days
- 3) Loss of license for 90 days – one year

B. Second Offense:

- 1) Fine of up to \$4,000
- 2) Jail of 30 days – one year (mandatory jail of three days as condition of probation)
- 3) Loss of license for 90 days – two years

C. Third and Subsequent Offenses:

- 1) Fine of up to \$10,000
- 2) Jail of two years to ten years (mandatory jail of ten days as a condition of probation)
- 3) Loss of license for 180 days – two years

D. License Surcharge – Drivers convicted on or after Sept. 1, 2003 for DWI, Intoxication Assault, and Intoxication Manslaughter must pay an additional \$1,000 per year for three years for a driver's license. The amount goes up to the \$1,500 per year if there is a subsequent conviction within the 3 year period. In addition, the surcharge is \$2,000 if the BAC was .16 or higher at the time of the test.

Drivers who seriously injure a peace officer, firefighter, or EMS personnel commit a 2nd degree felony with 2-20 years in prison and up to \$10,000 fine. Drivers who kill a peace officer, firefighter, or EMS personnel commit a 1st degree felony with 5-99 years/life in prison and up to \$10,000 fine.

E. Child Passenger – A DWI conviction which involved having a passenger under the age 15 is a state jail felony with a penalty of 180 days to 2 years in jail and a possible fine of \$10,000 (PC 49.045)

F. Open Container Penalty –Class C misdemeanor; up to \$500 fine (unless open container as part of a DWI conviction which results in minimum of six days in jail).

G. Intoxication Assault:

1) A person commits an offense if the person, by accident or mistake, while operating an aircraft, or motor vehicle in a public place while intoxicated, by reason of the intoxication causes serious bodily injury to another.

2) In this section, “serious bodily injury” means injury that creates a substantial risk of death or that causes serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

3) An offense under this section is a felony of the third degree (up to 10 years in jail and \$10,000 fine).

H. Intoxication Manslaughter:

1) A person commits an offense if the person:

a) operates a motor vehicle in a public place, an aircraft, or a watercraft; and

b) is intoxicated and by reason of that intoxication causes the death of another by accident or mistake.

- 2) An offense under this section is a felony of the section is a felony of the second page (2-20 years in jail and up to \$10,000 fine).

3. **Deferred adjudication not allowed for DWI**

4. **Community Supervision (Probation) for DWI is a final conviction**

5. **Chemical Tests for Intoxication**

A. Administrative License Revocation (ALR)

- 1) ARRESTED operating a motor vehicle in a public place
- 2) Loss of license for FAILING breath/blood test
- 3) Loss of license
 - 90 days if no alcohol/drug contacts in last ten years.
 - One year if one or more alcohol/drug contacts in last ten years.
- 4) Suspension may not be probated.
- 5) Hearing and appeal process available
- 6) \$125 reinstatement fee

B. Implied Consent

- 1) ARRESTED operating a motor vehicle in a public place or a water craft of 50 HP or greater.
- 2) Loss of License for REFUSING breath/blood test
 - 180 days if no alcohol/drug contacts in last ten years
 - Two years if one or more alcohol/drug contacts in last ten years
 - Reinstatement fee of \$125
 - Hearing and appeal process available
- 3) Suspension may not be probated.

- 4) Additional test within 2 hours (blood only).
- 5) Refusal used as court evidence.

C. Breath or blood required:

- 1) if arrested under Ch. 49 for operating motor vehicle or watercraft and refuses request to voluntarily provide specimen and person involved caused accident, an individual died or will die, another individual suffered serious bodily injury or has been transported to hospital;
- 2) if arrested for DWI with a child under 15.
- 3) if officer possesses or received reliable that the individual has previously been convicted or placed on probation for DWI with child, intoxication assault, intoxication manslaughter, or two or more previous DWIs.

6. **Intoxication is defined as:**

A. Having a blood alcohol concentration (BAC) of 0.08 or more. This means that if a person is 0.08 BAC or more, then intoxication is established. This is referred to as “intoxication per se,” and conviction may be obtained regardless of how they looked, acted, or talked.

B. Not having normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of these substances, or any other substance into the body. This means that if a person does not have enough alcohol in his/her bloodstream to register 0.08 BAC, but he/she has alcohol or some drug or controlled substance in his/her bloodstream, then such

person can be convicted of DWI if his/her normal abilities are impaired.

7. Law related to persons under age 21 and DWI:

The driver's license of persons under age 21 shall be suspended for one year if convicted of DWI or Intoxication Assault/Manslaughter even if the person is required to complete a DWI education course (TRC 521.342). The suspension shall be reduced to 90 days if the person is placed on community supervision (probation) and is required to only operate a vehicle which is equipped with an ignition interlock device which prevents use if the driver has been drinking [CCP 42.12, SEC 13(m)].