



SUFFOLK ACADEMY OF LAW
The Educational Arm of the Suffolk County Bar Association
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DWI'S IN THE HAMPTONS

FACULTY

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East Hampton Village Police Department

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Carl A. Irace, Esq.

Carl Irace is a federal criminal defense attorney appointed to the Criminal Justice Act (CJA) Panel for the Eastern District of New York-Central Islip. Locally, he is a solo practitioner with significant experience handling criminal and DWI matters. He is a Member of the National College for DUI Defense (the NCDD), the only organization accredited to certify DWI/DUI Criminal Defense attorneys. He completed the NCDD's intensive Summer Session in DUI Defense Law at Harvard Law School. He is certified by the National Highway Traffic Safety Administration in DWI Detection & Standardized Field Sobriety Testing.

Carl has been appointed as Special Arraignment Counsel in the Village of Southampton, the Town of Southampton, the Town of East Hampton, and the Village of Sag Harbor, all as part of the East End Arraignment Program. He also currently serves as Counsel to the Springs Fire District. He previously served as East Hampton's Deputy Town Attorney, and served nine years as an Assistant District Attorney in the Bronx, where he was designated to the Office of the Special Narcotics Prosecutor, and also served Homicide duty. In his career, he estimates that he has conducted approximately 12,000 local court arraignments and conducted approximately 2000 superior court arraignments.

When not practicing law, Carl volunteers a member of the East Hampton Lions Club, and the Secretary of the Executive Board of the East Hampton Chamber of Commerce. He lives in Sag Harbor with his wife and two sons.

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COURSE MATERIALS:
“DWI cases on the East End”

Presentation Date: April 18, 2023

Course Outline:

- I. Introduction, by Carl Irace
 - A. What is a DWI?
 - B. Potential consequences
- II. Anatomy of the Stop and Arrest Decision, by Chief Michael Tracey, Police Department of the Village of East Hampton
- III. Back at the Police Station, by Chief Austin McGuire, Police Department of the Village of Sag Harbor
- IV. Questions

Materials:

- I. Program Faculty Biographies
- II. DWI Penalties
- III. DMV Penalties for Repeat Offenders
- IV. NHTSA pamphlet “Visual Detection of DWI Motorists”



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www.DWILawyerSagHarbor.com
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The Visual Detection of DWI Motorists



The Visual Detection of DWI Motorists



U.S. Department of Transportation

**National Highway Traffic Safety
Administration**



www.nhtsa.gov

INTRODUCTION

More than a million people have died in traffic crashes in the United States since 1966, the year of the National Traffic and Motor Vehicle Safety Act, which led to the creation of the National Highway Traffic Safety Administration (NHTSA).

During the late 1960's and early 1970's more than 50,000 people lost their lives each year on our nation's streets, roads and highways. Traffic safety has improved considerably since that time: the annual death toll has declined substantially, even though the numbers of drivers, vehicles, and miles driven all have increased. When miles traveled are considered, the likelihood of being killed in traffic during the 1960's was three to four times what it is today.

The proportion of all crashes in which alcohol is involved also has declined. The declines in crash risk and the numbers of alcohol-involved crashes are attributable to several factors, including the effectiveness of public information and education programs, traffic safety legislation, a general aging of the population, and law enforcement efforts.

NHTSA research contributed to the improved condition, in part, by providing law enforcement officers with useful and scientifically valid information concerning the behaviors that are most predictive of impairment. Continued enforcement of Driving While Intoxicated (DWI) laws will be a key to saving lives in the future. For this reason, NHTSA sponsored research leading to the development of a new DWI detection guide and training materials, including a new training video. Many things have changed since 1979, but like the original training materials, the new detection guide describes a set of behaviors that can be used by officers to detect motorists who are likely to be driving while impaired.

Building upon the previous NHTSA study, researchers interviewed officers from across the United States and developed a list of more than 100 driving cues that have been found to predict blood alcohol concentrations (BAC) of 0.08 percent or greater. The list was reduced to 24 cues during 3 field studies involving hundreds of officers and more than 12,000 enforcement stops. The driving behaviors identified by the officers are presented in the following four categories:

- 1) Problems in maintaining proper lane position**
- 2) Speed and braking problems**
- 3) Vigilance problems**
- 4) Judgment problems**

The cues presented in these categories predict that a driver is DWI at least 35 percent of the time. For example, if you observe a driver to be weaving or weaving across lane lines, the probability of DWI is more than .50 or 50 percent. However, if you observe either of the weaving cues and any other cue listed in this booklet, the probability of DWI jumps to at least .65 or 65 percent. Observing any two cues other than weaving indicates a probability of DWI of at least 50 percent. Some cues, such as swerving, accelerating for no reason, and driving on other than the designated roadway, have single-cue probabilities greater than 70 percent. Generally, the probability of DWI increases substantially when a driver exhibits more than one of the cues.

This booklet contains:

- **The DWI Detection Guide**
- **A summary of the research that led to the guide**
- **Explanations of the 24 driving cues**
- **A description of post-stop cues that are predictive of DWI**

The research suggests that these training materials will be helpful to officers in:

- **Detecting impaired motorists**
- **Articulating observed behaviors on arrest reports**
- **Supporting officers' expert testimony**

DWI DETECTION GUIDE

Weaving plus any other cue: $p =$ at least .65

Any two cues: $p =$ at least .50

Problems Maintaining Proper Lane Position $p = .50-.75$

- Weaving
- Weaving across lane lines
- Straddling a lane line
- Swerving
- Turning with a wide radius
- Drifting
- Almost striking a vehicle or other object

Speed and Braking Problems $p = .45-.70$

- Stopping problems (too far, too short, or too jerky)
- Accelerating or decelerating for no apparent reason
- Varying speed
- Slow speed (10+ mph under limit)

Vigilance Problems $p = .55-.65$

- Driving in opposing lanes or wrong way on one-way
- Slow response to traffic signals
- Slow or failure to respond to officer's signals
- Stopping in lane for no apparent reason
- Driving without headlights at night
- Failure to signal or signal inconsistent with action

Judgment Problems $p = .35-.90$

- Following too closely
- Improper or unsafe lane change
- Illegal or improper turn (too fast, jerky, sharp, etc.)
- Driving on other than the designated roadway
- Stopping inappropriately in response to officer
- Inappropriate or unusual behavior (throwing, arguing, etc.)
- Appearing to be impaired

Post Stop Cues $p \geq .85$

- Difficulty with motor vehicle controls
- Difficulty exiting the vehicle
- Fumbling with driver's license or registration
- Repeating questions or comments
- Swaying, unsteady, or balance problems
- Leaning on the vehicle or other object
- Slurred speech
- Slow to respond to officer or officer must repeat
- Providing incorrect information, changes answers
- Odor of alcoholic beverage from the driver

$p \geq .50$ when combined with any other cue:

- Driving without headlights at night
- Failure to signal or signal inconsistent with action

The probability of detecting DWI by random traffic enforcement stops at night has been found to be about 3 percent (.03).

PROBLEMS IN MAINTAINING PROPER LANE POSITION

Maintaining proper lane position can be a difficult task for an impaired driver. For example, we have all, at one time, seen vehicles **weaving**. Weaving is when the vehicle alternately moves toward one side of the lane and then the other. The pattern of lateral movement can be fairly regular, as one steering correction is closely followed by another. In extreme cases, the vehicle's wheels even **cross the lane lines** before a correction is made. You might even observe a vehicle **straddling a center or lane line**. That is, the vehicle is moving straight ahead with either the right or left tires on the wrong side of the lane line or markers.



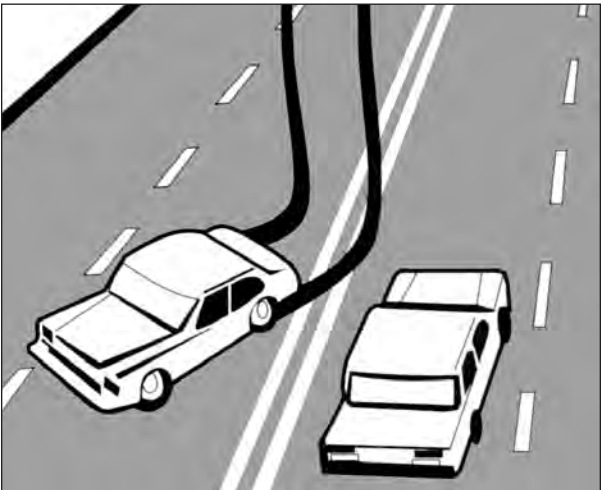
Weaving

Drifting is when a vehicle is moving in a generally straight line, but at a slight angle to the lane. The driver might correct his or her course as the vehicle approaches a lane line or other boundary or fail to correct until after a boundary has been crossed. In extreme cases, the driver fails to correct in time to avoid a collision.



Drifting

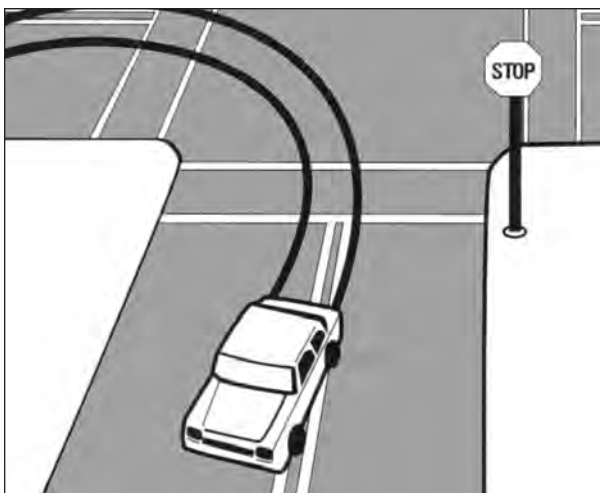
Course corrections can be gradual or abrupt. For example, you might observe a vehicle to **swerve**, making an abrupt turn away from a generally straight course, when a driver realizes that he or she has drifted out of proper lane position or to avoid a previously unnoticed hazard.



Swerving

A related DWI cue is **almost striking a vehicle or other object**. You might observe a vehicle, either at slow speeds or moving with traffic, to pass unusually close to a sign, barrier, building, or other object. This cue also includes almost striking another vehicle, either moving or parked, and causing another vehicle to maneuver to avoid a collision.

Turning with a wide radius or drifting during a curve is the final cue in this category of driver behaviors. A vehicle appears to drift to the outside of the lane or into another lane through the curve or while turning a corner. Watch for this cue, and stop the driver when you see it. Many alcohol-involved crashes are caused by an expanding turn radius or drifting out of lane position during a curve.



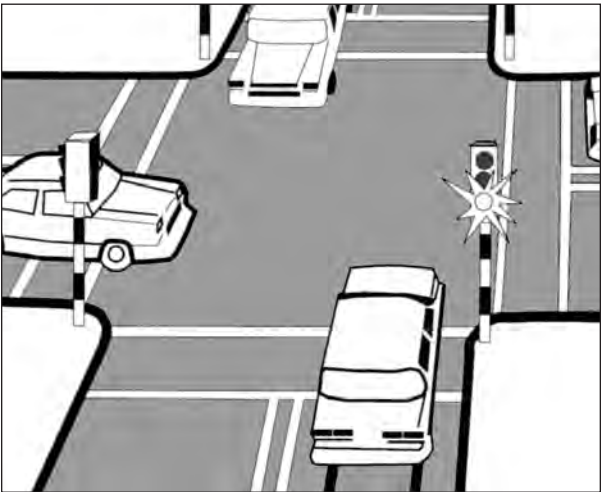
Turning With a Wide Radius

SPEED AND BRAKING PROBLEMS

The research showed that braking properly can be a difficult task for an impaired driver. For example, there is a good chance the driver is DWI if you observe any type of **stopping problem**.

Stopping problems include:

- **Stopping too far from a curb or at an inappropriate angle**
- **Stopping too short or beyond a limit line**
- **Jerky or abrupt stops**



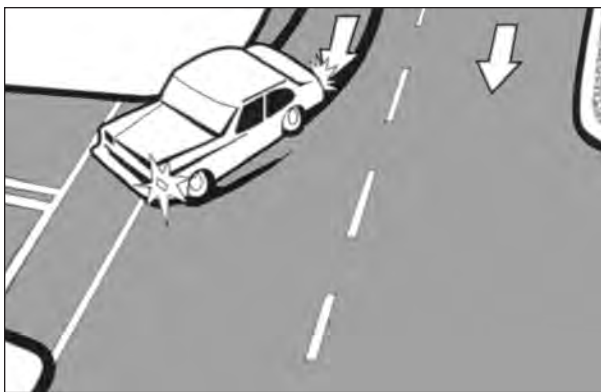
Stopping Beyond a Limit Line

Impaired drivers also can experience difficulty maintaining an appropriate speed. There is a good chance the driver is DWI if you observe a vehicle to:

- **Accelerate or decelerate rapidly for no apparent reason**
- **Vary its speed, alternating between speeding up and slowing down**
- **Be driven at a speed that is 10 miles per hour (mph) or more under the limit**

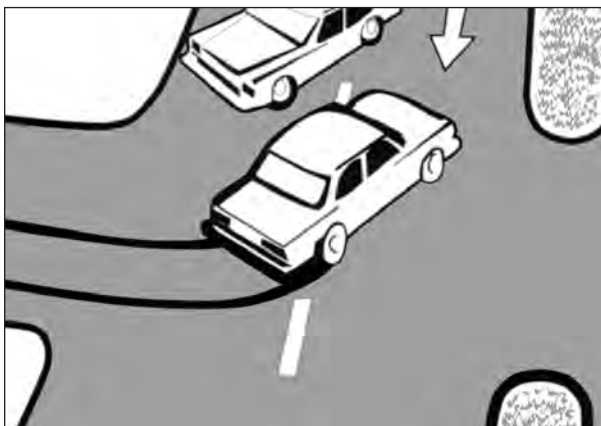
VIGILANCE PROBLEMS

Vigilance concerns a person's ability to pay attention to a task or notice changes in surroundings. A driver whose vigilance has been impaired by alcohol might forget to turn on his or her headlights when required. Similarly, impaired drivers often forget to signal a turn or lane change, or their signal is inconsistent with their maneuver, for example, signaling left but turning right.



Signaling Inconsistent With Driving Actions

Alcohol-impaired vigilance also results in motorists driving into opposing or crossing traffic and turning in front of oncoming vehicles with insufficient headway.



Driving Into Opposing or Crossing Traffic

Driving is a complex task that requires accurate information about surrounding traffic conditions. Failing to yield the right of way and driving the wrong way on a one way street are dangerous examples of vigilance problems.

A driver whose vigilance has been impaired by alcohol also might respond more slowly than normal to a change in a traffic signal. For example, the vehicle might remain stopped for an unusually long period of time after the signal has turned green. Similarly, an impaired driver might be unusually slow to respond to an officer's lights, siren, or hand signals.

The most extreme DWI cue in the category of vigilance problems is to find a vehicle stopped in a lane for no apparent reason. Sometimes when you observe this behavior the driver will be just lost or confused, but more than half of the time the driver will be DWI—maybe even asleep at the wheel.

JUDGMENT PROBLEMS

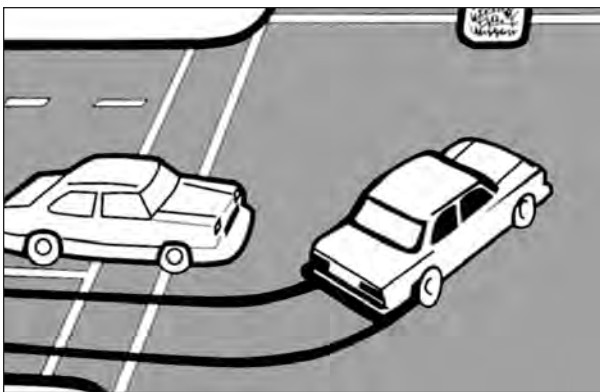
Operating a motor vehicle requires continuous decision making by the driver. Unfortunately, judgment abilities can be affected by even small amounts of alcohol. For example, alcohol-impaired judgment can cause a driver to follow another vehicle too closely, providing an unsafe stopping distance.

Alcohol-impaired judgment also can result in a driver taking risks or endangering others. If you observe a vehicle to make improper or unsafe lane changes, either frequently or abruptly or with apparent disregard for other vehicles, there is a good chance the driver's judgment has been impaired by alcohol.

Similarly, impaired judgment can cause a driver to turn improperly. For example, misjudgments about speed and the roadway can cause a driver

to take a turn too fast or to make sudden corrections during the maneuver. These corrections can appear to the observer as jerky or sharp vehicle movements during the turn.

Alcohol-impaired judgment can affect the full range of driver behaviors. For example, the research found that impaired drivers are less inhibited about making illegal turns than unimpaired drivers.



Turning Illegally

Driving on other than the designated roadway is another cue exhibited by alcohol-impaired drivers. Examples include driving at the edge of the roadway, on the shoulder, off the roadway entirely, and straight through turn-only lanes.

In some cases, impaired drivers stop inappropriately in response to an officer, either abruptly as if they had been startled or in an illegal or dangerous manner.

In fact, the research has shown that there is a good chance a driver is DWI if you observe the person exhibit *any inappropriate or unusual behavior*. Unusual behavior includes throwing something from the vehicle, drinking in the vehicle, urinating at the roadside, arguing with another motorist, or otherwise being disorderly. If you observe inappropriate or unusual behavior, there is a good probability that the driver is DWI.

SUMMARY

To summarize, the DWI cues related to **problems in maintaining proper lane position** include:

- **Weaving**
- **Weaving across lane lines**
- **Straddling a lane line**
- **Drifting**
- **Swerving**
- **Almost striking a vehicle or other object**
- **Turning with a wide radius or drifting during a curve**

The DWI cues related to **speed and braking problems** include:

- **Stopping problems (too far, too short, too jerky)**
- **Accelerating for no reason**
- **Varying speed**
- **Slow speed**

The DWI cues related to **vigilance problems** include:

- **Driving without headlights at night**
- **Failure to signal a turn or lane change or signaling inconsistently with actions**
- **Driving in opposing lanes or the wrong way on a one-way street**
- **Slow response to traffic signals**
- **Slow or failure to respond to officer's signals**
- **Stopping in the lane for no apparent reason**

The DWI cues related to **judgment problems** include:

- **Following too closely**
- **Improper or unsafe lane change**
- **Illegal or improper turn (too fast, jerky, sharp, etc.)**
- **Driving on other than the designated roadway**
- **Stopping inappropriately in response to an officer**
- **Inappropriate or unusual behavior**
- **Appearing to be impaired**

POST-STOP CUES

In addition to the driving cues, the following post-stop cues have been found to be excellent predictors of DWI.

- **Difficulty with motor vehicle controls**
- **Difficulty exiting the vehicle**
- **Fumbling with driver's license or registration**
- **Repeating questions or comments**
- **Swaying, unsteady, or balance problems**
- **Leaning on the vehicle or other object**
- **Slurred speech**
- **Slow to respond to officer or officer must repeat questions**
- **Providing incorrect information or changes answers**
- **Odor of alcoholic beverage from the driver**

Offense History	DMV Action
Five or more alcohol/drugged driving related convictions or incidents lifetime = "Persistently Dangerous Driver"	Permanent denial (subject to compelling or extenuating circumstances)
In a 25 year period, three or four alcohol/drugged driving related convictions or incidents + one Serious Driving Offense (SDO) = "Persistently Dangerous Driver"	Permanent denial (subject to compelling or extenuating circumstances)
Revoked for alcohol-related offense, three or four alcohol/drugged driving related convictions or incidents without any SDO in a 25 year period.	Deny for five years in addition to statutory revocation period, then relicense with restricted license and interlock for five years.
Revoked for non-alcohol-related offense, three or four alcohol/drugged driving related convictions or incidents without any SDO in a 25 year period	Deny for two years in addition to statutory revocation period, then relicense with restricted license for two years, but no interlock.
Two alcohol/drugged driving related convictions or incidents	No full relicensing until end of statutory minimum revocation period, even if DDP is completed.

DRUNK DRIVING PENALTIES

Driving While Intoxicated

DWI [.08% and higher Blood Alcohol Content (BAC) or other evidence of intoxication]

	FINE	JAIL SENTENCE	LICENSE ACTION
1 ST Offense (Misdemeanor)	Minimum \$ 500 Maximum \$ 1,000	Up to 1 Year	Minimum 6-Month Revocation
2 nd Offense (Within 10 years / Class E Felony)	Minimum \$1,000 Maximum \$ 5,000	Up to 4 Years	Minimum 1-Year Revocation*
3 rd Offense (Within 10 years / Class D Felony)	Minimum \$2,000 Maximum \$10,000	Up to 7 Years	Minimum 1-Year Revocation*
A person convicted of DWI could be sentenced to 3 years probation for a misdemeanor conviction and 5 years probation for a felony conviction.			

Aggravated Driving While Intoxicated

ADWI [.18% and higher Blood Alcohol Content (BAC)]

	FINE	JAIL SENTENCE	LICENSE ACTION
1 ST Offense (Misdemeanor)**	Minimum \$1,000 Maximum \$ 2,500	Up to 1 Year	Minimum 1 Year Revocation
2 nd Offense (Class E Felony)	Minimum \$1,000 Maximum \$ 5,000	Up to 4 Years	Minimum 18-Month Revocation
3 rd Offense (Class D Felony)	Minimum \$2,000 Maximum \$10,000	Up to 7 Years	Minimum 18 Month Revocation

Driving While Ability Impaired

DWAI [more than .05% to less than .08% Blood Alcohol Content (BAC)]

	FINE	JAIL SENTENCE	LICENSE ACTION
1 ST Offense (Traffic Infraction)	Minimum \$ 300 Maximum \$ 500	Up to 15 Days	90-Day Suspension
2 nd Offense Within 5 years (Traffic Infraction)	Minimum \$ 500 Maximum \$ 750	Up to 30 Days	Minimum 6-Month Revocation*
3 rd Offense Within 10 years (Misdemeanor)	Minimum \$ 750 Maximum \$1,500	Up to 180 Days	Minimum 6-Month Revocation*

Zero Tolerance

Drivers Under 21 [DMV administrative finding of .02% to .07% Blood Alcohol Content (BAC)]

	CIVIL PENALTY	LICENSE ACTION	ADDED FEE
1 ST Offense	Minimum \$125	6-Month Suspension	\$100 Suspension Termination Fee
2 nd Offense	Minimum \$125	1-Year Revocation or until age 21, whichever is longer	\$100 Re-Application Fee

* The Department of Motor Vehicles decides when your license can be returned. Its return or reinstatement, based on state law or regulation, is not automatic. You must apply for your license, pay civil penalties, a relicense fee and you may have to take a test.

** Cannot plead below DWI Misdemeanor

The Cost of a Drunk Driving Conviction

First Time Offender

■ Towing	\$ 50 plus
■ Car Storage (Fee Per Day)	\$ 45 plus
■ Defense Attorney	\$500 to \$1,500 plus
■ Bail Fee	0 to \$ 250 plus
■ DWI Fine	\$300 to \$1,000
■ Court Surcharge for Crime Victims Assistance Fund	\$ 20
■ Court Surcharge for Misdemeanor Level Crimes	\$ 140
■ Alcohol Evaluation	\$ 90 plus
■ DWI Victim Impact Panel Session	\$ 25
■ Probation Supervision Fee	0 to \$ 250 plus
■ Conditional License	\$ 75
■ Drinking Driver Program Fee	\$ 225
■ DMV Civil Penalty	\$ 300
■ DMV License Reinstatement Fee	\$ 50
■ Auto Insurance (additional cost per year)	\$2,000 to \$3,000

Total: \$3,645 to \$6,845

How A DWI Conviction Affects Auto Insurance...

Little Known Facts!!!

- An insurance company can deny no fault coverage (personal injury protection for medical, rehabilitation and loss of wages) to the driver that causes a motor vehicle crash due to alcohol/drug involvement.
- An insurance company can deny parents whose child resides with them the standard or preferred rate due to the alcohol related driving offense of their child. In other words, the insurance rates for parents could increase simply because their child lives with them and has a DWI conviction.

A Message From County Executive Steve Levy



Amazing as it may seem, we still have to remind people from time to time about the dangers of drunk driving and its tragic consequences.

Nationwide, in just the past decade, nearly a quarter of a million people have had their lives cut short simply because someone attempted to drive drunk. It is an appalling statistic that causes family heartbreak from Suffolk County to San Francisco and nearly everywhere in between.

But in Suffolk, we are working hard to eliminate this plague of our roadways by treating it as the violent crime it is. Our police force has made tens of thousands of DWI arrests in just the past six years, and we have convicted more drunk drivers than ever before. By doing so, and by using better equipment and better methods of detection, we have cut the number of alcohol-related fatalities in half. And we are going to keep working to bring that number down.

If you care about eliminating drunk driving, you can do your part by reading this brochure and sharing it with those you care about. If you have any questions or require further information please call (631) 853-5715.

Sincerely,

Steve Levy
County Executive

STOP DWI New York

SUFFOLK COUNTY

Penalties for Driving While Intoxicated in New York State

.08
Don't blow it.

New York State
STOP-DWI Foundation