

THE ALABAMA PROSECUTOR



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Upcoming Events

ADAA Extended Business Session	April 8-11	Point Clear
Special Srvs Division Conference	April 19-22	Orange Beach
Victim Service Officers Conference	May 24-27	Orange Beach
ADAA Summer Conference	July 5-8	Orange Beach

January 2011

THE *CRASH* C O U R S E

The Alabama Drug Recognition Expert Program

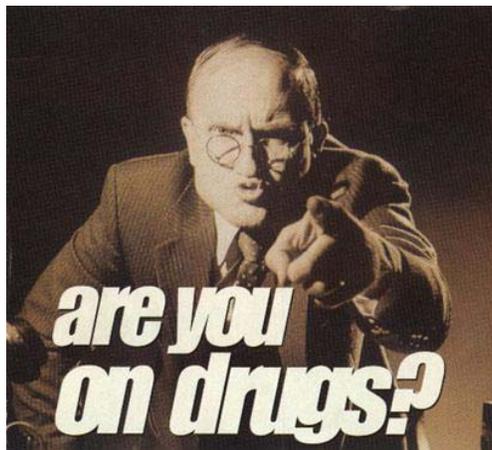
Brandon Hughes
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Alabama's Drug Recognition Expert (DRE) program took a big step forward in 2010 when 12 new Drug Recognition Experts were certified and admitted to the two year old program. Upon certification of the new officers, the number of DREs in Alabama grew from four to 16 and the Auburn and Dothan Police Departments as well as the Shelby County Sheriff's Office joined the Department of Public Safety as agencies with certified DREs. In addition to the new officers, the four original DREs received their certification as DRE instructors, which will allow for more frequent in-state trainings on investigating and prosecuting drug impaired drivers.

Although the DRE program began in the early 1970's, it was not until 2008 when Alabama became the forty-fifth state to have certified Drug Recognition Experts. In July 2008, four Alabama State Troopers attended DRE School in Phoenix, Arizona. They spent three weeks doing class work and field evaluations in obtaining their certification as Alabama's first DREs. It was at that time that I was appointed the state coordinator of the DRE program in Alabama. In October 2009, the sanctioning organization of the DRE program, the International Association of Chiefs of Police, officially recognized Alabama as a Drug Evaluation and Classification (DEC) state, which gave us the power to move forward and

establish our own program guidelines and begin training our officers in-state.

Being a new program, we put a high priority on inviting only the best officers in the state to be accepted in the school. In May 2010, we selected 44 candidates and required these officers to first attend and complete the 16 hour Advanced Roadside Impaired Driving Enforcement (ARIDE) training in which they learned baseline techniques for detecting and investigating drug impaired drivers. Upon completing ARIDE, we then selected 22 officers to attend the 56 hour DRE school in July. After just two days, seven of the 22 candidates were sent home for unsatisfactory performance on the first written exam. The remaining 17 candidates completed DRE school and were then sent to Phoenix in August for their field evaluations.



The next to last step in the DRE certification process is the field evaluations. The officers must perform a DRE examination on a subject suspected of being impaired by a drug. They must determine if the subject is in fact impaired and, if so, what drug category they are impaired by. The officers must complete 10 evaluations and do so with 100% accuracy or they will not be allowed to move on to the final step in the certification process. We use the Maricopa County Jail in Phoenix for the field evaluations because, due to the sheer volume of drug impaired persons moving through the jail everyday, we can accomplish in two nights

what would take six months to accomplish locally. The officers will also see drugs and drug effects out there that they would not be exposed to in Alabama, which further helps in their education.

The final step in the certification process is the eight hour final knowledge written exam which they must complete with a score 80% or better. The exam consists of fact patterns with signs and symptoms of drug impairment and they must conduct their evaluation and state their conclusions and the reasons for their conclusions. In addition to the essay style portion of the exam, they must complete a blank drug matrix from memory. The drug matrix is the listing of all seven drug categories along with the

signs and symptoms of each drug. This is the tool used by the DRE to take all the information he or she has gathered during the 12-step DRE evaluation and renders his or her opinion on the impairment of the subject.

Upon completing the field evaluations and the final knowledge exam, only 12 officers received DRE certification joining exclusive company as there are only 6500 certified DRE officers in the United States and only 1500 DRE instructors. These officers have been very busy since August and have made numerous cases. At this time, we are still awaiting these cases to go to trial.

If you have a DUI case involving a DRE evaluation in your circuit, please let me know so I can make sure you are prepared for trial. These will be unlike any case you have tried before and will require more than simply reading predicate questions. I have also found that it helps to meet with the judges handling these cases to educate them and explain what the DRE program is so they to are prepared when these cases appear on their dockets.

Though not new or novel across the country, the DRE program is new in Alabama and is yet another tool to combat impaired driving in this state and another method at our disposal to help reduce traffic fatalities on our roadways.

For more information on the DRE program or any other traffic related issues, please feel free to contact me anytime via email brandon.hughes@alabamada.gov or phone at OPS.



Alabama Certified Drug Recognition Experts

*Indicates DRE is also a DRE Instructor

Department of Public Safety

Chad Blankenchip (Selma)*

Daryl Bogle (Mobile)*

Drew Brooks (Dothan)

Seth Hannah (Huntsville)

Jason Harris (Motor Carrier Safety Division)

Jason Hewett (Sheffield)

Steven McWaters (Alex City)

Jay Penton (Montgomery)*

Eric Smith (Huntsville)*

Auburn Police Department

Matthew Coffey

James Neal

Jeffery Webster

Richard Young

Dothan Police Department

Scott Owens

Shelby County Sheriff's Office

Dylan Baker

Rory Dempsey



Computer Forensics as the “Smoking Gun”

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As prosecuting attorneys and investigators, I am sure that you have seen cases where forensic evidence amounted to a “smoking gun” for your case. DNA, bite marks, trace evidence, and ballistics often strongly implicate a suspect in a crime. Evidence recovered during a computer forensic examination often does not provide that level of certainty that the suspect committed the crime and yet, we in the ACFL often see cases where the investigator relies so heavily on the computer examination that he does not follow other more traditional investigative processes. Consider this not-so hypothetical cross of a computer forensic expert:

Defense Counsel: How do you know that it was my client who sat at that computer and sent the message (downloaded the contraband, hacked the network, .etc)?

Expert Witness: Based on the examination that I conducted of the submitted PC, the user account with the name of your client was used.

Defense Counsel: Was that account password protected?

Expert Witness: No.

Defense Counsel: Could anyone with physical access to that PC have used it to commit the crime?

Expert Witness: Yes.

Defense Counsel: Are you aware that my client had two grown sons living with him at the time of the crime?

Expert Witness: Yes.

Defense Counsel: How do you know?

Expert Witness: Because I found documents and emails that appeared to have been authored by them on the PC.

Defense Counsel: Is it possible that one of them committed the offense?

Expert Witness: Yes.

To many on your jury, this dialog might sound like reasonable doubt. It is definitely not a smoking gun! In the next few paragraphs, I will offer suggestions to the investigator on how to avoid this pitfall and suggestions to the prosecutor on how to mitigate the damage.

The investigator must begin the investigation as if no evidence will be found on the computer and try to build his case without it. With this approach, any evidence that is recovered during the computer examination will be "icing on the cake". The investigator can more thoroughly build his case by making better use of suspect interviews, interviews of others with access to the computer, and the gathering of other items of evidence that are often overlooked. The investigator must understand that it is his job to put the suspect at the scene of the crime (or keyboard), not the forensic examiner.

The interview of a suspect who is willing to talk can be the most important evidence gathered during the investigative process. One of the most important questions that should be asked is the point-black question, "Did you do _____?". I have seen countless interrogations where the investigator asks the suspect every imaginable question about the crime but never asks if he committed it. If a suspect does confess to the crime, the investigator should seek explicit answers to exactly how it was done. The interview of the suspect who denies committing the crime but is willing to talk can be used in conjunction with the forensic examination to help prove guilt. Now is the time for the interviewer to ask questions that can mitigate defense arguments through questions such as:

- Where did you obtain the computer and when?
- Is the original hard disk still in the computer?
 - The defense may argue that evidence recovered from the computer was pre-existing.
- Who else has physical access to this computer?
- Do you have to enter a user name and password to use the computer?
- Who else knows your password?
- Does everyone with access to the computer have their own user name?
 - These questions should be used to establish a list of other possible suspects and to establish the ease in which items can be stored under different user accounts.

- When do you normally use the computer?
- What do you use the computer for?
 - These questions help to establish a usage pattern for the suspect. Evidence found during the time frame of when the suspect admits that he uses the computer (especially if at odd times) might mitigate the argument that someone else is the offender.
- How knowledgeable are you about computers in general?
- Do you have antivirus or other security software on the computer?
 - These questions can be used to mitigate defense arguments that a virus or Trojan placed evidence on the computer.
- Have you ever seen _____ on the computer and if so, what did you do?
- What were you doing when you saw it?
 - These questions give the suspect an opportunity to acknowledge that he has seen contraband on the computer and to describe what he did when he found it. Examination may reveal discrepancies such as contraband not being immediately deleted.
- What do you think should happen to someone who does _____?
 - A guilty person will often "sympathize" when asked this question.

The investigator should interview every person who has physical access to the suspect's computer system even if the prime suspect confesses. The same kinds of questions as above should be asked of others. Additionally, questions seeking their knowledge of the guilt or innocence of the prime suspect along with general questions about their perceived understanding of how the suspect uses the computer should be asked.

The forensic examiner may be able to help overcome reasonable doubt by analyzing the usage patterns of the computer around the time of the offense and correlating them with activities that the suspect is known to engage in. For example, if interviews with acquaintances of the suspect reveal that he plays fantasy football, the examiner may be able to show that there was internet activity relating to fantasy football immediately before or after the criminal activity or illicit downloads.

The investigator should also consider gathering other items to further build the case against the suspect. For instance, school and work records for the suspect and all others with access to the computer can be used along with dates of criminal activity found by the forensic examiner to show that the suspect was always off of work or school when the activity occurred. Or, a card access controlled building may keep logs of everyone who swipes their entry card and show that the suspect was the only person present when the criminal activity occurred.

As a prosecutor, review the case thoroughly for problems that the defense may try to exploit. Remember that evidence of criminal activity found on a computer hard disk does not necessarily prove that a particular person

caused it to be there. It often takes more. Communicate effectively with the investigator and the forensic examiner to see if the holes can be filled through any of the methods discussed here.



The **Alabama Computer Forensics Labs** has hired two new investigators to work on the Swordphish project:

Bill Hamil retired from the Montgomery Police Department after 21 years of service primarily conducting investigations and technical support with the Special Operations Division. He helped to coordinate complex criminal investigations and is a specialist in electronic surveillance. He is active in the Alabama Narcotics Officers Association and National Technical Investigators Association. Bill received his B.S. in Criminal Justice from Faulkner University in 2004. Bill has begun on the job training in digital investigations and will soon be attending formal training through the International Association of Computer Investigative Specialists.

William Gordon retired as a Sergeant from the Montgomery Police Department after 20 years. He has extensive investigative experience including crimes against children, property and persons crimes. He has spent the past four years investigating insurance fraud for the Alabama Department of Insurance and has received additional training in arson investigations. William has begun on the job training in digital investigations and will soon be attending formal training through the International Association of Computer Investigative Specialists.

SORNA News

Trisha Mellberg
Sex Offender Resource Prosecutor
trisha.mellberg@alabamada.gov

The Sex Offender Registration and Notification Act (SORNA), which is Title I of the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. 109-248, was enacted on July 27, 2006. SORNA establishes minimum standards that must be adopted by the states for sex offender registration and notification. On July 2, 2008, the Attorney General issued the National Guidelines for Sex Offender Registration and Notification to provide states with guidance and assistance in implementing SORNA within their jurisdictions. By July 27, 2010, Alabama must become substantially compliant with SORNA to prevent the State from losing money allocated to it under the Byrne JAG formula.

In 2009 the Alabama Department of Public Safety, Office of Prosecution Services and the Governor's Office was awarded a grant from the Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) Office in Washington DC to implement the SORNA guidelines imposed by the Adam Walsh Act. In May of 2010 I joined the Office of Prosecution Services to work on implementing these guidelines. Since that time I have had the opportunity to meet, and work with, individuals from various agencies including the Alabama Department of Public Safety, U.S. Marshal Service and Alabama Criminal Justice Information System.

It is my goal for Alabama to implement the SORNA guidelines by rewriting Alabama's Sex Offender Registration and Notification Act to make it more workable for the law enforcement officers, district attorneys and other professionals that investigate, prosecute, register and manage sex offenders. To achieve this goal I scheduled SORNA meetings throughout the state to discuss the obstacles faced with the current law, strategies to remedy these obstacles

and the changes that must be implemented to be in substantial compliance with SORNA. With the help and support of the District Attorneys, each law enforcement agency that registers sex offenders was given the opportunity to attend a SORNA meeting. Since September I have had the opportunity to meet with with over 170 law enforcement officers, district attorneys and other professionals who register or manage sex offenders. I would like to thank everyone who attended the SORNA meetings. There was great participation among all of the agencies and the meetings were a huge success. Future plans have been set in place to meet with the Attorney General and the Governor.

The SORNA meetings made it clear that a rewrite of Alabama's Sex Offender Registration and Notification Act is crucial. A rewrite would give Alabama the opportunity to eliminate current inconsistencies, close loop holes and address constitutional issues such as the ruling that was recently handed down by the Alabama Court of Criminal Appeals regarding homeless sex offenders.

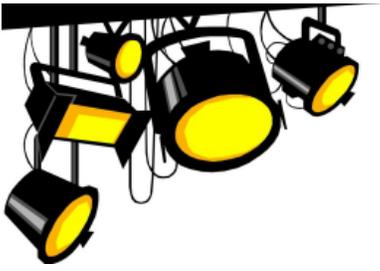
In November of 2010 the Alabama Court of Criminal Appeals affirmed the ruling by a Circuit Court Judge who held that the Alabama's Sex Offender Registration and Community Notification Act was unconstitutional as applied to indigent homeless sex offenders. The case involved an inmate sex offender, Adams, who was unable to provide an actual address where he would reside upon his release from DOC. As a result, Adams was arrested for violating §15-22-(a)(1). The Court of Appeals noted that "[o]nly homeless persons with access to funds to pay for a stay in a motel or other accommodation at an approved location will be freed from incarceration and indigents without such funds will remain incarcerated." State of Alabama v. Thornal Lee Adams, 2010 WL 4380236. The facts in this case established that Adams was indigent, that he had no family or friends with whom he could live, and that , despite his efforts, he had not been accepted to any homeless shelter or halfway house in time to comply with the requirements of the

Community Notification Act. The Court noted that Adams failure to provide an address was not voluntary conduct but was due to him being homeless.

The Attorney General’s office argued that the statute was not unconstitutional as applied to homeless because the term “actual address” meant the location where the offender could be found after his or her release and, according to the opinion, urged the Court to construe the phrase “to mean any physical place where such a person will be making his residence, either temporarily or permanently, whether that be a private dwelling, a shelter, a boat, a park bench, a bridge, or some other geographical space.” Id. The Court of Appeals rejected that AG’s argument that the term “actual address” meant the location where the offender could be found after his or her release and stated that the plain language of the statute interpreted actual address at which he or she will reside or live as “a fixed place where a person is going to live continuously for some period after his or her release from prison and where the person can receive mail”. Id.

A rewrite of Alabama’s Sex Offender Registration and Notification Act would provide an opportunity to remedy the obstacles faced with the current law, including the obstacles with homeless offenders. If there is anyone who was unable to attend a SORNA meeting, or has any suggestions regarding the future legislation please do not hesitate to contact me. You can reach me at trisha.mellberg@alabamada.gov or in the office at 334-242-4191.





ADAA Spotlight

Assistant District Attorney Named State's Best in Child Support

Like most attorneys, Cartledge Weeden “Carty” Blackwell Jr. loves to talk.

He also loves his work. The recent awarding of the Gordon F. Bailey Attorney of the Year plaque to Blackwell demonstrates that devotion to the practice of law.

“I was real tickled. If you’re involved with anything with Gordon Bailey’s name on it, it a real honor,” he said.

Blackwell, however, is modest and will roll off a list of people he works with as assistant district attorney for child support. The men and women of the Department of Human Resources are the heroes, according to this attorney.

“It’s rewarding to me,” Blackwell said, “Like any other it involves large numbers of people.”

But here’s what his co-workers and those who nominated him for this honor awarded by the Alabama Child Support Association, an organization of the Alabama District Attorneys Association.

“He always has a pleasant attitude and kind words to say not only to child support staff and together community partners, but especially to custodial and non-custodial parents. He strives to successfully balance being fair to all and collecting money for families. His caring attitude radiates to others even when they feel they are in an adversarial situation.”

Among his many accolades from co-workers and other attorneys, Blackwell has helped in a practical way advance the function of the child support office by instituting a pay docket, which was featured in a national newsletter.

Blackwell has been assistant district attorney for child support since 1992. He continues to maintain his private practice.

“He beat out all the other assistant district attorneys across the state,” said Fourth Judicial District Attorney Michael Jackson. “That’s a feather in his cap and in our office, too.”

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