

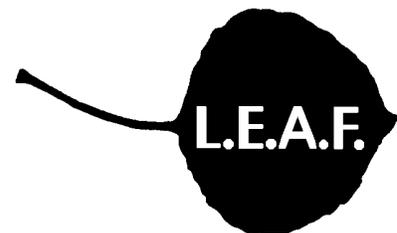


State of Colorado

The Use of Sobriety Checkpoints for Impaired Driving Enforcement

With the September 9, 1985 and October 7, 1999
Informal opinions from the Office of the Attorney General

*Colorado Department of Transportation
Office of Transportation Safety
4201 East Arkansas Avenue
Denver, Colorado 80222*





PREFACE

Impaired driving and impaired-related crashes constitute one of the nation's leading health problems. These events result in more deaths each year than do total homicides. The impact is particularly severe among young people, age 15-24, where impaired driving is the leading cause of death. Clearly, impaired driving and impaired related crashes constitute a major threat to the safety and well-being of the public. The costs resulting from alcohol-related crashes should be recognized and weighed against the costs and inconveniences associated with efforts to reduce them.

These guidelines have been designed to provide law enforcement agencies with a uniform and successful method to plan, operate and evaluate sobriety checkpoints. When implemented in conjunction with departmental policy and any constraints imposed by state or local courts, sobriety checkpoints provide an effective enforcement tool to combat the impaired driving problem.

Any agency considering the use of sobriety checkpoints should integrate them with a continuing, systematic and aggressive program, including vigorous enforcement, public information and education. The purpose of the program is to maximize the deterrent effect and increase the perception of "risk of apprehension" of motorists who would operate a vehicle while impaired by alcohol or drugs. There is convincing evidence that the use of checkpoints has a marked, dramatic effect on reducing alcohol-related crashes in a community.

GUIDELINES FOR SOBRIETY CHECKPOINTS

These guidelines suggest and describe operational procedures that police administrators may want to consider in order to ensure that sobriety checkpoints are used legally, effectively and safely. These points are consistent with those specified in recent court decisions, including the United States Supreme Court ruling in Michigan Department of State Police v. Sitz, upholding the constitutionality of sobriety checkpoints. An effective sobriety checkpoint program consists of the following components:

- ? Ongoing Program to Deter Impaired Driving
- ? Judicial Support
- ? Existing Departmental Policy
- ? Site Selection
- ? Special Warning Devices
- ? Visible Police Authority
- ? Chemical Testing Logistics
- ? Contingency Planning
- ? Detection and Investigation Techniques
- ? Operational Briefings
- ? Comprehensive Public Information and Education Programs
- ? Data Collection and Evaluation

Ongoing Program to Deter Impaired Driving - Agencies considering implementing sobriety checkpoints should integrate them with a continuing, systematic and aggressive enforcement program. Vigorous enforcement, public information and education need to be part of this program. The purpose of the checkpoint is to maximize the deterrent effect and increase the perception of "risk of apprehension" to motorists who would operate a vehicle while impaired by alcohol or other drugs. The use of checkpoints alone will not maintain the perception of risk essential to an effective general deterrence program.

Judicial Support - When officials decide to use sobriety checkpoints, they should involve their prosecuting attorney (district attorney, attorney general, etc.) in the planning process to determine legally acceptable procedures. This person can assist in identifying any legally mandated requirements and the types of evidential information that will be needed to prosecute cases emanating from checkpoint apprehension.

The jurisdiction's presiding judge should be informed of the proposed checkpoints and procedures, an essential step if the judiciary is to accept their use. The judge can

provide insight on what activities would be required to successfully adjudicate such cases.

Prosecutors, judges, and other involved members of the criminal justice system can be invited to observe the actual operation of the checkpoint.

Existing Policy/Guidelines - Before using sobriety checkpoints, the agency must have specifically established procedures outlining how the checkpoints are to be conducted. The courts have been very clear in requiring the advance planning of sobriety checkpoints. Failure to do so has been used as evidence that the checkpoint techniques involved unfettered discretion. The policy should also assure that the checkpoints are conducted with a minimal amount of intrusion or motorist inconvenience.

Site Selection - Planning should assure the safety of the general public and law enforcement officers when selecting an operational site. Sobriety checkpoints must not create more of a traffic hazard than the results of the driving behavior they are trying to modify.

Planners should remember to select a site that allows officers to pull vehicles out of the traffic stream without causing significant subjective intrusion (fright) to the drivers (United States v. Ortiz 422 U.S. 891 (1975)) and/or creating a safety hazard, e.g., by creating a traffic backup. Furthermore, officers' safety must be taken into account when deciding where to locate the checkpoint.

The department should objectively outline criteria used in the site selection process, e.g., an unusual incidence of alcohol/drug involved crashes or driving violations, unusual number of nighttime single vehicle crashes or other documented alcohol/drug related vehicular incidents.

The site should permit the safe flow of traffic through the checkpoint. Consideration should be given to the posted speed limits, traffic volume and visibility. Most jurisdictions have the capability to review the Average Traffic Volume (ATV) during the surveillance period for major roadways in their area. Once a jurisdiction has decided on possible locations for the sobriety checkpoints, the effect on traffic flow can be determined by ascertaining how long each interview takes, then, multiplying that time by the number of available officers, and finally, dividing that figure into the average number of vehicles which can be expected at that location. This will suggest whether all vehicles can be examined without causing a traffic build-up.

If the traffic volume precludes stopping every vehicle, a nondiscretionary scheme should be adopted, in advance, for stopping some subset of vehicles. In Delaware v. Prouse, 440 U.S. 648 (1979) the United States Supreme Court indicates that stopping

all cars would be an acceptable method of conducting spot checks. In a concurring opinion, Justice Blackmun (joined by Justice Powell) suggests that other methods would also be acceptable, such as stopping every tenth car that passes a given point. If every vehicle is not stopped, the method used to determine which ones will be stopped must appear in the administrative order authorizing the use of the sobriety checkpoint.

The site should have maximum visibility from each direction and sufficient illumination for the safety of both the motorists and officers. If permanent lighting is unavailable, ensure that adequate portable lighting is provided. Planners should also ensure that sufficient adjoining space is available to pull vehicles off the traveled portion of the roadway. Any other conditions that may pose a hazard should be taken into consideration.

Warning Devices - Special care should be taken to warn approaching motorists of the sobriety checkpoint. Such notice can be accomplished using warning signs indicating the upcoming checkpoint; flares or fusees (if weather permits) and safety cones or similar devices for marking and/or closing lanes on the roadway; permanent or portable lighting to illuminate the checkpoint area; and, marked patrol vehicles with warning lights flashing.

A sign or device should be placed to provide advance warning stating why motorists are stopped. The U.S. Supreme Court has found that visible signs of the officers' authority generate less concern and fright on the part of lawful travelers, and is therefore less of a subjective intrusion (United States v. Martinez-Fuerte, 428 U.S. 643 (1976)).

The placement and types of traffic control devices used should comply with federal, state or local transportation codes. Planners should check with appropriate agencies administering the location and placement of signing devices.

Visible Police Authority - The visibility of uniformed officers and their marked vehicles makes the police presence obvious. It also serves to reassure motorists of the legitimate nature of the activity. This is an important aspect of the sobriety checkpoint and part of the effort to reduce the intrusion to the passing motorists affected by the checkpoint.

A sworn, uniformed officer should be assigned to provide on-site supervision of the checkpoint operation. This officer should be responsible for the overall operation and should be well versed in contingency planning for the checkpoint. The checkpoint should be staffed by a sufficient number of uniformed personnel to assure a safe and efficient operation, based on traffic volume, roadway size, type of location, etc.

Chemical Testing Logistics - Since impaired driving arrests are anticipated at the selected location, the logistics of chemical testing must also be included. If possible, a mobile breath testing unit with a qualified operator could be physically located at the checkpoint. If one is not available, a system for expeditiously transporting suspected violators to chemical test sites should be established. In applicable locations, a Drug Recognition Expert (DRE) should be available, at a suitable location, to examine subjects who may be impaired by drugs other than or in combination with alcohol.

Contingency Planning - Any deviation from the predetermined plan for stopping vehicles should be thoroughly documented and the reason for the deviation given (e.g., traffic backing up, intermittent inclement weather). Courts have allowed this as long as documentation of the reason requiring the deviation from the interview sequence is kept (United States v. Prichard, 645 F2d 854). If such an event occurs, jurisdictions should have prepared an alternative plan, in advance, to handle the checkpoint.

Detection and Investigation Techniques - An agency considering the use of sobriety checkpoints should ensure that the participating officers are properly trained in detecting impaired drivers. The use of sobriety checkpoints which allow impaired drivers to pass through undetected will not achieve the desired deterrence effect. Officers should look for the following indicators of impairment during initial contact with a driver at a checkpoint: odor of alcoholic beverages or other drugs (marijuana, hashish, some inhalants); bloodshot eyes; alcohol containers or drug paraphernalia; fumbling fingers; slurred speech; admission of drinking or drug use; inconsistent responses; detection of alcohol by a passive alcohol sensor; etc. It is highly desirable that officers assigned to conduct the sobriety checkpoint receive the DUI Detection and Standardized Field Sobriety Testing (SFST) training. Police are using these techniques taught in the SFST course to quickly detect whether a driver is impaired.

Once an officer's suspicion is raised, further investigation can take place out of the traffic lane without impeding the flow of traffic. If an officer believes it is necessary to move a suspect's car after he or she has reasonable suspicion of impairment, it should be moved by someone other than the suspect.

The officer should then continue the investigation using non-incriminating divided attention questions (e.g., by the officer simultaneously asking for driver's license and vehicle registration, requiring the subject to do two things at once) and the administration of the SFST battery, which includes the Walk and Turn test, One-Leg Stand test, and Horizontal Gaze Nystagmus. After the completion of the SFST, the officer may use a portable breath testing device (PBT), if permissible in that jurisdiction. An evidential test to determine the blood alcohol concentration (BAC) should then be administered.

If the officer determines the subject is impaired and obtains a low BAC, a DRE should be utilized for further investigation. If a DRE is not available, normal departmental procedures regarding drug impaired drivers should be followed.

Operational Briefings - The success of a sobriety checkpoint depends greatly upon smooth and efficient operations. The persons selected as supervisors of the operation should be briefed thoroughly on all procedures. This includes maintaining as little delay to the motoring public as possible and keeping records of any deviation from the original operational plan.

Persons selected to staff the checkpoint should be briefed on both its purpose and operation. They should understand the necessity for standard and uniform questions asked of drivers to avoid subjectivity. The use of an operational briefing is one way to accomplish this.

Public Information and Education - To obtain maximum benefit in terms of its general deterrent effect, sobriety checkpoints should be publicized aggressively. Most drivers will probably never encounter a sobriety checkpoint, but will only learn of it through media reports or by word of mouth. These two valuable forms of public communication will greatly enhance any such program and should be employed consistently.

Checkpoints are an ideal opportunity to give educational materials regarding impaired driving, speeding, child restraint and seat belt usage, as well as seasonal reminders such as schools opening, to persons stopped at the checkpoint.

Data Collection and Evaluation - A systematic method of data collection and evaluation should be used to monitor and ensure standardization and consistency of sobriety checkpoints. This may be done by measuring the reaction of the public to the checkpoint and administrative evaluation of collected data.

Public reaction - This can be measured by immediate feedback received by officers at the site of the sobriety checkpoint. Also, a short questionnaire which includes an explanation of why the checkpoint is conducted, given to drivers stopped at the checkpoint, can provide data. It may ask of the driver such questions as; Does the driver believe the checkpoint is fair? Did the driver mind being stopped briefly? Did the driver feel checkpoints help deter driving while impaired? The response can be completed later and mailed back to the agency. If the jurisdiction has the resources, a stamped, self-addressed postcard can be used as the questionnaire.

Evaluation - This concerns the extent to which the program's implementation, operation and efficiency meets targets set for the program. The following items may be addressed:

- ? Number of vehicles passing through the checkpoint
- ? Average time delay to motorists
- ? Number of motorists detained for field sobriety testing
- ? Number and types of arrests
- ? Identification of unusual incidents such as safety problems or other concerns
- ? Reaction of police officers participating in the sobriety checkpoint, including degree of support and effect on morale
- ? Perception of the quality of checkpoint cases brought before prosecutors and judges, including special problems
- ? Change in number of impaired driving arrests
- ? Change in number of impaired driving related nighttime crashes
- ? Other information deemed necessary by individual agencies

The Colorado Department of Transportation and the National Highway Traffic Safety Administration strongly supports the regular use of sobriety checkpoints. They should be integrated into an overall drunk and drugged driving program, along with vigorous selective enforcement, public information and education. Effective enforcement of drunk driving

laws, combined with swift and sure license removal, provides the most important element for reducing alcohol-related fatal and serious injury crashes. Roadside sobriety checkpoints have provided among the most effective results of any enforcement procedure. Checkpoints are an important part of a comprehensive enforcement program designed to raise the perceived probability among potential impaired drivers that they will be stopped and arrested for DUI.

APPENDIX A

SOBRIETY CHECKPOINTS BRIEFING GUIDE

Prior to conducting the sobriety checkpoint, the following items should be discussed and thoroughly explained to all officers and supervisors participating in the detail. Routine information, such as location, times, and personnel assignments, including chemical test operators, should be included at each briefing.

- ? Explain the goal(s) of the roadside sobriety checkpoint.
- ? Discuss the sobriety checkpoint location and the statistical data supporting the chosen checkpoint site.
- ? Stress the need for safety for both the officers and motorists
- ? Assign the sobriety checkpoint operational supervisor. The supervisor shall remain at the checkpoint location to oversee all on-site enforcement activities.
- ? Discuss the placement of personnel and traffic control devices in conformance with established roadside sobriety checkpoint guidelines and federal, state and/or municipal signing regulations.
- ? Develop and establish a systematic approach to stopping the vehicles as they enter the checkpoint location. For example, all vehicles or every fifth vehicle will be stopped. At no time will a random stop be utilized. If a problem such as traffic congestion occurs and requires a change in the pattern of stopping vehicles, the on-scene supervisor will determine if there will be a change from the systematic vehicles stopping sequence. All changes, no matter how slight, shall be documented including the time of change with an appropriate explanation of the reason for the change.
- ? Instruct all participating officers to explain the purpose of the checkpoint to the motorist as they approach a vehicle. A uniform statement/question to the driver should be used, for example:

- ? "Good Evening. You have been stopped at a Department Name sobriety checkpoint. We use checkpoints in an effort to detect and deter the impaired driver. Have you consumed any alcohol or controlled substance today?"
- ? If the driver's answer is no and there is no other compelling reason to detain the vehicle, the officer should permit the motorist to proceed.
- ? If the driver's answer is yes, ask how much and when. Depending on the answers and other circumstances, the officer should decide if further investigation is warranted. If so, direct the driver to safely exit the vehicle and escort him or her to the designated area for further investigation. If not, permit the motorist to proceed.
- ? Sobriety checkpoint pamphlets, questionnaires and occupant protection booklets should be given to each motorist stopped during the detection phase.
- ? Also during the detection phase, the officer should see if the occupants of the stopped vehicle are properly using required safety restraints (including child safety seats). If a violation exists a verbal reminder may be given.
- ? Instruct officers to inspect the driver for the smell of alcoholic beverages or other drugs, bloodshot eyes, fumbling fingers, slurred speech, admission of drinking or drug use, abusive language, inconsistent responses, etc. Be observant of the interior of the vehicle for alcoholic beverage containers, drug paraphernalia or other contraband, such as weapons, that are in plain view.
- ? The motorist should be permitted to proceed on his/her way unless the officer observes evidence of intoxication, or there is evidence of another serious violation requiring immediate action.
- ? Those persons suspected of impairment should be subjected to the battery of Standardized Field Sobriety Tests. If impairment is obvious and the blood alcohol level (BAC) is low, a Drug Recognition Expert (DRE) should evaluate the subject. If a DRE is not available, normal departmental policy for handling impaired drivers should be followed.
- ? Searches of a motor vehicle, the driver, or passengers, shall be conducted only when consistent with departmental policies or when legally permissible.

- ? A motorist who wishes to avoid the checkpoint by legally turning before entering the checkpoint area should be allowed to do so unless a traffic violation(s) is observed or probable cause exists to take other action. The act of avoiding a sobriety checkpoint does not constitute grounds for a stop.
- ? An accurate and complete written evaluation report shall be prepared for each sobriety checkpoint operation. Items in the report should include but are not limited to:
- number of vehicles passing through the checkpoints
 - number of motorists detained for Standardized Field Sobriety Testing
 - average time delay for motorists
 - number and types of arrests
 - identification of unusual incidents such as safety problems or other concerns
 - reaction of police officers participating in the sobriety checkpoint, including the effect on morale and degree of officer support
 - reaction of the motoring public to the sobriety checkpoint

MODEL POLICY

SOBRIETY CHECKPOINT GUIDELINES

I. PURPOSE

The purpose of this policy is to provide guidelines for the physical construction and operation of a sobriety checkpoint in order to maximize the deterrent effect and increase the perception of "risk of apprehension" of motorists who would operate a vehicle while impaired by alcohol or other drugs.

II. POLICY

It shall be the policy of this law enforcement agency to implement a sobriety checkpoint program. This will be done as part of a comprehensive enforcement program. To ensure standardization of this program a clear and concise set of written guidelines has been developed governing procedures on how checkpoints will be operated within this jurisdiction.

To implement this policy this agency must:

- . Satisfy federal, state and local legal requirements.
- . Conduct checkpoints with a minimal amount of intrusion or motorist inconvenience.
- . Assure the safety of the general public as well as law enforcement officers involved.
- . Provide for an objective site selection process based on relevant data.
- . Provide for public information and education to maximize the deterrent effect and heighten awareness of the impaired driving problem.

- . Provide for a systematic procedure for data collection and after impact analysis report to monitor and ensure standardization and consistency of the sobriety checkpoint program.
- . Officer selection should be based on experience and training. Operational procedures will be covered during a briefing period prior to each checkpoint.

III. DEPARTMENTAL GUIDELINES

Written guidelines, consistent with existing agency policies, prepared in advance of the checkpoint program must:

- A. Be approved by the agency's chief law enforcement official or designee prior to commencement of the checkpoint.
- B. Specify signing, safety equipment, warning devices, barriers, etc. that will be used, their placement and proper use at the scene. This specification will be consistent with applicable standards and regulations. (See the relevant state or local manuals on traffic control devices, etc.)
- C. Specify the method for selecting motorists to be contacted, e.g., "every vehicle, every fifth vehicle," etc. to ensure objectivity.
- D. Provide for an operational briefing of personnel prior to each checkpoint. At this time designate assignments and respective duties.
- E. Specify dialogue and educational material to be used by checkpoint personnel.
- F. Provide for the removal of vehicles to the predetermined area when further investigation is required.
- G. Public reaction to the use of sobriety checkpoints can be obtained by several different methods. Recommended procedures for obtaining feedback are:
 1. Mail in surveys.
 2. Verbal feedback from motorists at checkpoint site.
 3. Periodic public opinion polls.

IV. PROCEDURES

A. Site Selection

This department must be able to objectively outline criteria utilized in the site selection process:

1. Alcohol/Drug related traffic experiences.
 - a. Unusual incidence of alcohol/drug related crashes.
 - b. Alcohol/drug impaired driving violations.
 - c. Unusual number of nighttime single vehicle crashes.
 - d. Any other documented alcohol/drug related vehicular incidents.
2. Select locations which permit the safe flow of traffic through the checkpoint.
 - a. Consideration should be given to posted speed limits, traffic volume and visibility.
 - b. Ensure sufficient adjoining space is available to pull vehicles off the traveled portion of the roadway.
 - c. Consider other conditions that may pose a hazard.
3. The site should have maximum visibility from each direction and sufficient illumination. If permanent lighting is unavailable ensure that portable lighting is provided.

B. PERSONNEL

1. A sworn, uniformed officer will be assigned to provide on-scene supervision of the checkpoint.
2. The checkpoint will be staffed by a sufficient number of uniformed personnel to assure a safe and efficient operation.

C. ADVANCE NOTIFICATION

1. For the purpose of public information and education, this agency will announce to the media that checkpoints will be conducted.

2. This agency will encourage media interest in the sobriety checkpoint program to enhance public perception of aggressive enforcement, to heighten the deterrent effect and to assure protection of constitutional rights.
3. This agency will provide advance notification of the checkpoint to public safety agencies expected to be impacted.

D. MOTORISTS WARNINGS / SAFETY METHODS

1. Special care is required to warn approaching motorists of the sobriety checkpoint.
2. Basic equipment will include, but is not limited to:
 - a. Warning signs placed in advance of the checkpoint
 - b. Flares, fusees, or similar devices
 - c. Safety cones or similar devices
 - d. Permanent/portable lighting
 - e. Marked patrol vehicles
3. The use, placement and types of traffic control devices must comply with federal, state, or local transportation codes.

E. CONTINGENCY PLANNING

Any deviation from the predetermined guidelines must thoroughly document the reason for the deviation. (i.e. traffic backing up, intermittent inclement weather.)

F. DATA COLLECTION AND EVALUATION

To monitor and ensure standardization and consistency of the sobriety checkpoint program a systematic method of data collection will be incorporated.

1. After action report may include, but is not limited to:
 - a. Time, date, and location of checkpoint.
 - b. Weather conditions.
 - c. Number of vehicles passing through checkpoint.
 - d. Average time delay to motorists.
 - e. Predetermined order of selecting motorists.

- f. Number and types of arrests.
 - g. Number of motorists detained for field sobriety testing.
 - h. Identification of unusual incidents such as safety problems/other concerns.
2. To assist in determining the effectiveness of a checkpoint operation, a periodic impact analysis will include the following types of information.
- a. Crash rate reduction.
 - b. Impaired driving offenses.
 - c. Impaired driving convictions
 - d. Public opinion survey to determine increased perception of detection and apprehension of impaired drivers.