

TEXAS JUSTICE COURT TRAINING CENTER

TRAFFIC SAFETY INITIATIVE NEWSLETTER
SEPTEMBER 2015

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A MESSAGE FROM PROGRAM ATTORNEY ROB DANIEL

Greetings, and welcome to the most recent edition of the Texas Justice Court Training Center Traffic Safety Initiative’s annual newsletter, made possible by a grant from the Texas Department of Transportation. The Texas Justice Court Training Center is very pleased to have this opportunity to bring all justices of the peace, constables, and court personnel up to date on the program’s progress and success over the past year, as well as to provide information regarding recent trends and developments in traffic safety.

In 2014-15, the Training Center provided training on traffic safety issues at all 20 hour justice of the peace seminars and 16 hour court personnel seminars. This year, our education for judges focused on occupational licenses and magistrate duties relating to DWI offenses, while our education for clerks focused on properly processing alcohol cases involving minors.

This past July, for the first time ever, all of the judicial education groups in the state of Texas joined together in 2015 to provide a joint symposium on DWI-related issues. (Partner groups

included the Texas Association of Counties, the Texas Center for the Judiciary, and the Texas Municipal Courts Education Center.) I am pleased to report that over 40 justices of the peace attended this seminar, which also included many municipal judges, county judges, statutory county court judges, and district judges. We are thrilled that TxDOT is helping us to provide this service to Texas judges, and we will be conducting a similar event in 2016.

TJCTC continues to update and expand its DWI Bond Schematic Program. This program assists individual Texas counties in adopting a comprehensive plan for setting DWI bond conditions, and is a component of a statewide plan to reduce the incidence of DWI offenses across Texas.

If your county wishes to participate in the program, simply fill out the enrollment form located on the TJCTC website. If you received this newsletter via our E-Letter system, a copy of the enrollment form is attached

to the email. We hope many of you will choose to participate. Please do not hesitate to contact me if you have any questions regarding the program.

This newsletter contains two articles from outside sources regarding two trends in the transportation world: the growing popularity of “transportation network companies” such as Lyft and Uber and the creation of “Vision Zero” programs throughout the state of Texas. Vision Zero programs aim to eliminate traffic fatalities. It’s my opinion that we cannot do this without eliminating DWI offenses, and I encourage you to speak to Vision Zero coordinators in your jurisdiction about the role justice courts can play in reducing traffic deaths.

In 2015-16, we will continue to offer instruction regarding magistrate duties associated with DWI offenses, as well as instruction regarding the proper issuance of occupational driver’s licenses. As always, we welcome your input as we put together the material for 2015-16. We think it will be

an exciting year of education that will improve your ability to perform your duties as a justice of the peace or a justice court clerk, and we look forward to seeing all of you as we travel throughout Texas.

2015-2016 TJCTC TRAINING SCHEDULE

20 HOUR JUSTICE OF THE PEACE SEMINARS

December 6-9: Galveston
January 24-27: San Antonio
February 9-12: San Marcos
May 15-18: Rockwall
May 31-June 3: Lubbock

16 HOUR COURT PERSONNEL SEMINARS

November 18-20: San Marcos
February 22-24: Galveston
March 21-23: San Antonio
May 2-4: San Marcos
June 15-17: Austin
July 13-15: Rockwall

TRAFFIC SAFETY WEBINARS

October 8: Occupational Licenses
December 10: Blood Warrants
August 17: DWI Bond Conditions

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“Internet Sensation” Raises Curious Questions about DWI Offenses

By Rob Daniel, Program Attorney, TJCTC

A Texas State University student recently made headlines after videos of her driving a pink Barbie Jeep around San Marcos and the university campus were posted to the Internet. Why would a 20 year old student choose an electric-powered child’s toy as her means of transportation? It turns out that the student’s license had been suspended due to her failure to provide a breath sample following an arrest for Driving While Intoxicated, and her father had taken her car away.

(Bizarrely, several gossip sites provided “news coverage” suggesting that putting lives at risk after getting wasted at a Waka Flocka Flame concert is totally okay as long as you do something cute afterwards. For example, Gawker posted an article titled “DWI Barbie Jeep Girl, Please Drive Straight to My Heart.”)

The student told the San Antonio Express-News that “her 21st birthday plans in November involve revving up

[the Barbie Jeep] for a night at The Square in San Marcos with her friends.”

This statement raises two questions. First, does a person need a driver’s license to operate a Barbie Jeep on a public roadway? Second, can an intoxicated person commit the offense of Driving While Intoxicated if the person is “driving” a Barbie Jeep? Believe it or not, we’ve received several similar questions at the Training Center over the past few years (mostly relating to golf carts and ATVs), so we’d like to take the opportunity to address these questions here.

Section 521.021 of the Transportation Code states that “A person, other than a person expressly exempted under this chapter, may not operate a motor vehicle on a highway in this state unless the person holds a driver’s license issued under this chapter.” If a person operates a motor vehicle in violation of this requirement, he or she commits a criminal offense under Section 521.025

of the Transportation Code, which is commonly referred to as the “No DL” statute. The statutory language quoted above raises two questions for our Barbie Jeep driver. First, does a Barbie Jeep constitute a “motor vehicle?” Second, does a city street in San Marcos constitute a “public highway?”

Generally, words and phrases found in Texas statutes “shall be read in context and construed according to the rules of grammar and common usage.” (See Sec. 311.011(a), Government Code.) The Texas Supreme Court has stated that “The plain meaning of the text is the best expression of legislative intent.” *Molinet v. Kimbrell*, 356 S.W.3d 407, 411 (Tex. 2011). However, when the Legislature has provided a definition for a particular word or phrase, the legislative definition controls. (See Sec. 311.011(b), Government Code.)

Interestingly, the Texas Legislature has elected to define the terms “motor vehicle” and

“highway” multiple times within the Transportation Code, but none of these definitions specifically apply to Chapter 521. For example, Chapter 502 of the Transportation Code defines a motor vehicle as “a vehicle that is self-propelled.” Chapter 522 defines a motor vehicle as “a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway.” Chapter 541 defines a motor vehicle as “a self-propelled vehicle or a vehicle that is propelled by electric power from overhead trolley wires.” Chapter 642 defines a motor vehicle as “a motor vehicle, other than a motorcycle, that is designed or used primarily for the transportation of persons or property.”

Chapter 472 of the Transportation Code defines the term “highway” as “the entire width between the boundary lines of a publicly maintained way, any part of which is open to the public for vehicular travel,” and similar definitions may be found in Chapters 541 and 601.

If the definitions cited above applied to Section 521.021 of the Transportation Code, it seems likely that our Barbie Jeep driver would need a license to operate her motor vehicle on a public highway.

However, the definitions quoted above do not apply to Chapter 521 (unless they happen to match the “common usage” definition), and so an appellate court reviewing the common meaning of the terms “motor vehicle” and “highway” would likely turn to a dictionary for assistance. *Crosstex NGL Pipeline, L.P. v. Reins Road Farms-1, Ltd.*, 404 S.W.3d 754 (Tex. App.—Beaumont 2013).

Unfortunately for Barbie Jeep Girl, commonly-used dictionaries don’t seem to help her cause. For example, Merriam-Webster defines a “motor vehicle” as “1. A vehicle (such as a car, truck, or motorcycle) that is powered by a motor. 2. An automotive vehicle not operated on rails, especially one with rubber tires for use on highways.” Black’s Law Dictionary contains four definitions for “highway,” three of which seem unhelpful for anyone seeking to operate a Barbie Jeep on a city street without a license. Those definitions are: “1. Broadly, any main route on land, on water, or in the air. 2. A free and public roadway or street that every person may use. 3. The main public road connecting towns or cities. 4. The entire width between boundaries of every publicly maintained way when part is

open to public use for purposes of vehicular traffic.”

If our protagonist were to be charged with an offense under Section 521.025 of the Transportation Code (or an offense under Section 521.457 of the Transportation Code, Driving While License Invalid, which contains the same terms), the jury could “freely read the statutory language to have any meaning which is acceptable in common speech.” *Ryser v. State*, 453 S.W.3d 17 (Tex. App.—Houston [1st Dist.] 2014, *pet. ref’d*), citing *Teer v. State*, 923 S.W.2d 11, 19 (Tex. Crim. App. 1996). In other words, a jury could elect to believe that the Texas Legislature intended to refer to city streets when it employed the term “highway” in Section 521.025, or it could elect to believe that the Texas Legislature intended to refer to a main road connecting one city to another.

Although it seems somewhat implausible that the San Marcos Police Department would arrest a college student piloting a Barbie Jeep on a city street, it certainly seems possible that this activity could, technically speaking, constitute an offense under Section 521.025 or Section 521.457 of the Transportation Code.

Texas law is clearer with regard to the question of whether operating a Barbie Jeep while intoxicated constitutes an offense under Section 49.04 of the Penal Code (Driving While Intoxicated). A person commits the offense of DWI if “the person is intoxicated while operating a motor vehicle in a public place.”

Within Chapter 49 of the Penal Code, the term “motor vehicle” does not follow the “common usage” rule. That’s because the Legislature has determined that the phrase “motor vehicle” “has the meaning assigned by Section 32.34(a)” of the Penal Code whenever that phrase is used within Chapter 49. (See Sec. 49.01(3), Penal Code.) The definition contained in Section 32.34 is broad, and states that a motor vehicle is: “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.” This definition clearly includes a Barbie Jeep. (It also includes bicycles, skateboards, and roller skates.)

Additionally, driving the Barbie Jeep would clearly constitute “operating” the vehicle. Although the term “operating” is not defined by statute, the Court of Criminal Appeals has held that this element is met if “the totality of the

circumstances...demonstrate that the defendant took action to affect the functioning of his vehicle in a manner that would enable the vehicle's use.” (Therefore, idling in neutral in a grocery store parking lot while intoxicated would technically constitute the offense of DWI.)

Finally, a public roadway clearly constitutes a “public place.” Interestingly, even operating a Barbie Jeep on a city sidewalk while intoxicated could arguably constitute the offense of Driving While Intoxicated. (Additionally, driving a vehicle on a sidewalk in the Central Business Area of San Marcos violates city code. (See Sec. 82.269, San Marcos City Code.))

In conclusion, we recommend enjoying the Waka Flocka Flame concert while sober if you plan to drive yourself and others home. We also recommend buying a bus pass, a bicycle, or a good pair of shoes, rather than a Barbie Jeep, if your driver’s license has been suspended.

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TRAFFIC SAFETY WEBSITES

<http://www.nhtsa.gov/impaired>
National Highway Traffic Safety Administration Impaired Driving Website

<http://tti.tamu.edu/group/cts/>
Texas Transportation Institute Center for Traffic Safety

<http://www.txdot.gov/safety/tips/default.htm>
TxDOT Traffic Safety Tips

<http://www.nsc.org/Pages/Home.aspx>
National Safety Council

<http://www.texas Trafficsafety coalition.com/>
Texas Traffic Safety Coalition

<http://www.tjctc.org/Educational-Programs/Traffic-Safety.html>
TJCTC Traffic Safety Initiative

<http://www.cjcenter.org/idi/>
Impaired Driving Initiatives (Sam Houston State University)

The Movement to Eliminate Traffic Deaths Gains Strength in Texas Cities

By Angie Schmitt, Streetsblog USA

Texas cities are some of the most dangerous places in the U.S. to walk or bike — or drive, for that matter.

In 2013, the per capita traffic death rate in Texas was 24 percent higher than the nation as a whole. And because so many people live in the state, it regularly leads the nation in total traffic deaths.

Walking in Texas cities can be particularly perilous. Adjusted for population, the Lone Star State is the 10th most dangerous for walking. Houston, Dallas, and San Antonio are all on the list of the 20 most dangerous cities for pedestrians. The traffic fatality rate in San Antonio, for example, is more than three times as high as New York City's.

But a movement to change that is afoot.

San Antonio

Last week 54 people stood on the steps of San Antonio's City Hall — one for each pedestrian killed on city streets the previous year. The demonstration launched the start of the city's Vision Zero initiative, whose leading champion is Council Member Shirley Gonzales.

Gonzales doesn't equivocate when she talks about street safety. She wants Vision Zero in San Antonio to be a real paradigm shift.

"We have high traffic fatality rates because we have a fundamentally dangerous environment," she said at the event, flanked by Mayor Ivy Taylor and City Manager Sheryl Sculley, both big supporters, according to the Rivard Report.

"These fatalities are preventable, they are not inevitable," Gonzales said.

City leaders are currently preparing a document that will lay out actionable steps toward reducing the number of traffic deaths — year by year — to zero. Officials say they hope the action plan will be complete by the end of this year.

Gonzales told Streetsblog the city has put aside \$2 million for immediate steps like ramped up traffic enforcement and an education campaign. San Antonio officials are also discussing reducing the default speed limit from 30 to 25 miles per hour — but that will require state approval. As for street design, a recent city budget provided a \$10 million boost in funding for sidewalks — a simple but encouraging step that had been in the works for a long time.

Gonzales says the city has a lot of work to do on street redesign. "It could include

road diets, it could include speed reduction, it could include more sidewalks, more crosswalks, better lighting,” she said. “Some are real basic things that San Antonio has neglected over our lifetime.”

“In the long term we’re looking at raised medians in certain areas, we’re looking at painting the streets certain shades — using green paint in a bike lane and doing some landscaping that would encourage slower traffic in certain areas,” she said.

Of course, there are a few “naysayers” in San Antonio, says Gonzales. But part of Vision Zero is changing the indifferent cultural attitude toward traffic violence.

When you ask someone how many people they expect to be killed while walking, they usually come up with a number, Gonzales said. “If you ask them how many members of your family would be acceptable to lose in a traffic fatality, of course the answer’s always zero. That’s how we change people’s mind. All the elected officials are pretty committed to that.”

Leah Shahum, director of the newly formed national Vision Zero Network, says San Antonio is the 10th U.S. city to commit to a Vision Zero framework of eliminating traffic deaths, and it is the first in Texas.

But it looks like other Texas cities aren’t far behind. Campaigns to establish Vision Zero goals as city policy are underway in Austin and Houston as well.

Austin

2015 will be the worst year for traffic deaths in Austin’s history. Just this week, a crash claimed the 81st victim, tying a decade-old record.

But in January, the City Council unanimously approved the formation of a Vision Zero task force. Nic Moe, who sits on the task force as a grassroots representative, says the effort was inspired by Vision Zero policies in New York, Chicago, and San Francisco.

“A group of us on the [city’s] Pedestrian Advisory Council recognized that one of our main issues was that

pedestrians were dying,” he said. “We thought it would be a good way to frame what’s going on.”

Since the beginning of the year, citizen representatives and officials from a handful of city departments — public works, police — have been meeting to establish a Vision Zero plan for Texas’s capital city. Details haven’t been released to the public yet, though proposals were released within city departments this week, says Moe. By this winter, he expects Austin to have adopted a Vision Zero framework for eliminating traffic deaths.

Moe, meanwhile, serves on a volunteer group called Vision Zero ATX, whose goal is to ensure the city enacts meaningful street safety policy.

“We’re looking at enforcement,” he said. “We’re looking at education and culture change. The third thing, which is obviously huge, is engineering.”

Progress is being made on street design and land use

through the city's new Complete Streets policy and its "Code Next" zoning reform.

The task force has also been looking at opening up data on traffic collisions to the public, and establishing measurable goals and targets. By mapping data, Austin has discovered that 69 percent of the city's serious injury collisions and traffic fatalities occur on just 8 percent of streets.

Houston

In Houston, city officials recently held the first meeting of what could evolve into a Vision Zero task force, reports Jay Crossley of local advocacy group Houston Tomorrow, which helped convene the gathering.

The meeting brought together officials from the police department, public works, and other agencies that can help reduce traffic deaths. Crossley hopes Mayor Annise Parker will adopt a Vision Zero policy before she is term-limited in January.

Almost 700 people were killed on the region's roadways in 2014. But the details of what Vision Zero would look like in Houston are still sketchy. Bike Houston has laid out more than a dozen ideas it would like to see included, including police on bikes to enforce traffic rules, stiffer speeding and DUI penalties, lowering speed limits, and reintroducing red light cameras.

Crossley hopes a Houston Vision Zero plan would include stepped-up police enforcement, something the department is already experimenting with at the request of bike advocates, as well as banning cell phone use while driving and lower speed limits on residential streets.

The city has been working to overhaul its street design standards after Parker issued an executive order establishing a complete streets policy in 2013. But those changes have yet to be felt.

"There's a lot of things we'll have to talk about and change," Crossley said.

This article originally appeared on StreetsBlog USA. To view the article online, please visit the link below.

<http://usa.streetsblog.org/2015/09/24/the-movement-to-eliminate-traffic-deaths-gains-strength-in-texas-cities/>

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Uber Actually Reduces Drunk-Driving Deaths

By Charlotte Lytton
The Daily Beast

New research suggests that Uber is responsible for a drop in drunk-driving deaths across California.

The study, by Philadelphia's Temple University, analyzed data on alcohol-induced road deaths from 2009 to 2014, summarizing that the mortality rate for such incidents fell by up to 5.6 percent in cities where Uber was used.

Professors Brad Greenwood and Sunil Wattal looked at the quarterly changes in vehicular homicides—which kill 13,000 Americans each year—occurring in Californian cities with Uber versus the rate in those ones without, finding that the service reduced deaths by a minimum of 3.6 percent wherever it was implemented. Should the study's findings hold nationally, an estimated 500

lives would be saved every year, and the annual cost of deaths of this nature—\$37 billion, racked up by the likes of medical care for the injured, and prosecution and incarceration for the perpetrators—could be reduced.

"I had the idea for the paper at a friend's wedding, when I had drunk a little too much and an Uber X driver took me home," Greenwood explains of his research. The study had no affiliation with Uber itself, though the professors did alert the company to their findings after the analysis had been completed.

Its key findings were that UberX significantly reduces the number of alcohol related motor vehicle fatalities, that the effect takes between 9 and 15 months to manifest, and during times of

likely surge pricing, such as weekends and celebratory holidays associated with drinking, the effect is greatly diminished (most likely because fewer people use the service when its rates are increased). The study also found that Uber Black—the "executive luxury service"—proved to be something of an anomaly, only achieving the same results in cities with a population of over 250,000.

The functionality of the Uber app, which shows users exactly how long they have to wait until their ride arrives, is cited as one of its greatest attractions to inebriated customers. Though some may doubt a would-be drunk driver's ability to make wise decisions, this fits into the notion of rational choice theory, the paper argues, which "suggests that offenders respond selectively

to particular situations based on the probability of being apprehended, the benefit they will reap from the crime, and the opportunity cost of selecting one option over another.” The coupling of low cost and easy availability is what the researchers deem to be the core of Uber X’s success, emphasized by the finding that periods of surge pricing had no effect on the rate of motor vehicle homicides.

The news casts a rare positive light on Uber, a company that has seemingly been mired in every possible form of controversy since its inception six years ago. With a near-endless rotation of allegations from rape to kidnap levelled at the service’s drivers, and cities including New Delhi, Toronto, and Berlin seeing Uber subjected to scrutiny in court, banned, or both, the notion that it could benefit for the population’s health and finances could perhaps alter its unpopular image.

The results can also be seen as something of a victory for the sharing economy, which is routinely criticized for its lack of regulation.

Greenwood thinks “a lot of parts of the sharing economy get backlash from established institutions because they are challenging established business models, e.g. hotels for AirBNB, or Uber and taxis. But, a lot of the conversation isn’t based on hard data, it’s based on speculation, and that is not a good thing.

“This paper is just a starting point which investigates only one part of the ridesharing business model,” he adds, “and the hallmark of good science is replication, but I hope policy makers take the findings seriously when they try to incorporate these emerging business models into the economy.”

Greenwood and Wattal will present their findings at a conference in Vancouver next week.

**THANK
YOU!**
**For your
service to the
State of Texas
and your
commitment to
traffic safety.
We look
forward to
seeing you in
2015-16!**

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