

MASSACHUSETTS

Prosecutors Operating Under the Influence (OUI) Manual

▶ AT-A-GLANCE

▶ **Project Characteristics**
First Comprehensive
Statewide OUI Manual

▶ **Program Areas**
Alcohol and Other Drugs

▶ **Targeted Populations**
Prosecutors, Municipal and
State Law Enforcement

▶ **Type of Jurisdiction**
State

▶ **Jurisdiction Size**
6,349,097

▶ **Funding**
Section 164: \$9,355

▶ **Contact**
Caroline Hymoff
Senior Program Manager
Exec. Office of Public Safety
Gov. Highway Safety Bureau
1 Ashburton Place
Boston, MA 02108
(617) 727-4054 Ext. 25558
Caroline.Hymoff@state.ma.us

Problem Identification

Driving while under the influence of alcohol or other drugs is a major contributing factor in motor vehicle fatalities and injuries in Massachusetts each year. It is not unusual to have law enforcement report more people dying from motor vehicle crashes than from murder in a single year. The ability to successfully prosecute and adjudicate Operating Under the Influence (OUI) offenders sends a message to the community that there are consequences for endangering the lives of others on the road. Successful prosecutions also serve as an incentive to law enforcement that their hard work in keeping the roadways safe is taken seriously by the courts and the public.

Experienced prosecutors will tell you that an OUI case can be one of the most difficult cases to prosecute. Several factors contribute to the challenges of trying these cases. First, based on the results of juror questionnaires, there is a strong likelihood that the jurors have committed the same crime at some point in their lives. Second, over the past several years, the percentage of offenders who refuse to submit to a chemical test has dramatically increased. Cases without breath test evidence usually go to trial. As a result, prosecutors have less physical evidence to present the fact-finder and must be skilled in eliciting critical observations from law enforcement and other witnesses. The newest prosecutors are often assigned to handle OUI cases and do not have the experience or resources to be adequately prepared against these veteran practitioners. Finally, the cases that do go to trial often involve repeat offenders who have hired seasoned attorneys due to the significant penalties they face if they are guilty.

Goals and Objectives

The goal of the *Massachusetts Prosecutors Operating Under the Influence (OUI) Manual* project is to create a comprehensive manual that simplifies the complex legal and evidentiary issues that arise in many OUI cases and provide Massachusetts prosecutors with a tool to assist them in better prosecuting these cases.

Strategies and Activities

The Governor's Highway Safety Bureau (GHSB) recognized the challenges prosecutors face in order to more effectively prosecute OUI. GHSB provided grant funds to the Massachusetts District Attorneys Association (MDAA) to provide training and resources to prosecutors in the area of vehicular crimes. GHSB earmarked a portion of those funds for writing and publishing the first OUI Manual.

The *Massachusetts Prosecutors OUI Manual*:

- Includes everything prosecutors need to know about an OUI case – from investigation to case preparation though trial and sentencing;
- Offers information required to understand the complex legal and evidentiary issues that arise in many OUI cases;
- Provides the means by which prosecutors can always feel ready for trial and prepared to respond to defense challenges;
- Covers the following topics:
 - Defining the legal elements of an OUI prosecution
 - Standardized field sobriety test, breath testing, and blood tests
 - Predicate questions for witnesses typically utilized in an OUI trial including arresting officer, breath test administrator, and toxicologist
 - Prosecution responses to common defense motions and common defenses asserted at trial
 - Various OUI jury trial stages, from jury selection to sentencing
 - Prosecuting the offender

The GHSB provided all district court prosecutors in Massachusetts with a copy of the manual.

Results

Massachusetts prosecutors received the OUI manual in April 2003. Initial feedback has been very positive. Prosecutors commented that they consistently use the manual to assist them in prosecutions.

In Fiscal Year 2004, GHSB issued a revised OUI manual containing the new per se law in Massachusetts. GHSB distributed this revised manual to all 351 municipal police departments, state and municipal law enforcement training academies to assist in police training. In the future, each District Attorney's Office will receive an electronic copy of the *Prosecutors OUI Manual* as well.