

A Proposal to Build “Best in Class” DUI Enforcement in South Dakota, in memory of Maegan Spindler

1. Background

On July 8, 2013, Ron Fischer, with a blood alcohol content almost three times the legal limit and high on marijuana, blew pass a stop sign in broad daylight and plowed into two people working on a trailered boat in a nearby parking lot at 60 mph. Our daughter Maegan Spindler and her co-worker Dr. Robert Klumb were killed. Their deaths that day in Pickstown, SD are tragic not only because the lives of two amazing people were cut short, but also because their deaths—like every single death or injury caused by a DUI—were entirely preventable. No DUI incident should ever be called an “accident”. The fact that Maegan and Rob were gruesomely killed in such a senseless manner is a direct result of:



- The general acceptability of DUI among the public due to weak deterrence;
- The lack of severe consequences for DUI; and
- Spotty and reactive DUI enforcement, as opposed to DUI enforcement that is proactive and highly visible.

First and foremost, we must all accept the fact that her death was entirely preventable. Secondly, it was the result of criminal behavior. Thirdly, the state has an obligation to protect its residents and others from criminal behavior. Fourth, DUI is **emphatically** not a “non-violent crime” in the absence of death or injury (as indicated in the 2013 SD Criminal Justice Initiative). Driving a vehicle while intoxicated is no different than a drunk randomly shooting a firearm in public; it is only chance that keeps innocents out harm’s way from a drunk driver.

The state of South Dakota in recent years has made important and significant strides in its DUI programs . But South Dakota, like all states in the Union, is clearly “behind the curve” in DUI prevention, enforcement and penalties when compared to “best practices” in other areas of the world. The European Union has cut DUI deaths by more than half during the past decade, while death rates in the US have flat lined in recent years¹. This is not a “nanny state” approach, rather good police work, stiff penalties and public education. It is also important to note that dramatic improvements in trauma care has coincided with the decline in DUI deaths in the US since the 1980s. Today, many people that would have died 30 years ago are now saved—although many suffer grievous, painful and disabling injuries.

DUI costs South Dakota hundreds of millions of dollars each year. MADD estimates the annual subsidy by South Dakota taxpayers as almost \$1 billion in the past five years (204 deaths); *these costs are socialized, largely absorbed by the taxpayers of South Dakota*. The direct costs of prosecuting and incarcerating Ron Fischer for his crime will likely exceed \$2 million. In the case of Maegan’s death, we may conservatively estimate her lost lifetime earnings of \$3-5 million; Rob Klumb was 46 years old with a PhD and his earnings would have been \$2-3 million. The total cost to South Dakota of these two deaths is \$7 million on the low side and \$10 million on the high side. Of course, there is no way to quantify the loss of a family member.

It is our sincere belief that South Dakota, by adopting DUI “best practices,” can in time turn the tragedy of Maegan and Rob’s deaths into a social good. South Dakota is a small state with a big problem. But small size is an asset; change is “do-able” and **South Dakota should become a leader for the entire nation**.

¹ National Transportation Safety Board, “Reaching Zero: Actions to Reduce Alcohol-Impaired Driving”, page 1

2. **We propose the following actions:**

1. "Reaching Zero: Actions to Reduce Alcohol-Impaired Driving" was released by the National Transportation Safety Board on May 14, 2013, (see <http://go.usa.gov/TeQe>). This report contains a very detailed set of recommendations that should be adopted by all states. Among the NTSB recommendations:
 - Lower the current DWI BAC threshold from the current 0.08 to 0.05 **or lower**. All levels of measurable alcohol increase risk and risk increases exponentially with BAC.²
 - Use of High Visibility Enforcement (HVE)
 - Use of passive alcohol sensors at all checkpoints and traffic stops to improve detection of impaired drivers. Passive sensors more than double arrests³.
2. A permanent, explicitly dedicated excise tax of 10% should be enacted on the wholesale cost of all alcoholic beverages sold within the state of South Dakota in order to **supplement** current DUI enforcement efforts. Adjusting current budget priorities to accomplish "some" HVE today will invite reductions in the next recession or if different priorities arise. The excise tax for the first 10 years would be explicitly dedicated to the funding of DUI enforcement and education and for no other purpose. Funds would be apportioned to state, local and tribal law enforcement on the basis of regional DUI incidence and risk. When South Dakota has reached top decile performance in DUI crash, injury and death rates compared to other US states, then a portion of funds would be re-dedicated to drug and alcohol treatment.

If there is lack of consensus for enacting a new tax, then we suggest the Governor propose abolishing one or more unpopular taxes affecting families or business development which currently go into the general fund. This will offset the proposed dedicated alcohol excise tax.

Alcohol demand is probably inelastic and an alcohol excise tax guarantees a certain revenue stream for a very specific purpose. *It places the cost exactly where it belongs and does not **socialize** the cost of DUI, as is the current practice.*
3. High Visibility Enforcement (HVE) should be employed in addition to traditional DUI enforcement actions. Establish an HVE system, supported by dedicated funds, of mandatory, random, and unannounced sobriety checkpoints, which all law enforcement would be required to implement, perform and report results. Sobriety checkpoints are the single most effective method for making enforcement of DUI laws highly visible. The number and frequency of such checkpoints would be established using DUI incidence measures calculated on a regional basis. We feel that state highway patrol should be the primary resource for HVE to insure standardized practices, but local law enforcement should almost always be involved. Also note that HVE would have positive knock-on effects of quickly removing unlicensed drivers and unregistered or uninsured vehicles from the road, such as the driver and vehicle that killed Maegan Spindler.

The NTSB report references a comparison study of weekly sobriety checkpoints in two counties versus two others which did not. In one year, the counties with weekly checkpoints had a 70% reduction in drivers with BAC greater than 0.05 as compared to those without.⁴
4. New DUI Measurements: As professional statisticians, we question the validity of current DUI performance measures. We advocate developing a system of statistically valid measures to characterize, track and report to the public the **incidence** of DUI on a regular basis based on sobriety checkpoints. Measures such as deaths, injuries, crashes or arrests do not accurately capture DUI **incidence** and, in any event, are reactive and not proactive in nature. The goal is to provide evidence regarding the incidence of impaired driving overall and track progress in reducing the number of impaired drivers using something quantifiable

² NTSB, page 21

³ NTSB, page 26

⁴ NTSB page 24

like “parts per million defect rates”, which are ubiquitous in the technology sector. This would involve a statistical techniques such as stratified random sampling or spatial statistics. *You cannot improve what you do not measure!*

5. “Dram Shop” laws should be enacted to provide liability for the sale or provision of alcoholic beverages to visibly intoxicated persons. Current South Dakota law specifically exempts providers of alcohol from any liability for damages caused by serving intoxicated individuals. Opponents of “Dram Shop” laws argue that only those people who drive while impaired should be held responsible for their actions; again, another example of socialized costs for uninsured drunk drivers. They overlook the fact that it is irresponsible to sell alcohol to patrons that are a known danger to others or for private individuals to do the same. Taxpayers should not be forced to subsidize the losses incurred which result from private irresponsibility.
6. Implement immediate roadside vehicle impoundment of a minimum of 7 days upon DUI arrest, regardless of vehicle ownership. Make payment of impoundment charges the responsibility of the arrestee.
7. Provide a clear and simple path for asset forfeiture as a penalty for DUI and use it routinely. For example, any aggravated DUI offense would result in asset forfeiture of the vehicle, regardless of ownership. Asset forfeiture would apply regardless of jurisdiction and require coordinated action of state, local and tribal governments. South Dakota routinely uses asset forfeiture for drug crimes. DUI is also a drug crime and certainly causes more deaths and injuries. Asset forfeiture should be constructed in such a manner such that satisfaction of lien holders is not an impediment to asset forfeiture; the primary purpose of asset forfeiture is for punishment for DUI and not to generate revenue. This may be especially effective for preventing drunk drivers from using borrowed or communally owned/used vehicles.
8. Establish a system of DWAI penalties for measurable BAC at or above 0.02, but below 0.05, with stricter thresholds for repeat offenders. For example, a full DUI violation would be the 0.02 BAC level for any prior offender.
9. Establish a category of aggravated DUI for above 0.10 BAC and for all multiple offenses. Aggravated DUI should be treated as a felony. Aggravated DUI should always involve asset forfeiture and “some” jail time and not allow for judicial or prosecutorial discretion.
10. Enacting “some” mandatory jail time for the first DUI offense, and requiring a state prison sentence, beginning with the second offense. *Even first offenders should hear the iron jail doors slam behind them, eat jail food and sleep in a cell for at least a “few” nights.*
11. Implement immediate roadside driver license suspension upon arrest.
12. Upon conviction, impose stiff mandatory license suspension of at least 180 days for the first DUI offense, a minimum of 3 years for the second offense, and permanent revocation for the third DUI offense, DUI above 0.10 BAC or any DUI incident resulting in injury or death.
13. Treat the first and second DUI offenses as a felonies and not a misdemeanor. Do not allow prosecutorial or judicial discretion to reduce DUI to a misdemeanor.

3. *Implement Policies to Prevent a Repeat of the Events Surrounding the Tardy Arrest of Ronald Fischer:*

We were told that Ron Fischer could have been arrested at the scene where he killed our daughter. In spite of this fact, he was not arrested until 15 days after the killing. It took the state laboratory 11 days to receive, test and return the results from a blood sample of Ron Fischer taken at the scene. The reasons for these delays, as reported in the Sioux Falls Argus Leader are unacceptable to the families of those killed by drunk drivers and caused us great distress.

Fischer was transported by helicopter to a Sioux Falls hospital and we understand he left the hospital as a free man after 2 days. The Argus Leader quoted State Highway Patrol

spokesman Lt. Welsh as saying that the state did not wish to be responsible for Fischer's hospital bill! Lt. Welsh also stated whether a suspect was arrested at the hospital depended upon the "seriousness" of the crime (implying that killing 2 people was not serious)! *This was **totally unacceptable and caused our entire family great distress!***

- In the event of a DUI death or injury, laboratory samples should be transported by courier to the testing facility. Such samples must never be sent via US mail. It is ironic that the alleged criminal got helicopter treatment and the victims got US mail treatment.
- The state testing facility should be required to provide blood alcohol results within 24 hours of receipt, *especially for those involving death or injury*, even if other tests (medical, drugs, etc) are run on the sample. Staffing and training levels should be adequate that samples never have to wait for **days** for a qualified technician. If the South Dakota state lab is unable to perform tests in a timely manner, cooperative arrangements should be made with federal or neighboring states' crime labs or with certified institutions within the state.
- In the event of injury or death from DUI incidents, the state should insure that suspects are **never** allowed to either leave the scene of a DUI incident or a hospital without being arrested, as was the case of Ron Fischer. Fischer returned to tribal lands. When a warrant was finally issued on July 19 (11 days after the killings), the local sheriff could not arrest Fischer. It was not until July 23 that Fischer finally turned himself in voluntarily. *Again, great distress was caused to our family.*
- If a suspect returns to tribal lands where the state is not allowed to execute an arrest warrant, it should be routine, immediate procedure to either request the US Attorney for South Dakota issue a warrant for flight from prosecution and have it executed by US Marshals or the Governor should issue a special extradition request to tribal authorities.

4. Charles Mix County: An Example of how DUI Enforcement Resource Constraints have Tragic Consequences

In Charles Mix County, law enforcement consists of 1 elected sheriff, 4 permanent deputies, a contract deputy and a single trooper assigned to a geographically large county with a known, significant DUI problem. This is not unusual for rural South Dakota counties. In addition to traditional law enforcement, the sheriff's department provides security for the court house in Lake Andes and also transports prisoners.

The staffing without overtime averages less than 2 FTE law enforcement officers per shift. There are only approximately 100 troopers in the State Highway Patrol to supplement local law enforcement for the entire state. We assume law enforcement staffing is even lower during evenings and night, when NTSB reports that 12.7% of nighttime drivers test positive for alcohol and 1 in 20 are above 0.05⁵ (the rates in Charles Mix County, of course, are unknown but probably higher than the nationwide sample referenced by NTSB).

We understand there are about 130 DUI arrests in Charles Mix County per year. It is estimated that a DUI arrestee drives drunk approximately 80 times before arrest⁶ (perhaps rates are even higher in the county, given the demographics). Using the 80:1 ratio, this means there are 10,400 annual instances of drunk driving in the county, or almost 30 per day, whereas an arrest occurs approximately once every 3 days.

In the mid-2000s the state apparently had federal grant money and state police would perform sobriety checkpoints once or twice a month in the county. Without funding, these apparently have been largely abandoned and there are only a few sobriety checkpoints per year. Regardless, if there are 10,400 drunk driving trips annually, does it seem to be a reasonable response to only have monthly (as in the mid-2000s) or semi-annual (today) sobriety checkpoints? Is the current sobriety checkpoint policy a plausible deterrent to drunk driving in Charles

⁵ NTSB, page 6

⁶ NTSB, page 6

Mix County? We believe the answer to that question is painfully obvious, especially to the Spindler and Klumb families.

The relevant DUI enforcement question is how can the public receive needed HVE in Charles Mix County given the currently limited law enforcement resources? If there were to bi-weekly, random sobriety checkpoints of 4 deputies for a 4 hour period, it would require the addition of approximately 1.0-1.5 FTE. Surely Charles Mix County would be hard-pressed to organize and fund such an activity on its own, without the dedicated state funding we propose.

We also understand that there are counties within South Dakota that have virtually no taxable property (they consist of mainly of tribal lands) and have extreme resource constraints for law enforcement. This is another reason why the proposed state-wide excise tax on alcohol to fund DUI enforcement is so important.

Only through a frequent use of sobriety checkpoints and other forms of High Visibility Enforcement will there be a credible fear for drunk drivers of getting arrested and penalized.

5. First Offenders, Multiple Offenders: Which are most important?

93 percent of DUI fatal crashes are from first time offenders while 7 percent are from multiple offenders⁷. Ronald Fischer was a first time offender. If the vast majority of deaths and injuries are caused by first time offenders, it seems logical that the majority of enforcement efforts and resources be aimed at deterrence of the first offense and not primarily focused on recidivism. Does spending on DUI reflect the 93%-7% split, or do repeat offenders receive more attention?

While it is imperative to catch and penalize multiple offenders, meaningful reduction in DUI deaths and injuries necessarily requires robust deterrence of first time offenders. Technology (ignition interlocks, transdermal monitoring, etc) can not deter first time offenders unless they became standard equipment in all cars, which is doubtful. Deterrence is the perception or fear of the high risk of being arrested for DUI. It amounts to a change in culture and will take many years of effort.

There is also a mistaken perception that first time offenders somehow deserve leniency upon DUI arrest and conviction, as evidenced by the misdemeanor status of the crime and no mandatory jail time – not even a weekend. Indeed, penalties for DUI do not have the potential become severe, in our opinion, until after the third or fourth offense.

6. Conclusion

Twelve years ago 3,000 people were killed on 9/11. This was a horrifying event that changed many, many policies and behaviors. *Each and every year, 3.5 times as many people are killed by confirmed legally drunk drivers and up to 6 times as many are killed if “alcohol involved” estimates are used. In the years since 9/11 over 150,000 Americans have been killed by drunk drivers, far in excess of all Americans killed in terrorism and wars after 9/11 and more than all wars since WWII.* Three times as many receive debilitating injuries as are killed; over 600,000 casualties of DUI since 9/11! How much is “enough”? It is time to stop this senseless, preventable deaths and injuries. The outrage and grief should not be entirely borne by the victims and their families. It should outrage and grieve everybody.

As parents of Maegan Spindler, as citizens of the United States, we feel the time to enact comprehensive DUI reform is now. Zero DUI deaths is the goal. Enough is enough. Let South Dakota lead this effort.

Contact information for Maegan’s family:

Gregg & Susan Spindler
3975 Pompey Hollow Road
Cazenovia, NY 13035
315-655-8187
sd_ DUI_initiative@sgsstat.com

⁷ NTSB page 31. The 93% figure is by subtraction from the 7% of fatal incidents caused by repeat offenders.

