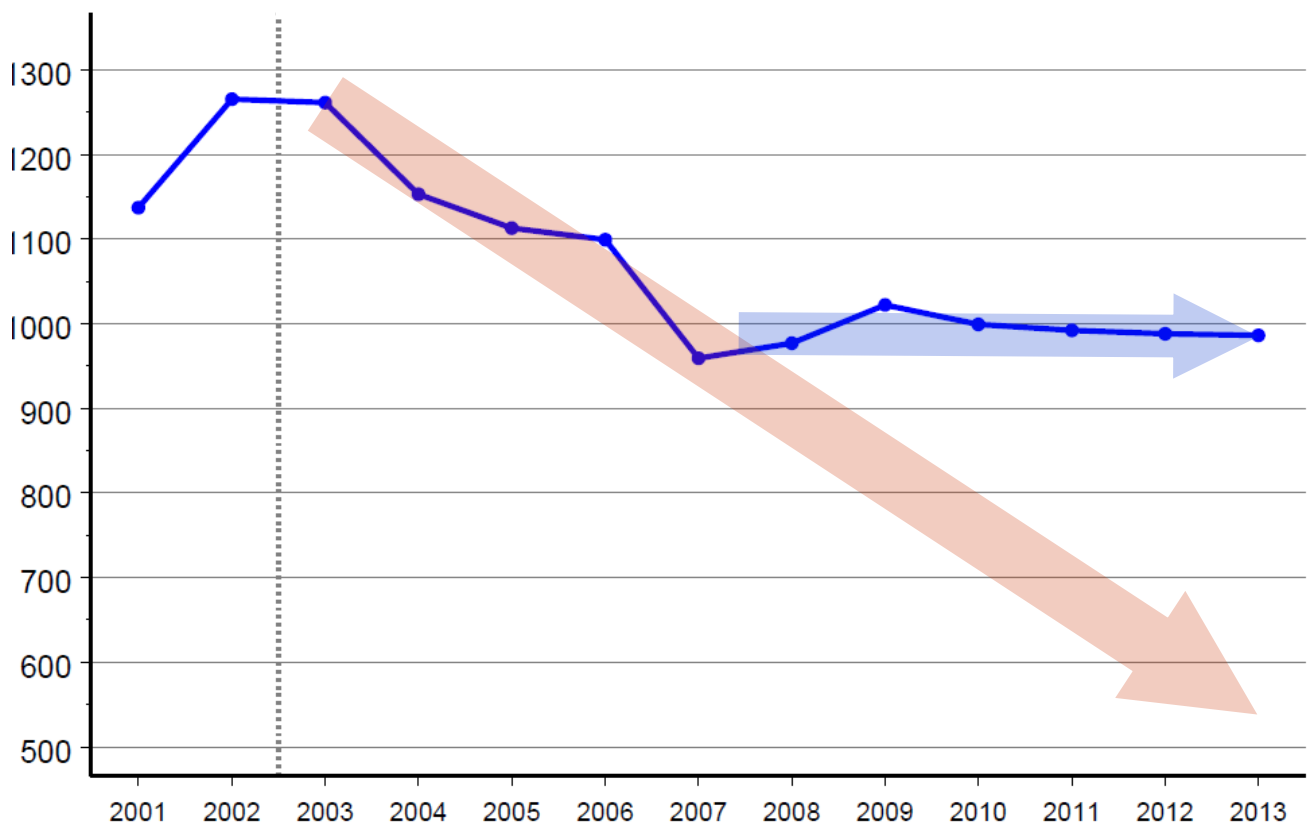


# South Dakota's Recent DUI Trends and Proposed Reforms

## What went wrong, How to fix it



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## **South Dakota's Recent DUI Trends**

The purpose of this paper is to demonstrate that South Dakota made impressive, significant reductions in DUI crashes, deaths and injuries during the mid-2000s, but progress has stalled in the past several years. It discusses the reasons improvements were attained and proposes fact-based solutions to regain the initiative. This paper requests leadership on this matter by the Governor and Legislature to change laws and provide adequate funding to resume forward progress to eventually eliminate this entirely preventable cause of death and injury.

### **Our Personal Interest in this Issue**

In Pickstown, SD on July 8, 2013, Ronald Ray Fischer, Jr., with a blood alcohol content over three times the legal limit and high on marijuana, blew past a stop sign in broad daylight and plowed into two people working on a trailered boat in a parking lot at 60 mph. Our 25 year old daughter Maegan Elizabeth Spindler and her supervisor Dr. Robert Klumb were killed. Both were employees of the US Fish & Wildlife Service, based in Pierre. Fischer is scheduled to stand trial in Lake Andes on September 29, 2014.

After her death, we studied DUI and South Dakota's DUI efforts, in particular. What we found was the entire United States is a serious laggard when it comes to DUI deaths, injuries and enforcement when compared to other advanced countries. And South Dakota ranks near the bottom within the US, unfortunately. Poor performance comes in spite of the fact that the US produces world-class research and methods for DUI prevention. We conclude that poor performance is the result of a lack of political will and leadership to reduce this entirely preventable cause of death and suffering.



**DUI prevention is simply a matter of the sanctity of human life.** It is a public safety issue and should never have a political or ideological component. While private initiatives help, ultimately this is a problem that **only** state and local government can solve.

### **DUI Trends within South Dakota**

Compared to the 1970s, DUI in South Dakota has been reduced significantly, as with the nation as a whole. Forty years ago half the traffic deaths were attributable to DUI, with over 200 deaths per year. During this time Blood Alcohol Content (BAC) was reduced from 0.15 to 0.10, while enforcement and laws were strengthened.

Further progress was made in the 1980s and 1990s, driven by increased public awareness. The federal government, through the National Highway Traffic Safety Administration, provided incentives for states to reduce BAC from 0.10 to 0.08. South Dakota adopted the 0.08 standard in 2002. Also, in the mid-2000s the federal government provided grants for High Visibility Enforcement (HVE) consisting of sobriety checkpoints and saturation patrols.

The mid-2000s focus on DUI provided significant performance improvements for South Dakota. Comparing 2001 versus 2013 the following observations are made:

- The number of DUI crashes were reduced by 13%. This is perhaps the best indicator of “how much drunk driving” is taking place in the state.
- DUI fatalities dropped 44%. Fewer DUI crashes lead to fewer deaths. Deaths are also significantly influenced because automotive safety and trauma care both improved compared with the early 2000's, influencing the reduction.

- Injuries are down by 25%, not as much as fatalities. It is also influenced by improved automotive safety and trauma care; many that would have died years ago now survive.

	2013	2001	2013 vs 2001 Change	Percent Change
<b>Total DUI Crashes</b>	986	1,137	-151	-13.28%
<b>DUI Fatal Crashes</b>	37	65	-28	-43.08%
<b>DUI Injury Crashes</b>	454	563	-109	-19.36%
<b>DUI PDO Crashes</b>	495	509	-14	-2.75%
<b>DUI Fatalities</b>	42	75	-33	-44.00%
<b>DUI Injuries</b>	639	851	-212	-24.91%
<b>DUI Arrests</b>	8,683	8,956	-273	-3.05%
<b>DUI Convictions</b>	6,083	5,559	524	+9.43%

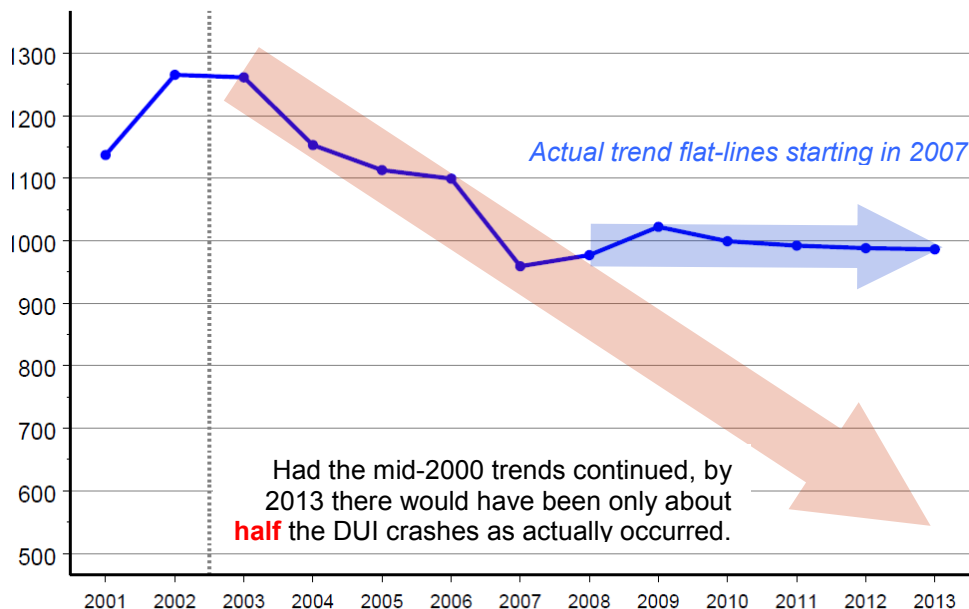
[All data in tables and charts from Source: SD Motor Vehicle Crash Summary for years 2007, 2013, [https://dps.sd.gov/enforcement/accident\\_records/Annual\\_Crash\\_Reports.aspx](https://dps.sd.gov/enforcement/accident_records/Annual_Crash_Reports.aspx). See Appendix for spreadsheet]

**One Picture is worth a thousand word: Trend Charts**

The above **table** is informative and there is apparent improvement between 2001 and 2013, but columns of numbers never fully convey what has happened in recent years. It is necessary to look at **trend charts** to gain full understanding of what happened in the past and more important, what is **not** happening at the current time. “One picture is worth a thousand words”.

First, the **incidence** of DUI is most important. How much drunk driving actually take place and what is the trend? The number of DUI Crashes is a far better measure for DUI incidence than deaths. As figure 1 illustrates, DUI crashes tumbled from a high of 1,265 in 2002 to 959 in 2007, a reduction of 24%. But since 2007, DUI crashes have remained stubbornly flat (blue arrow), just under 1,000 per year. The red arrow shows the five year 2003-2007 trend projected to 2013. Had this improving trend continued, and not flat-lined, there would have been about half the number of DUI crashes in 2013 as actually occurred. We may also surmise that deaths and injuries in 2013 might have been half the actual numbers.

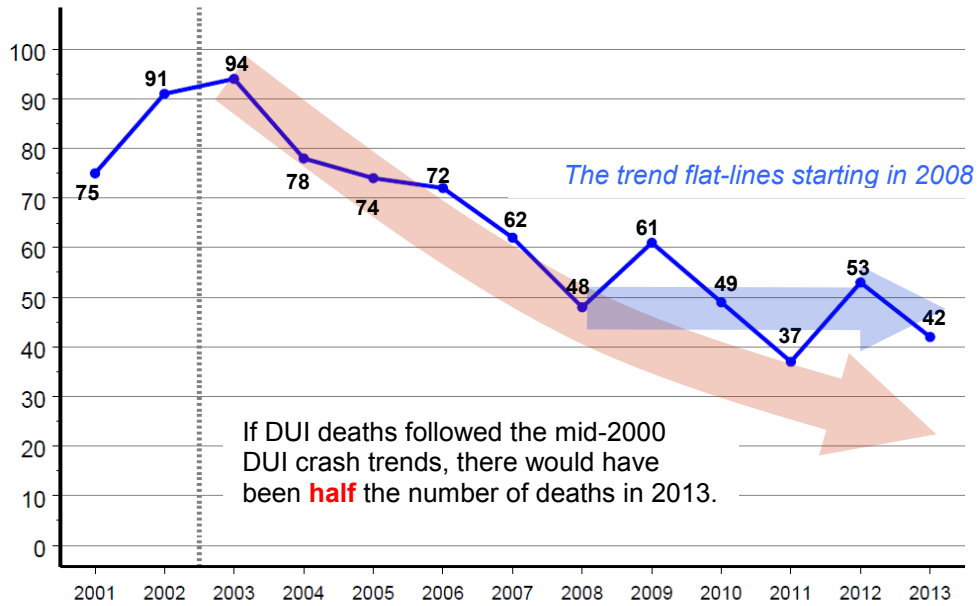
**Figure 1: South Dakota DUI Crashes 2001-2013**



DUI fatalities are roughly 40% the numbers of the early 2000's, but the death rate has also flattened in recent years (blue arrow), with high year-to-year variability (see Figure 2). While 2013's reduction is surely welcome, it came on the heels of a 43% **increase** the prior year. Other major factors unrelated to DUI are automotive safety and trauma care improved compared to the early 2000's, influencing the downward trend (the same is true for non-DUI deaths and injuries).

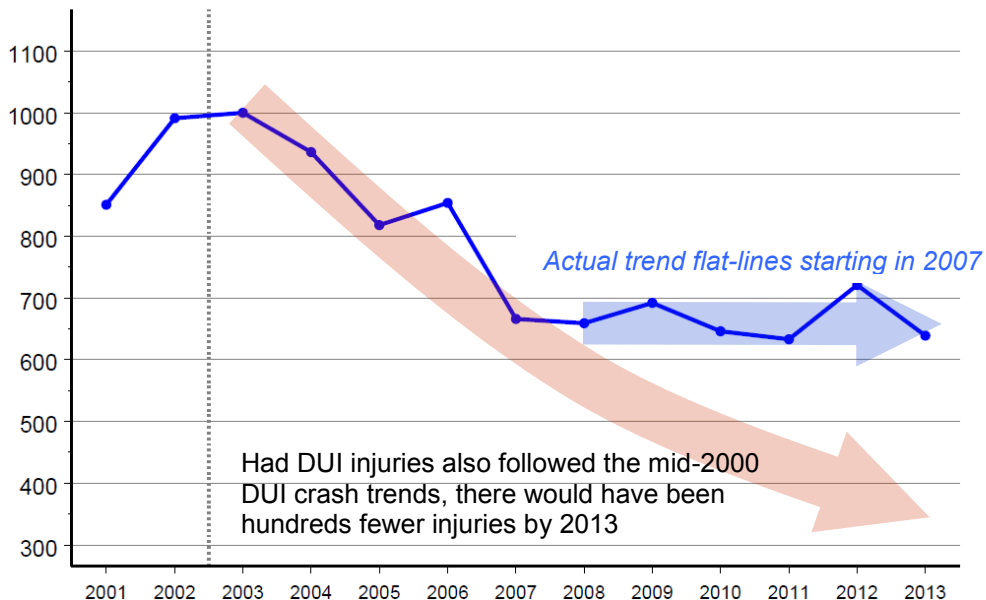
*But we could not have expect near-zero deaths in 2013 based on the 2003-2008 trend.* Recall that if crashes had followed their trend line, they would have been halved (Figure 1). The number of deaths and injuries is directly related to the number of crashes. Therefore, it is reasonable to assume that deaths (and injuries) would also have been half the actual levels in 2013 if the improvements in the mid-2000s had continued as indicated by the curved red arrow.

Figure 2: South Dakota DUI Fatalities 2001-2013



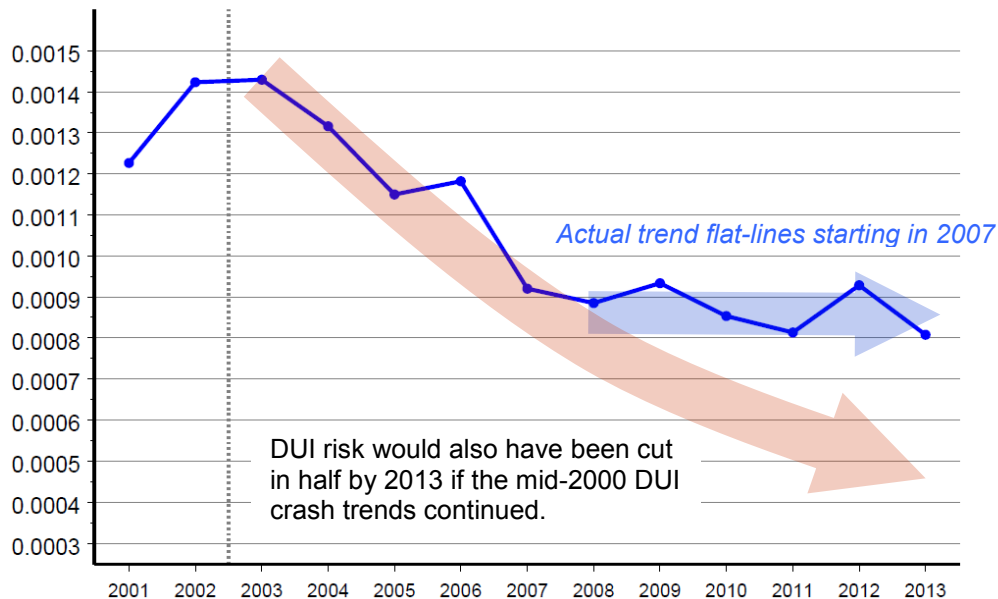
DUI Injuries dropped significantly between 2003 and 2008, but are stable thereafter averaging 666 between 2009 and 2013 (blue arrow, see Figure 2A). Progress stalled.

Figure 2A: South Dakota DUI Injuries 2001-2013



Annual DUI Risk is the *probability* that a South Dakota resident becomes a DUI casualty in a given year (see Figure 3).

Figure 3: South Dakota DUI Risk 2001-2013



DUI Risk is computed by dividing the number of DUI deaths and injuries by the state's population for each year. It averaged about one-tenth of a percent per year. Like the other DUI performance measures, it also flat-lined after 2007 (blue arrow). This equates to approximately a 1-in-1000 chance of a South Dakota resident being a DUI victim in any given year. When compounded over an 80 year lifetime, this is a 1-in-12 or an 8% chance of becoming a DUI victim. Had mid-2000 trends continued, risk would have been halved (curved red arrow).

**What accounted for improvements in the first decade of the 2000's?**

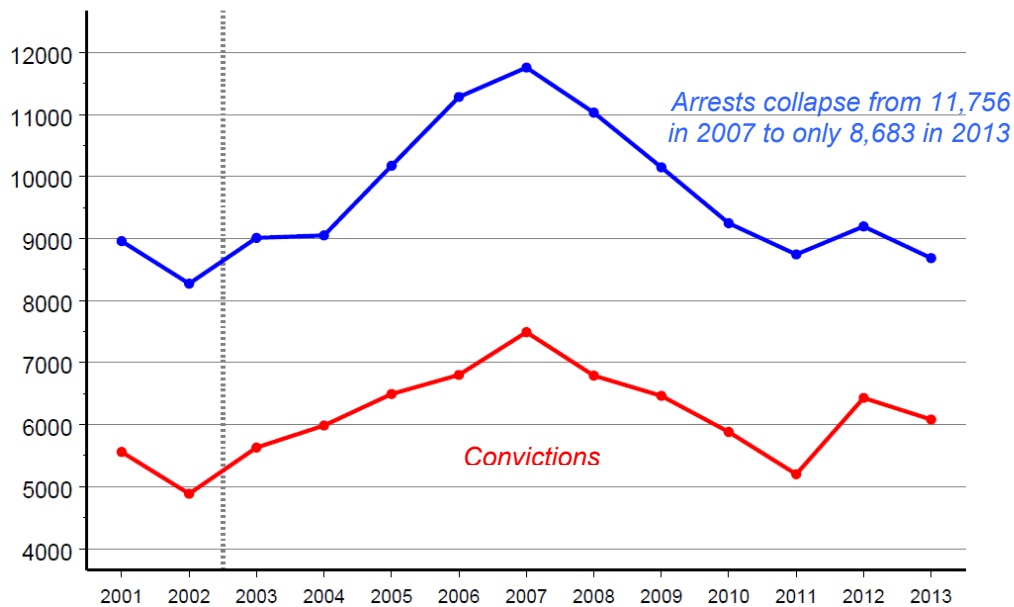
Most significant factor lowering DUI was blood alcohol content being lowered from 0.10 to 0.08, effective July 1, 2002 (all charts have a vertical dashed line on this date). Lower BAC definitively lowered the carnage and incidence of DUI. All the trends begin to improve after 2002. This has also been proven nationally with research.

Lower BAC resulting in fewer deaths is simply common sense. Most drinkers know and respect the law. For an adult male, the difference between 0.08 and 0.10 could be the difference between consuming three or four drinks versus five or six in a 2-3 hour period. Most people know these limits and behave accordingly. Further, the more alcohol consumed, the harder it becomes for many drinkers to say "no".

Secondly, during the mid-2000's South Dakota benefited from federal grants for DUI enforcement consisting of regular checkpoints and saturation patrols. DUI Arrests and Convictions (Figure 4, next page), peaked in 2007 and have declined ever since. Arrests in 2013 were 26% fewer than 2007 and at the lowest level since 2002. Even worse is approximately one-third of DUI arrests result in acquittals or plea bargains to non-DUI charges.

There are known discrepancies in the arrest and conviction statistics contained in the South Dakota Unified Judicial System statistics. After we questioned the apparent 45% acquittal rate for year 2012 reported in the 2012 DPS "Motor Vehicle Crash Summary", these numbers were significantly revised with fewer arrests and more convictions in the 2013 Summary. Also, the 2011 DUI Arrests of 5,342 reported to the FBI's Uniform Crime Reporting (UCR) Program Table 69 are wildly different from those contained in the Summary (8,744 arrests, 5,199 convictions).

Figure 4: South Dakota DUI Arrests and Convictions 2001-2013



Let it suffice to say that data collection regarding DUI arrests and convictions leaves analysts or decision makers with unanswered questions regarding data integrity. It should go without saying that DUI arrests and convictions should be precise, actual numbers.

**The evidence speaks for itself; after significant improvements in the mid-2000's, progress has stalled. All the trends confirm this conclusion.** It would have been possible to halve South Dakota DUI crashes in the decade starting in 2003, if the initiative and momentum had been maintained. DUI deaths and injuries would have been far fewer than actual experience. The practical result of these key DUI measures flat-lining for the past several years means there has been needless human suffering by thousands of victims and their families.

**As Maegan's parents, we naturally are left wondering whether she and Rob would be alive today if the State of South Dakota stuck to the exemplary efforts of the mid-2000s.**

**South Dakota Public and Political Attitudes Towards DUI**

Unfortunately, as the trend charts clearly demonstrate, DUI remains stubbornly commonplace in South Dakota and there have been no measurable improvements in the past 5 years. Why did the political leadership lose focus on this public safety scourge?

In his introduction to the 2013 the Department of Public Safety's "Motor Vehicle Crash Summary", Governor Dennis Daugaard claimed there were "25 percent fewer" fatal incidents and this was a "great improvement". The actual reduction in fatalities was 20.8% and 17.8% for fatal crashes. But this came on the heels of a 43% increase in deaths the preceding year.

"This is a significant decrease and is a good sign of the continued social abhorrence of this behavior" said the Governor.

While the Governor surely personally abhors impaired driving, the sad fact of the matter is that DUI is endemic in many parts of South Dakota. Binge drinkers and alcoholics do not share his abhorrence; it is their way of life and most of these people have never been apprehended for DUI.

Further, the state's motor vehicle laws, driver licenses, registration and insurance requirements are routinely ignored in some areas, as they were by Ronald Ray Fischer, Jr. This lawlessness is well-known and tolerated. Victims pay the terrible price of this lawlessness.

**The vast majority of DUI deaths and injuries are caused by first-time offenders, like**

Ronald Ray Fischer, Jr. In South Dakota, 76% of fatal incidences involve first-time offenders<sup>1</sup> and nationally the figure is 93%<sup>2</sup> (indicating South Dakota has a greater problem with DUI recidivism than is experienced nationally). As enforcement efforts declined, there is less chance of getting arrested. There is little fear of consequences. Therefore, deterrence of first time offenses is paramount of importance going forward.

The laudable “24/7” sobriety program, ignition interlocks or DUI courts only address those who are already arrested and convicted. The SB 70 criminal justice reforms of 2013 are largely a social engineering experiment to reduce prison populations that does nothing to increase the likelihood of catching first-time offenders. Only stepped up enforcement with certain penalties and widespread public education will deter first-time offenders.

The CDC estimates that the typical DUI arrestee drives drunk 80 times before being caught<sup>3</sup>. Given the 2009-2013 statewide annual average of 9,203 arrests, of which an estimated 75% are first-time arrests may imply there are 552,168 drunk driving trips *prior* to the first arrest each year. The DUI arrests are simply the tip of an enormous DUI iceberg.

In 2011 and 2012, the South Dakota Office of Highway Safety, Department of Public Safety conducted a Driver Survey<sup>4</sup>. In both years over 700 licensed drivers or ID holders were surveyed on their attitudes about highway safety. Section IV is devoted to Impaired Driving. The results are enlightening to further quantify the DUI problem in the state.

The introduction to Section IV contains a caution: “It is possible, or even likely, that given the particularly sensitive nature of this line of questioning, ***social desirability bias may have led to systematic underreporting of impaired driving behaviors***. In this light, estimates of impaired driving behaviors reported here are likely to underestimate actual incidence”<sup>5</sup> [emphasis added].

Consistent in both reports is the admission that approximately 25% of **all** drivers get behind the wheel within 2 hours after consuming alcohol. Let us quantify how many people are drinking and driving. South Dakota has 554,553 licensed drivers<sup>6</sup>. Nationally, 35% of the public does not drink<sup>7</sup>. If 35% of licensees are non-drinkers, then about 360,000 of South Dakota’s licensed drivers drink alcohol. If 25% of *all drivers* report drinking and driving, that means 38% of those that *drink*, or 137,000 drivers, admit driving within 2 hours after consuming alcohol. The survey does not state how much alcohol was consumed, but it is irrelevant because any alcohol is proven to cause impairment.

While Governor Dugaard cites “social abhorrence” of drinking and driving, a sizeable proportion of South Dakota drivers – 25% – do exactly that, drink and drive. This clearly indicates *social acceptance* and not *social abhorrence* by a significant proportion of the public. *But remember the Driver Study author’s caution about underreporting! It would not be surprising if a majority of drinkers have driven within 2 hours of consuming alcohol.* It is reasonable to conclude that number is almost certainly understated, perhaps by half.

Shockingly, 1.4% of drivers admit to drinking and driving “all of the time” or “most of the time”! This equates to 7,763 drivers state-wide. Shouldn’t such people be identified and permanently denied the privilege of driving or have a lifetime requirement of an ignition interlock?

The Driver Survey Section IV words of caution are heeded and proven; about 8% of drivers surveyed reported an arrest for DUI. This figure is almost certainly understated. There

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<sup>1</sup> Meeting with Col. Craig Price, Superintendent SD Highway Patrol, November 14, 2013

<sup>2</sup> National Transportation Safety Board (NTSB) “Reaching Zero: Actions to Reduce Alcohol-Impaired Driving”, May 14, 2013, (see <http://go.usa.gov/TeQe>), page 31. The 93% figure is by subtraction from the 7% of fatal incidents caused by repeat offenders.

<sup>3</sup> NTSB, page 6

<sup>4</sup> [http://dps.sd.gov/enforcement/highway\\_safety/attitudinal\\_surveys.aspx](http://dps.sd.gov/enforcement/highway_safety/attitudinal_surveys.aspx)

<sup>5</sup> [http://dps.sd.gov/enforcement/highway\\_safety/attitudinal\\_surveys.aspx](http://dps.sd.gov/enforcement/highway_safety/attitudinal_surveys.aspx), 2012 Driver Survey, page 21

<sup>6</sup> [http://www.statemaster.com/graph/trn\\_lic\\_dri\\_tot\\_num-transportation-licensed-drivers-total-number](http://www.statemaster.com/graph/trn_lic_dri_tot_num-transportation-licensed-drivers-total-number)

<sup>7</sup> National Epidemiologic Survey on Alcohol and Related Conditions, 2002

were 125,543 DUI arrests in the years 2001-2013. NHTSA reports approximately 25% of South Dakota's DUI arrests are repeat offenders<sup>8</sup>. If we discard 25% of arrests for repeat offenders, 94,157 first-time arrests remain. Some percentage would be out-of-state residents (e.g., Sturgis celebrants) – if we assume one-quarter are nonresidents (probably a high estimate), that leaves about 70,000 first time arrestees during the fourteen year time period. That amounts to almost 13% of licensed drivers (or 20% of licensed drivers that drink alcohol), assuming the 14 years is a representative sample frame to characterize licensed driver DUI demographics. Hence the Driver Survey's author cautions seem validated.

South Dakota is one of only two states (Nevada is the other) that slams the door shut for victims to recover civil damages from those that sell or provide alcohol or drugs to visibly intoxicated persons (known as Dram Shop and Social Host liability laws). When things go badly and innocents are killed or injured (as was the case of Maegan Spindler), the victims have no civil recourse against the alcohol or drug sellers. Under South Dakota law, the only responsible party is the accused killer, not his alcohol or drug dealers. Who benefits from this arrangement? How does the Governor and Legislature justify this immoral law?

Citing "social abhorrence" of DUI is simply wishful thinking, clearly not based in the face overwhelming evidence and data. The data tells us that South Dakota made impressive reductions in DUI during the mid-2000s, but then progress abruptly stopped.

In 2007 or 2008, did somebody or a group made a conscious decision to reduce enforcement efforts when federal grant money ran out? Was there some sort of cost-benefit analysis performed to justify that the state shouldn't provide DUI enforcement funding it lost from the federal government? Or was it a consensus that "we've done enough" and to tolerate the current levels of DUI crashes, injury and deaths?

MADD estimates DUI costs South Dakota \$220 million per year. The cost of each drunk driving death at \$4.9 million<sup>9</sup>. Do politicians look at all the externalities associated with their alcohol-related policy decisions? Ultimately, DUI costs are largely socialized, mostly dumped on victims and local government or buried in federally subsidized Medicaid or BIA spending.

The tragic result is DUI continues killing more and injuring more than would be the case if mid-2000 trends continued. There are scores of additional deaths and hundreds of injuries every *single year*.

In late July 2013 we came to Pierre to gather Maegan's belongings. We also met the Governor's General Counsel Jim Seward and attempted a constructive dialog about DUI reforms. Governor Dugaard sent condolences on August 26, 2013 and promised a "data driven, evidence based" process to review South Dakota's DUI laws and practices. We provided the necessary "data" and "evidence" from the National Transportation Safety Board (NTSB) to support DUI reforms. We were very encouraged.

Despite our best efforts with two visits to his office, emails, phone calls, a presentation to his staff and a personal meeting, the Governor decided not to propose any DUI reforms in the 2014 legislative session saying it would not have the "intended effect" of reducing DUI. The only change was to increase Highway Patrol enforcement actions from approximately 200 to 400 in 2014 (this averages to about one action per day in the entire state).

We were mystified. It left us to wonder what, in the Governor's opinion, would have the desired effect? The Governor's assessment, of course, totally contradicts the findings of the NTSB. Ignoring the NTSB's report on reducing impaired driving is just as serious as if the CEO of Boeing or Airbus chose to deny and ignore NTSB aircraft safety recommendations.

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; ***South Dakota could lead the entire nation.***

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<sup>8</sup> <http://www.nhtsa.gov/people/outreach/traftech/1995/TT085.htm>

<sup>9</sup> [http://www.madd.org/drunken-driving/state-stats/South\\_Dakota.html](http://www.madd.org/drunken-driving/state-stats/South_Dakota.html)



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

## ***How to Fix It:***

### **Changes in South Dakota Law:**

Below are proposed changes in law based on our reading of NTSB and NHSTA reports and other traffic safety resource documents. Of course, these suggestions would need to be extensively rewritten to conform to South Dakota statutes. We would appreciate any offers from legislators or attorneys that could re-write these proposals into a form to be introduced into the 2015 legislative session.

1. Fully implement all applicable statutory recommendations from “Reaching Zero: Actions to Reduce Alcohol-Impaired Driving”<sup>1</sup> by the National Transportation Safety Board. 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.
    - To incorporate the NTSB recommended 0.05 BAC threshold, we suggest South Dakota adopt a Driving While Ability Impaired statute, similar to those in New York, Colorado or most Canadian Provinces. DWAI is a less serious offense for BAC at or above 0.05, but below 0.08 and is often used to allow first offenders a plea from DWI at or above 0.08 (without aggravated circumstances) to the lesser offense. South Dakota currently allows a DWI at 0.05 at the officer’s discretion, but it is a difficult prosecution.
    - The DWAI offense should be for first-time offenders only and not be allowed for Aggravated DWI (see 6 below). Repeat offenses at or above 0.05, the charge and penalties would be identical to “full” DWI.
    - Establishment of DWAI will insure more “good” arrests and successful prosecutions.
  - The NTSB document also contains a number of recommendations about reducing recidivism, installation of ignition interlocks for all DWI convicts. Some may already be implemented in South Dakota.
2. Repeal the explicit statutory abrogation of “Dram Shop” and Social Host Liability (SD ST § 35-11-1, 35-11-2). Pass statutes allowing for civil liability in the case of injury or death caused by either the sale or provision of alcohol or illicit drugs to intoxicated persons, without any exceptions.
3. Implement immediate roadside vehicle impoundment upon DUI arrest, regardless of vehicle ownership, with progressively longer impoundment durations and impoundment fees depending on the number of arrests and/or BAC (see example on last page). The impoundment fee is in addition to any contracted towing charges associated with the impoundment. Impoundment fees would be distributed in a manner such that the state DPS receives a nominal administrative fee of 10%, while the arresting and prosecuting authorities divide the remainder to fund DUI enforcement and adjudication expenses.

Parking violators are routinely subject to towing and vehicle impoundment and there is no reason why drunk drivers should not.
4. Implement immediate roadside driver license suspension upon any DUI arrest, with progressively longer suspension durations and reinstatement fees depending on the number of arrests and/or BAC (see example on last page). Driver license suspension fees would be distributed in a manner such that the state DPS receives a nominal administrative fee of 10%, while the arresting and prosecuting authorities divide the remainder to fund DUI enforcement and adjudication expenses.
5. Provide a clear and simple path for asset forfeiture as a penalty for DUI and use it routinely.

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<sup>1</sup> <http://go.usa.gov/TeQe>

For example, any aggravated DUI offense or repeat offenses would result in asset forfeiture of the vehicle, regardless of ownership. Asset forfeiture would apply regardless of governmental jurisdiction. South Dakota routinely uses asset forfeiture for drug crimes. DUI is also a drug crime and likely causes more deaths and injuries than illicit drug use. 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. The arresting agency receives the net proceeds of the sale of the seized assets. This may be especially effective for preventing drunk drivers from using borrowed or communally owned/used vehicles.

6. Include in aggravated DUI statutes for: (1) a threshold above 0.12 or 0.15 BAC; (2) any DUI when there are passengers as children below the age of 18 or disabled persons; (3) for all incidents involving death, injury or reportable property damage. Aggravated DUI is a felony.
7. Limitation of Plea Bargains: Do not allow plea bargains from DWI or DWAI to any non drinking-and-driving charges under any circumstance (e.g., DWI to reckless driving). Do not allow plea bargains for any aggravated DUI charge. Allow only a one-time plea bargain from DWI to a DWAI charge. Do not allow "suspended imposition of sentence" for any DWI or DWAI charge. Do not allow expungement of any DUI convictions. Prior convictions should be considered for a 25 year period for all DUI offenses.
8. Remedy the deficiencies of the Implied Consent law. The South Dakota Supreme Court has ruled that the state's DUI Implied Consent Law was unconstitutional in the case of Shauna Fierro. This has immensely complicated the job of law enforcement when a drunk driver refuses a blood test. Officers have to obtain a telephonic warrant, requiring a minimum of 30 to 60 minutes to obtain under ideal circumstances. This removes officers from patrol duties and also creates a silent disincentive to apprehending drunks. Clarify and define the allowable "exigent circumstances" when a warrant is not required. Define standard state-wide "best practice" for all Judicial Circuits to insure that warrants are provided expediently and simply to law enforcement officers.
9. The state should dedicate **all** of its current alcohol excise tax receipts to provide block grants to county and city law enforcement agencies for enforcement of DUI laws and other and alcohol-related crime and to social service agencies charged with providing services for alcohol education and dependency programs resulting from DUI and other alcohol-related crimes.

The current receipts of the alcohol excise tax are insufficient to compensate county and city governments for the costs of DUI or other alcohol related crimes. The alcohol excise tax was last raised in 1985 and is modest in comparison to half the states. We propose that the alcohol excise tax be raised **at a minimum** to account for inflation during the 1985-2014 period and be indexed to inflation thereafter.

The excise tax should exempt small in-state wineries or microbreweries. The tax should be raised on products with known high-abuse potential such as malt liquor or fortified wines.

Under no circumstances should alcohol excise taxes be placed in the state general fund.

10. The state should provide block grants to county and city law enforcement agencies to provide a minimum of 1 (one) patrol vehicle equipped with a mobile law enforcement computer and automated license plate readers for agencies lacking such equipment. The purpose is to use such vehicles in DUI enforcement actions to identify vehicles without registration or insurance and those used in prior DUI offenses.

The Charles Mix County Sheriffs Department does not have any computer-equipped vehicles and this was noted as a problem during the investigation of the crime which killed Maegan Spindler. Many local law enforcement agencies simply do not have the financial resources for such equipment.

11. Part of any comprehensive DUI reform should be the establishment of an oversight council consisting of state, county and city law enforcement officials and members of the public on a

rotating membership basis. The group would review DUI progress through a system of measures developed through peer review and establish and disseminate “best practices” to all law enforcement agencies within the state and report to the public.

The following items came to our attention during testimony of the trial State v. Ronald Ray Fischer, Jr. in the deaths of Maegan Spindler and Robert Klumb.

12. Establish an Aggravated Vehicular Homicide Statute, a class 3 felony. Under current law, an intoxicated driver, such as Fischer may be charged with Vehicular Homicide or Manslaughter or both. Conviction on Manslaughter in cases such as Fischer's is possible, but is a “high bar” for prosecutors.

We suggest an Aggravated Vehicular Homicide Statute include “recklessness” and BAC levels at or above 0.12 or a combination of BAC at or above 0.08 and presence of prescription opioids or illicit drugs.

13. South Dakota Law requires BAC be determined by concentration in whole blood. In Fischer's case only one law enforcement whole blood test was admissible as evidence. Two medical BAC tests were run using blood plasma; one was deemed admissible but only to corroborate the law enforcement whole blood.

To the extent supportable with peer-reviewed scientific research, we feel there should be admissibility of a wider range of BAC evidence; certainly blood plasma results with scientific adjustments and possibly from breathalyzer tests.

14. Establish concentrations for THC and/or its metabolites to provide for DUI and aggravated DUI categories for those using cannabis.

Other:

15. For first time DUI offenders, establish a minimum fine of \$1000. Multiple offenders should be subject to *steeply increasing* minimum fines.
16. Subject all DUI offenders to alcohol/drug dependency screening and if found to have dependency issue, require completion of an approved treatment program.
17. Subject all DUI offenders to anti-DUI training, which includes victim impact panels or presentations.
18. Consider “some” mandatory jail time for first time offenders, if even for one night. Second time offenders should have mandatory jail time of 30 days.

# IMMEDIATE ROADSIDE PROHIBITION PENALTIES

DWAI for BAC  $\geq 0.05$ ,  $< 0.08$

DWI for BAC  $\geq 0.08$

APPROVED SCREENING DEVICE (ASD) RESULT

IMMEDIATE DRIVING PROHIBITION LENGTH

VEHICLE IMPOUND LENGTH

VEHICLE IMPOUND AND TOWING FEES\*

ADMINISTRATIVE PENALTIES

LICENCE RE-INSTATEMENT FEE

TOTAL\*\*

**WARN**

1<sup>ST</sup> INCIDENT

3 DAYS

3 DAYS  
(AT OFFICER'S  
DISCRETION)

\$150+

\$200

\$250

\$600

**WARN**

2<sup>ND</sup> INCIDENT  
\*\*\*

7 DAYS

7 DAYS  
(AT OFFICER'S  
DISCRETION)

\$230+

\$300

\$250

\$780

**WARN**

3<sup>RD</sup> INCIDENT  
\*\*\*

30 DAYS

30 DAYS

\$680+

\$400

\$250

\$1,330

**FAIL**

(OR REFUSE TO PROVIDE  
A BREATH SAMPLE)

90 DAYS

30 DAYS

\$680+

\$500

\$250

\$1,430

**NOTE: ABOVE COSTS ARE SUBJECT TO CHANGE AND DO NOT INCLUDE APPLICABLE TAXES**

**\* BASED ON 10KM TOW DISTANCE OF A STANDARD SIZE VEHICLE – GREATER DISTANCES AND/OR OVERSIZED VEHICLES WILL RESULT IN INCREASED FEES.**

**\*\* DOES NOT INCLUDE POTENTIAL INCREASES IN INSURANCE PREMIUMS**

**\*\*\* WITHIN FIVE YEARS**

**NOTE: DRIVERS MAY ALSO BE REFERRED TO REMEDIAL PROGRAMS – ADDITIONAL FEES WOULD BE ASSOCIATED WITH A REFERRAL TO RESPONSIBLE DRIVERS PROGRAM AND/OR IGNITION INTERLOCK PROGRAM.**



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FOR THE MINISTRY OF JUSTICE (IMMEDIATE ROADSIDE PROHIBITION PENALTIES), APRIL 2013.

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**DUI Statistics used in  
South Dakota Recent DUI Trends and Proposed Reforms**

Year	DUI Percent of All Crashes	Total DUI Crashes	DUI Percent of Fatal Crashes	DUI Fatal Crashes	DUI Percent of Injury Crashes	DUI Injury Crashes	DUI Percent of PDO Crashes	DUI PDO Crashes	DUI Percent of Fatalities	DUI Fatalities	DUI Percent of Injuries	DUI Injuries	DUI Casualties	DUI Arrests	DUI Convictions	Acquittal Rate	South Dakota Population	Casualty Rate
2001	6.40%	1,137	42.20%	65	11.50%	563	4%	509	43.90%	75	12%	851	926	8,956	5,559	37.93%	754,844	0.1227%
2002	7.30%	1,265	47.80%	76	13.50%	635	4.40%	554	50.60%	91	14.20%	991	1,082	8,272	4,886	40.93%	760,116	0.1423%
2003	7.00%	1,261	45.10%	78	13.20%	630	4.20%	553	46.30%	94	14.40%	1,000	1,094	9,011	5,628	37.54%	765,389	0.1429%
2004	6.70%	1,153	36.70%	61	13.30%	607	3.90%	485	39.60%	78	14.30%	936	1,014	9,049	5,985	33.86%	770,661	0.1316%
2005	6.80%	1,113	39.20%	62	12.70%	552	4.20%	499	39.80%	74	13.20%	818	892	10,174	6,493	36.18%	775,933	0.1150%
2006	7.00%	1,099	39%	67	13.40%	563	4.10%	469	37.30%	72	14.20%	854	926	11,282	6,801	39.72%	783,582	0.1182%
2007	5.90%	959	42.30%	55	11.50%	467	3.60%	437	42.50%	62	11.50%	666	728	11,756	7,490	36.29%	791,232	0.0920%
2008	6.10%	977	41.30%	45	11.40%	467	4.00%	465	39.70%	48	11.50%	659	707	11,029	6,791	38.43%	798,881	0.0885%
2009	6.00%	1,022	45.50%	51	11.60%	474	3.90%	497	46.60%	61	12.10%	692	753	10,147	6,462	36.32%	806,531	0.0934%
2010	5.70%	999	35.50%	44	10.80%	448	3.80%	507	35.00%	49	11.10%	646	695	9,246	5,882	36.38%	814,180	0.0854%
2011	5.70%	992	29.70%	30	11.50%	457	3.80%	505	33.30%	37	11.80%	633	670	8,744	5,199	40.54%	823,767	0.0813%
2012	6.10%	988	38.10%	45	12.50%	486	3.70%	457	39.80%	53	13.30%	721	774	9,194	6,432	30.04%	833,354	0.0929%
2013	5.90%	986	30.60%	37	11.60%	454	3.90%	495	31.10%	42	11.70%	639	681	8,683	6,083	29.94%	843,000	0.0808%
Year	DUI Percent of All Crashes	Total DUI Crashes	DUI Percent of Fatal Crashes	DUI Fatal Crashes	DUI Percent of Injury Crashes	DUI Injury Crashes	DUI Percent of PDO Crashes	DUI PDO Crashes	DUI Percent of Fatalities	DUI Fatalities	DUI Percent of Injuries	DUI Injuries	DUI Casualties	DUI Arrests	DUI Convictions	Acquittal Rate	South Dakota Population	Casualty Rate
<b>2001-2013 Average</b>	6.35%	1,073	39.46%	55	12.19%	523	3.96%	495	40.42%	64	12.72%	777	842	9,657	6,130	36.47%		0.1067%
<b>2009-2013 Average</b>	5.88%	997	35.88%	41	11.60%	464	3.82%	492	37.16%	48	12.00%	666	715	9,203	6,012	34.65%		0.0867%
<b>2001-2005 Average</b>	6.85%	1,204	42.95%	70	12.88%	609	4.13%	525	45.10%	85	13.73%	945	1,029	8,822	5,515	37.57%		0.1349%
<b>Data Sources:</b>																		
Columns B-P: <a href="https://dps.sd.gov/enforcement/accident_records/images/2007%20Facts%20Book.pdf">https://dps.sd.gov/enforcement/accident_records/images/2007%20Facts%20Book.pdf</a>																		
Years 2001-2006: <a href="https://dps.sd.gov/enforcement/accident_records/images/2007%20Facts%20Book.pdf">https://dps.sd.gov/enforcement/accident_records/images/2007%20Facts%20Book.pdf</a>																		
Years 2007-2013: <a href="https://dps.sd.gov/enforcement/accident_records/documents/2013FactsBook.pdf">https://dps.sd.gov/enforcement/accident_records/documents/2013FactsBook.pdf</a>																		
Column Q: Computed from column O and P																		
Column R: Red cells are from US Census Bureau, other values are estimated																		
Column S: Computed from columns K plus N, divided by column R																		