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MISSOURI PROSECUTORS RELEASE FIRST ROUND OF BEST PRACTICES RECOMMENDATIONS

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The **Missouri Association of Prosecuting Attorneys (MAPA)** recently adopted two sets of recommended Best Practices for prosecutors. The recommendations relate to the investigation and prosecution of driving while intoxicated cases, and investigative techniques regarding suspects who are in custody. The recommendations are the first to be released under MAPA's new Best Practices Initiative.

"These recommendations reflect the work of seasoned, career prosecutors and law enforcement officials," said **Executive Director Jason Lamb**. "They are the first of many that will help us fulfill our duty as prosecutors to obtain just convictions and to keep the public safe."

The first set of recommendations relates to driving while intoxicated cases and includes suggestions that prosecutors develop a 'no refusal' policy for DWI cases and work with local law enforcement agencies to develop standard procedures, including electronic means, to obtain search warrants to test a defendant's blood alcohol content.

"These recommendations are engineered to save lives," said **President Matt Selby, the Stone County Prosecuting Attorney**. "We wouldn't hesitate to obtain evidence via search warrant in a rape or murder case. By getting the evidence in each and every DWI case – which is blood alcohol content – we can help protect the public from repeat DWI offenders who endanger the roadways."

The second set of recommendations suggests that all custodial interrogations involving crimes against persons be audio recorded and preferably video recorded, and that suspects in photo-array line-ups be pictured in non-custodial garb.

"These are straight-forward, common sense recommendations that reaffirm the public trust and confidence in the criminal justice system and investigative process," said **Eric Zahnd, chair of the MAPA Best Practices Committee and Platte County Prosecuting Attorney**. "While evidence should never be excluded simply because it wasn't recorded, these recommendations will help ensure that the best evidence is always available for the jury to consider."

The [MAPA Best Practices Initiative](#) was launched last fall after Missouri's prosecutors studied a similar protocol of the District Attorneys Association of New York. Other areas being studied by Missouri's prosecutors include forensic sciences, special victims' issues, victims' rights, death penalty, ethics, and child support. Following the lead of New York and Missouri, several other state prosecutor associations have recently begun to implement similar committees.

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**Missouri Association of Prosecuting Attorneys Best Practices Recommendations
DWI and Traffic Safety**

Note: A best practices recommendation of the Missouri Association of Prosecuting Attorneys is the product of careful consideration by experienced prosecuting attorneys. However, it is only a recommendation. A best practices recommendation may or may not be feasible or desirable to implement in every jurisdiction. There may be other methods in local jurisdictions to reach the same or similar objectives.

RECOMMENDATION: Prosecutors should develop a no refusal policy for impaired driving cases.

RECOMMENDATION: Prosecutors should work with law enforcement to develop standard procedures to obtain search warrants to procure blood in impaired driving cases.

Commentary: Law enforcement will be more willing to adopt a no refusal policy if the process is simple and streamlined. Using a standard template for search warrants and affidavits will help ensure all necessary information is included and will reduce the time it takes to prepare the documents.

RECOMMENDATION: Prosecutors and law enforcement should use electronic means to obtain search warrants.

Commentary: Time is of the essence in impaired driving cases. When feasible, using email or other electronic means to communicate with law enforcement and judges will cut down on the time it takes to get a blood sample from the suspect.

RECOMMENDATION: Prosecutors and law enforcement should draft language in addition to the implied consent warnings to inform defendants that if they refuse a test, the officer will seek a warrant.

Commentary: Many defendants who initially refuse to submit to a breath test may change their minds when they are told that the officer is going to seek a warrant. Adding this language will cut down on the overall number of refusals and overall number of requests from law enforcement to obtain a search warrant for blood. Below is a sample of the warning that could be given:

I am going to give you the implied consent warning in a moment. Before I do that, however, I want to advise you that _____ County is a “no refusal county” which means if you refuse to give your breath sample upon my request after being read implied consent, I will apply for a search warrant to obtain your blood sample. If a judge issues the search warrant, [insert a description of how blood will be taken, e.g., you will be taken to a hospital and blood will be drawn or a nurse will be called to take your blood, etc.]

RECOMMENDATION: Prosecutors should file a motion for bond conditions in all impaired driving cases.

Commentary: Public safety is a concern when DWI offenders are out on bond. Some conditions that prosecutors should request are: electronic monitoring or the 24/7 program, no alcohol, and no bars. Another concern is releasing defendants while they are still impaired. Prosecutors should also request that defendants will not be released until their BAC is .02 or lower and they are showing no visible signs of impairment.

**Missouri Association of Prosecuting Attorneys Best Practices Recommendations
Suspect and Witness Statements**

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RECOMMENDATION: Suspects in photo array line-ups should be pictured in non-custodial garb, and photos should not draw undue attention to any particular person.

Commentary: This recommendation is consistent with modern-day investigative practices and techniques and is consistent with case law on the topic which shows that court is the proper gatekeeper and arbiter of whether or not line-up procedures are constitutional. See State v. Parker, 458 S.W.2d 241 which held “[f]rom the innumerable cases on ‘identification,’ it is obvious that the courts jealously guard against any chance of error. For this reason, even the approved investigative methods, be it confrontation or photographic comparison, may be found improper if ‘so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification.’” (citing Simmons v. United States, 390 U.S. 377 at 384)

RECOMMENDATION: All custodial interrogations involving crimes against persons should be audio recorded and preferably video recorded as well.

Commentary: Section 590.700 encourages recorded custodial interrogations for certain offenses. Prosecutors should work with their local law enforcement agencies to develop strategies to comply with this statute.