

THE ARIZONA REPUBLIC

Newspaper archive powered by 

September 4, 2001

Section: Front

Edition: Final Chaser

Page: A6

IMPACT OF 0.08 LIMIT REMAINS TO BE SEEN PROSECUTORS, DEFENDERS FORESEE DIFFERENT EFFECTS ON COURTS

Jim Walsh, The Arizona Republic

Defense attorneys predict an open season on drunken drivers and a sharp increase in DUI arrests and trials under Arizona's new stricter law, but a top prosecutor expects no new cases and little impact in the courtroom.

Arizona lowered the limit Saturday at which drivers are presumed under the influence of alcohol to 0.08 percent from 0.10 percent. It is the 29th state to lower the limit, joining a nationwide assault on drunken driving.

The National Highway Traffic Safety Administration found that 40 percent of Arizona fatalities in 1999 were alcohol-related. The state set a fatality record with 1,036 deaths in 2000, according to the Governor's Office of Highway Safety.

After Illinois lowered its legal limit to 0.08 percent in 1997, a study found the number of drunken drivers in fatal collisions fell 13.7 percent and concluded the state may have saved 47 lives in 1998. Police reported they were "not overwhelmed with new arrests."

A separate federal study also concluded that alcohol-related deaths dropped in seven of 11 states with 0.08 DUI laws, but its unclear how long the beneficial impact lasts.

"You have this big push and then it trails off," said DeCarlo Ciccel, an analyst in the impaired driving unit at the federal traffic safety agency.

Craig Penrod, a Tempe defense attorney, sees Valley police aggressively enforcing the new limit.

"Everyone seems to think there will be a lot more cases coming into the system," he said. "I think there will be more trials and more acquittals."

Special Assistant Maricopa County Jerry Landau couldn't disagree more, saying the only real impact he envisions is that defendants who once fought cases with 0.10 or 0.11 readings may plead guilty after the legal limit drops.

While previous marginal cases become stronger, they are replaced by new marginal cases of 0.08 to 0.09, he said.

In Arizona, prosecutors can file two separate charges: impairment and exceeding the 0.08 limit. By law, drivers are under the influence if "impaired to the slightest degree."

Landau said a driver is arrested for driving while impaired prior to taking a breath test, based on driving behavior and field sobriety tests. A second charge of driving with a blood-alcohol concentration beyond the legal limit is filed based on the results of blood and breath tests.

"We don't really expect any new cases to come in," Landau said. "The blood alcohol confirms things, but that person is already going to be arrested for driving under the influence by the time the BAC test is administered."

If defense attorneys are "looking for a cash windfall, they're not going to see it," Landau said.

But **Penrod** said it won't be hard for police officers invigorated by the new law to find reasons for stopping suspected drunken drivers.

"It's a pretty small threshold to have a basis to stop someone," he said. "Almost everybody is doing something to violate traffic laws."

Cliff Girard, a Phoenix DUI defense attorney, predicts an avalanche of cases because people who record a 0.08 reading have few symptoms of inebriation and won't accept that they were impaired.

"Your going to get a lot of trials," Girard said. "This will back up the whole system."

West Mesa Justice of the Peace Clayton Hamblen expects an increase of drunken-driving arrests at sobriety checkpoints, but not routinely.

Because many regular drinkers have a high tolerance, "I think a lot of people at that lower range will not show signs of impairment," he said.

"Another reason is that there's an awful lot of fish in that DUI pool," Hamblen said. "There's only so many officers. They have to pull the most egregious ones off the road first."