



National Highway Traffic Safety Administration

[Docket No. NHTSA-2023-0011]

Agency Information Collection Activities; Notice and Request for Comment; Examine Issues with Prosecuting Driving-Under-the-Influence-of-Drugs (DUID) Cases

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for public comment on proposed collection of information.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) invites public comments about our intention to request approval from the Office of Management and Budget (OMB) for a new information collection. Before a Federal agency can collect certain information from the public, it must receive approval from OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes a collection of information for which NHTSA intends to seek OMB approval regarding prosecution of driving-under-the-influence-of-drugs (DUID) cases.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: You may submit comments identified by Docket No. **NHTSA-2023-0011** using any of the following methods:

- *Electronic submissions:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 1-202-493-2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building between 9 a.m. and

5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9322 before coming.

Instructions: All submissions must include the agency name and the docket number for this Notice. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the *Federal Register* published on April 11, 2000 (65 FR 19477-78) or you may visit <https://www.transportation.gov/privacy>.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or the street address listed above. Follow the online instructions for accessing the dockets via internet.

FOR FURTHER INFORMATION CONTACT:

For additional information or access to background documents, contact Ms. Amy Berning, Contracting Officer's Representative, Office of Behavioral Safety Research (NPD-310), (202) 366-5587, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C 3501 et seq.), before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public

comment on the following: (i) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) how to enhance the quality, utility, and clarity of the information to be collected; and (iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses. In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information for which the agency is seeking approval from OMB.

Title: Examine Issues with Prosecuting Driving-Under-the-Influence-of-Drugs (DUID) Cases.

OMB Control Number: New.

Form Numbers: NHTSA Form 1703 and NHTSA Form 1704

Type of Request: New information collection.

Type of Review Requested: Regular.

Requested Expiration Date of Approval: 3 years from date of approval.

Summary of the Collection of Information:

NHTSA is seeking approval to conduct interviews with State and local officials and others involved in prosecution and defense of drugs and driving offenses (DUID), to examine the challenges faced within the criminal justice system during the and to identify potential solutions to those challenges. Interviews will be conducted by telephone, virtual web meeting, or in-person with justice system professionals who have served or worked on DUID cases including prosecutors, Traffic Safety Resource Prosecutors (TSRPs), prosecutor coordinators, judges, Drug Recognition Experts (DREs), law enforcement officers with Advanced Roadside Impaired Driving Enforcement (ARIDE) training, officers with Standardized Field Sobriety Testing

(SFST]) training, toxicologists, defense attorneys, and former jurors. Up to 221 interviews will be conducted. Participation by respondents will be voluntary. The interviews with prosecutors will be 60 minutes. The interviews with TSRPs, prosecutor coordinators, judges, and DREs and other law enforcement officers will be 30 minutes. The interviews with toxicologists, defense attorneys, and former jurors will be 20 minutes.

Description of the Need for the Information and Proposed Use of the Information:

NHTSA was established to reduce deaths, injuries, and economic losses resulting from motor vehicle crashes on the Nation's highways. As part of this statutory mandate, NHTSA is authorized to conduct research for the development of traffic safety programs. Title 23, United States Code, chapter 4, section 403 gives the Secretary of Transportation (NHTSA by delegation) authorization to use funds appropriated to conduct research and development activities. The agency develops, promotes, and implements educational, engineering, and enforcement programs with the goal of ending preventable tragedies and reducing economic costs associated with vehicle use and highway travel. Drug-impaired driving is a long-standing highway safety problem. Drug-impaired driving arrests and prosecutions can be complex. The possibility of drug combinations, and evidence from forensic toxicology add to the complexity.

The laws in the States where the offense occurred make a difference in whether, and what offense can be charged by prosecutors. For example, State laws vary on a range of issues such as statutory definitions of being impaired or being under the influence, how control of a vehicle is defined, if there are implied consent laws, the type of testing allowed, *per se* limits for selected drugs or no *per se* limits for drugs other than alcohol, varying concentration levels in States with *per se* laws, and whether alcohol or drug impaired driving are separate offenses for charging purposes. A prosecutor must consider these specific aspects of law in determining how to move forward with a case. In addition, at each step of the process, there are other factors such as evidence collection that influence decision-making and present challenges that must be addressed.

NHTSA will use the information to produce a technical report that presents the results of the study. The technical report will provide aggregate summary identification of challenges prosecutors face in DUID cases and potential solutions including lessons learned. The technical report will not include any personally identifiable information (PII). Possible solutions to prosecutorial challenges that may be identified by State officials include legislation, training, policy, programs, and practices. The technical report will be shared with State highway safety offices, State and local governments, statewide prosecutor organizations, and those who are assigned to DUID cases including prosecutors, law enforcement, toxicologists, defense attorneys, and the judiciary.

This study will examine the range of challenges faced by prosecutors in DUID cases and will explore potential solutions. The resulting outcome will provide prosecutors and others in the criminal justice system improved ability to overcome challenges. With this assistance, the project goal is to enhance the handling of DUID cases, and to reduce drug impaired driving and prevent the loss of life on the nation's roadways due to drug impairment.

Frequency of Collection: This is a one-time collection.

Affected Public: The respondents will be criminal justice professionals from up to 40 states who handle or have handled DUID cases. Between one and ten of each of the following will be selected: prosecutors, TSRPs, prosecutor coordinators, judges, Drug Recognition Experts (DREs), law enforcement officers (with SFST or ARIDE certification), toxicologists, defense attorneys or public defenders, and former jurors. Respondents may also be referred from other respondents for their expertise.

Estimated Number of Respondents: There will be a total of up to 221 semi-structured interviews using NHTSA Form 1703 and NHTSA Form 1704 across these justice professionals, with emphasis on conducting interviews with more prosecutors who handle DUID cases.

Estimated Total Annual Burden Hours: The total amount of burden is 148 hours.

The expected completion time for the interview is 60 minutes with prosecutors. The expected completion time for the interview is 30 minutes for TSRPs, prosecutor coordinators, judges, DREs and SFST and ARIDE trained law enforcement officers. The expected completion time for the interview with toxicologists, defense attorneys, and jurors is 20 minutes.

Estimated Total Annual Burden Cost: The total amount of burden cost to respondents is estimated to be \$9,304 (see Table 1).

Table 1. Calculation of Total Burden Hours and Estimated Costs by Type of Respondent

Type of Respondent	Number of Respondents*	Minutes per Respondent	Estimated Wage per Hour*****	Total Estimated Burden Hours	Total Estimated Cost
Prosecutors Contacted	93	2	\$71.17	3.1	\$220.63
Prosecutors Recruited	70	60	\$71.17	69.75	\$4,964.11
TSRPs** Contacted	53	2	\$71.17	1.77	\$125.73
TSRPs** Recruited	40	30	\$71.17	19.88	\$1,414.50
Prosecutor Coordinators Contacted	13	2	\$69.46	0.43	\$30.10
Prosecutor Coordinators Recruited	10	30	\$69.46	4.88	\$338.62
Judges Contacted	20	2	\$68.52	0.67	\$45.68
Judges Recruited	15	30	\$68.52	7.50	\$513.90
Drug Recognition Experts (DREs) and Law Enforcement Officers Contacted	59	2	\$34.02	1.97	\$66.91
Drug Recognition Experts (DREs) and Law Enforcement Officers Recruited	44	30	\$34.02	22.13	\$752.69
Toxicologist Contacted	24	2	\$42.85	0.80	\$34.28
Toxicologist Recruited	18	20	\$42.85	6.00	\$257.10
Defense Attorneys*** Contacted	20	2	\$71.17	0.67	\$47.45
Defense Attorneys Recruited	15	20	\$71.17	5.00	\$355.85
Jurors who have served on DUID juries**** Contacted	13	2	\$36.99	0.43	\$16.03
Jurors who have served on DUID juries Recruited	10	20	\$36.99	3.25	\$120.22
TOTAL Contacted	295			10	\$586.80
TOTAL Recruited	221			138	\$8,716.99
TOTAL				148.21	\$9,303.79

* A response rate of 75% is used for calculations. This is based on a NHTSA study where similar types of professionals were contracted about their work related to traffic safety.

** Traffic Safety Resource Prosecutors (TSRP)

*** Including public defenders and staff at the National Traffic Law Center and National Judicial College.

**** As identified by prosecutors during interviews.

***** US Department of Labor, Bureau of Labor Statistics (accessed September 2022). September 2022 National Occupational Employment and Wage Estimates – Mean Hourly Wage (All Occupations). http://www.bls.gov/oes/current/oes_nat.htm

Participation in this study is voluntary and there are no costs to respondents beyond the time spent in the interview and reviewing the interview notes. Participants will incur no burden related to annual reporting or record keeping due to the collection of this new information.

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (i) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (ii) the accuracy of the Department's estimate of the burden of the proposed information collection; (iii) ways to enhance the quality, utility and clarity of the information to be collected; and (iv) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29A.

Nanda Narayanan Srinivasan,

Associate Administrator,

Research and Program Development.

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