

# DUI Convictions: Putting the Pieces Together

A Montana TSRP Training Program

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# Disclaimer

- These opinions are my own and do not necessarily reflect the opinions of the State, the AGO, DOJ, DOT, law enforcement, or anyone else.

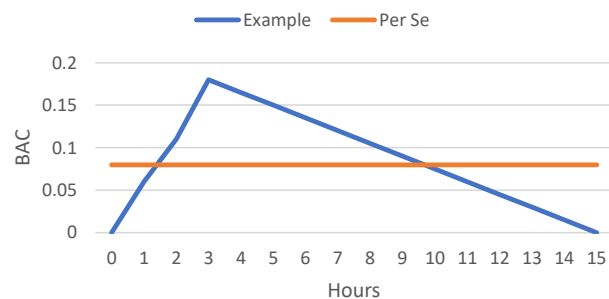
## Last Season on MT DUIs 101...

1. Driving Under the Influence = Cheeseburgers
  - Driving or actual physical control of a motor vehicle
  - Upon a way of the state open to the public
    - Broad definition including private and public roads, parking areas, etc.
  - While under the influence of alcohol and/or drugs.
    - Under the Influence = Diminished Safety



## Last Season on MT DUIs 101...

2. “Actual Physical Control” is supported by the science
  - “Sleeping it off” in a car doesn’t work under real world conditions.
  - Alcohol takes a long time to metabolize out of the system.
  - “Mellanby Effect” tricks our brain into misjudging impairment as our body metabolizes alcohol.
  - Alcohol increases our ability to fall asleep but reduces our ability to stay asleep.



## Last Season on MT DUIs 101...

3. Marijuana DUIs Drastically Increasing
  - Fatal THC crashes ~ +100% increase from 2020-2023.
  - Blood concentration does not tell whole story
    - THC metabolizes extremely fast out of blood stream. Impairment usually higher than blood THC.



# Itinerary: Investigation to Conviction

- LEO has arrested and issued a DUI citation.
- Now what?
- Sprint vs Marathon
- Surviving pretrial:
  - Burden to initiate traffic stop.
  - Burden to arrest.
- Proving it to a jury.



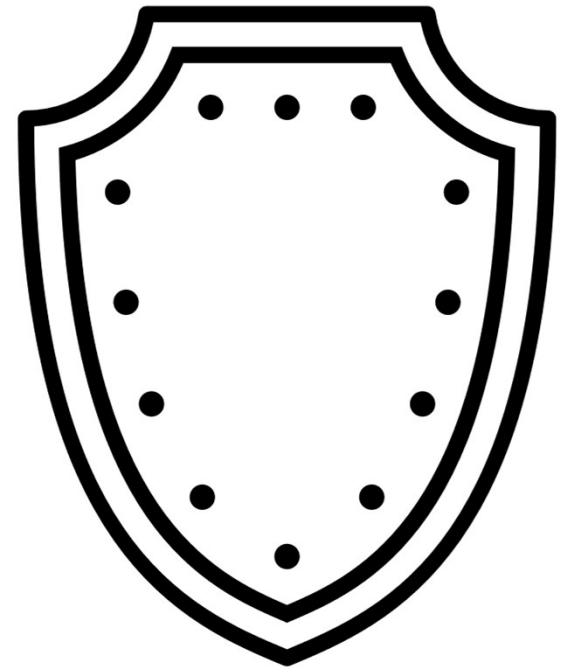
Itinerary:  
Investigation  
to Conviction

- Surviving pretrial:
- “Dismissed on a technicality”



# Constitutional Protections

- The Constitution is a Shield.
- The Shield protects individuals from government action.
  - *E.g. Freedom of Speech*





# Constitutional Protections

- The Constitution is a Shield.
- The Shield protects individuals from government action.
  - *E.g. Freedom of Speech*
  - Free to be an internet troll
  - Not free from social consequences



**Troll** @soalone · Oct 22, 2024

I love kicking puppies!!1 My favorite is when they whimper!

💬 23

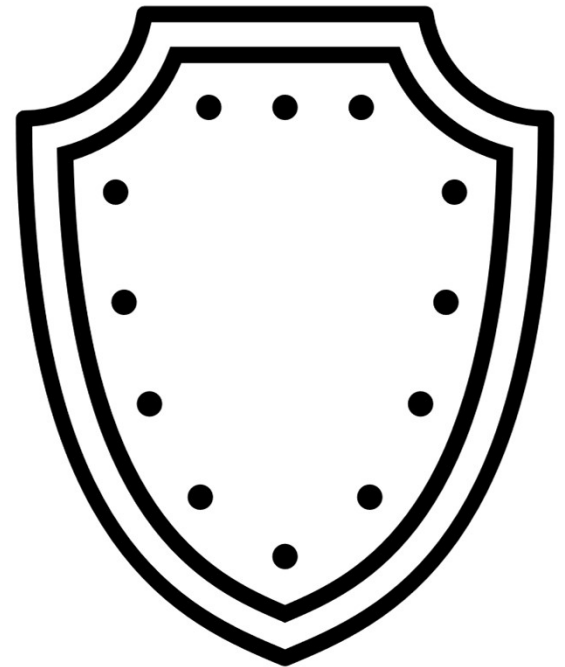
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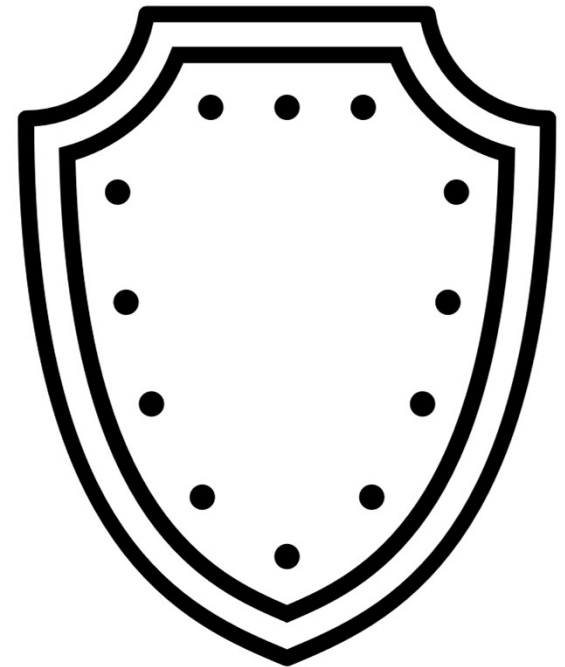
# Constitutional Protections

- The Constitution is a Shield.
- The Shield protects individuals from government action.
- That means The Shield governs LEO investigations



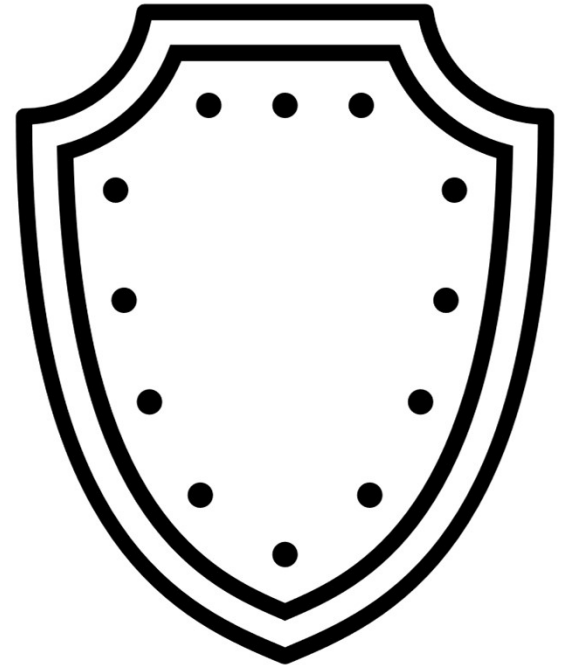
# Constitutional Protections

- Law enforcement are free to engage in non-compulsory interactions with citizens.
- However, if law enforcement *seizes* an individual, the LEO must have sufficient evidence to justify the intrusion.
- Simplified, “seizure” means most people would not feel free to ignore LEO and go about their business.
  - E.g. Exit Bar



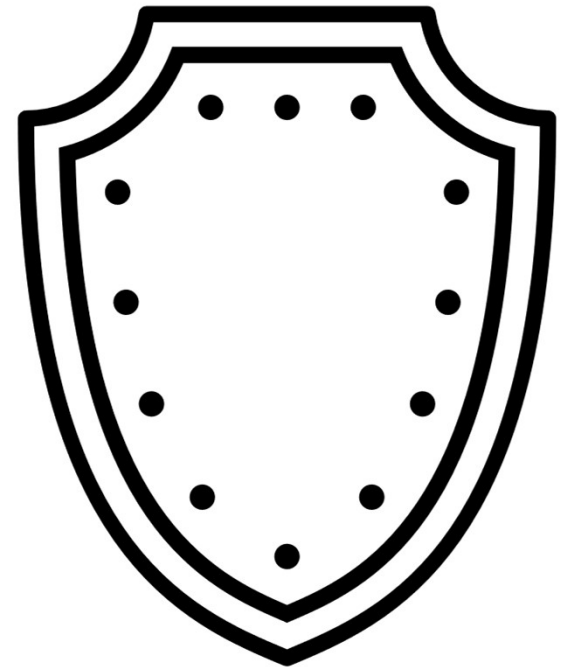
# Constitutional Protections

- Pretrial, multiple “sufficiency of evidence” hurdles we must clear.
- Failure to clear the hurdle usually results in dismissal.
  1. Enough evidence to permit initial seizure?
  2. Enough evidence to arrest?



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# Initial Seizures

- To conduct an “investigative stop,” Montana LEO require “Particularized Suspicion” of wrongdoing:
  1. Objective data and articulable facts from which they can make certain inferences, and;
  2. A resulting suspicion that the individual/vehicle is or has been engaged in wrongdoing.

# Story Time

\*Some details summarized for time/narrative purposes\*





Bozeman, Montana





After Bar Close



BPD Officer  
Danzer



BPD Officer  
Danzer

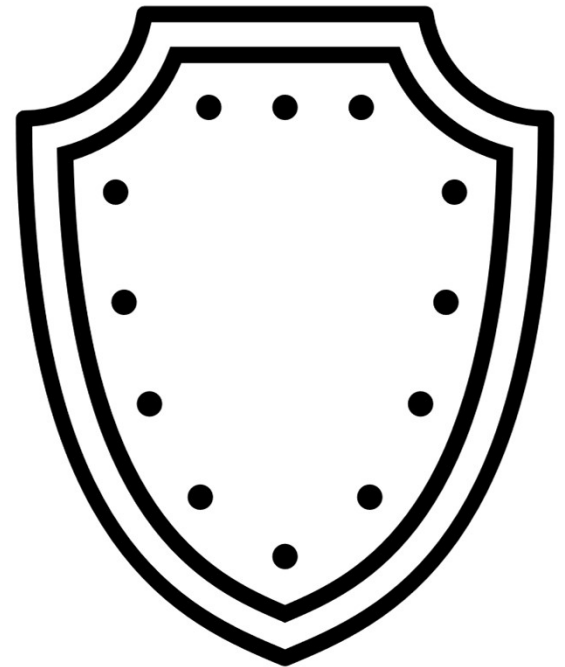




Public  
Urination

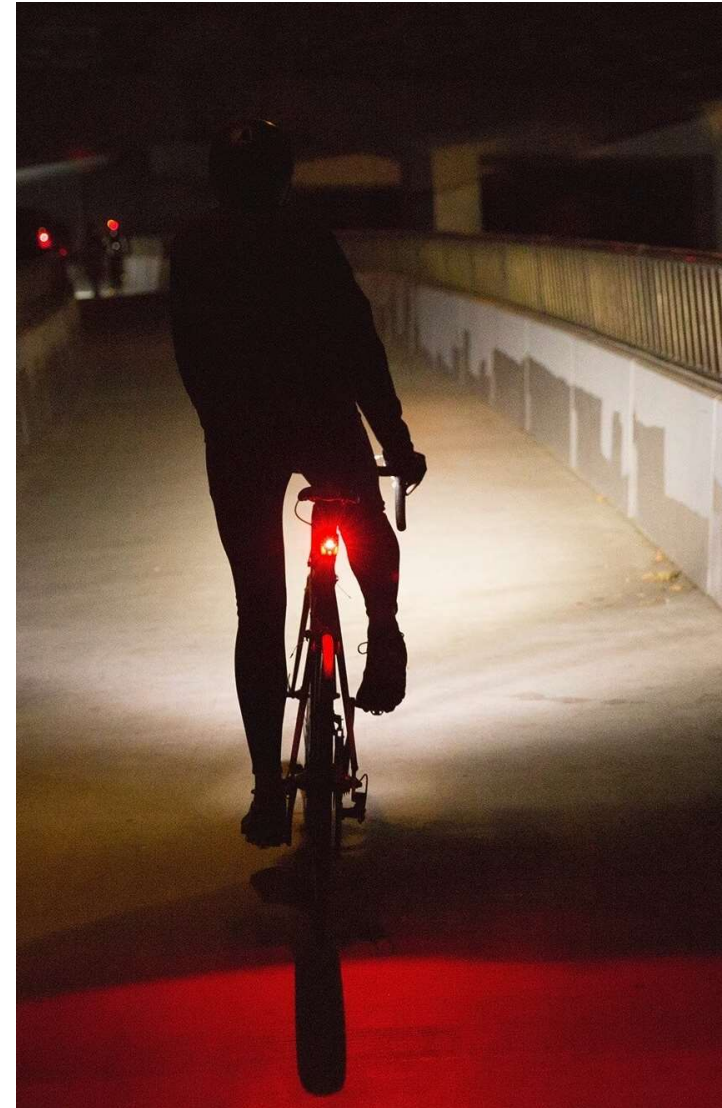
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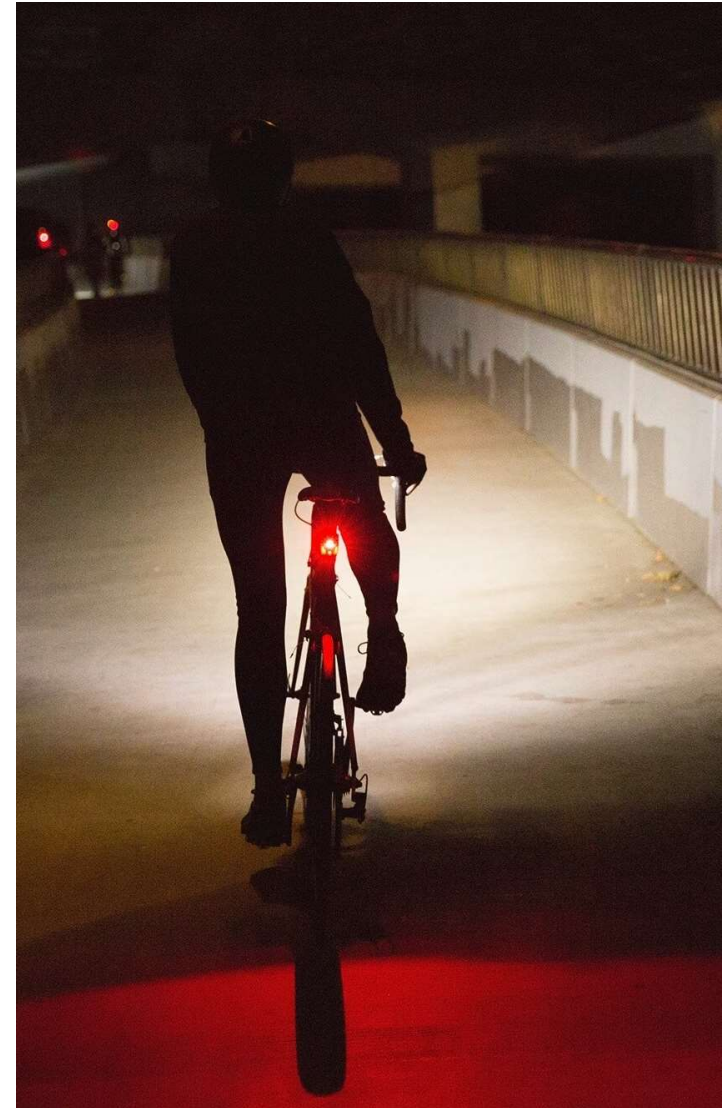
# Danzer's Objective Data?

- Public Urination?
  - On a vehicle?
- Slurred speech?
- Odor of alcohol?
- Downtown Bozeman right after bar closing?
- Pretends to get a ride?
- Danzer watches Defendant driving a few minutes later.



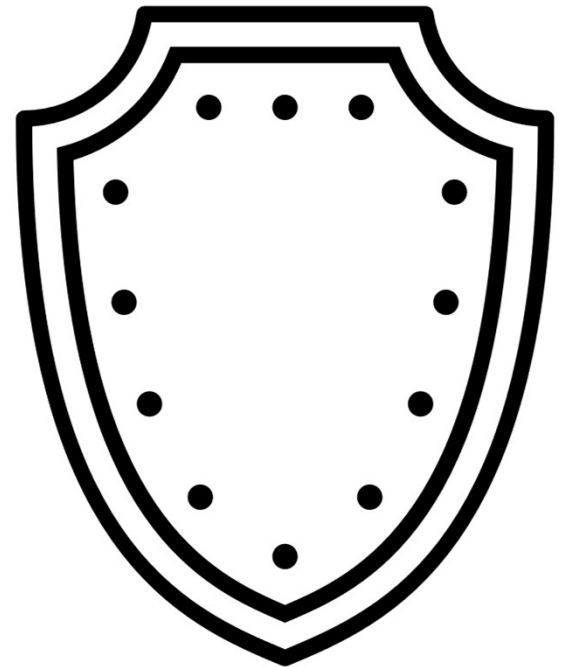
# Danzer's Resulting Suspicion?

- Defendant driving or actual physical control of a vehicle?
- Upon a way of the state open to the public?
- While “under the influence” of alcohol and/or drugs?
  - IE diminished safety



# Constitutional Protections

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  1. Enough evidence to permit initial seizure?  
Yes! Can pull over Defendant.





BPD Officer  
Nyquist



- Speeding on Mendenhall
- Red Light Viol.
- Fail Signal
- Speeding on 7<sup>th</sup>
- Pulled over on 7th



Activates Red & Blue  
emergency lights to  
initiate traffic stop





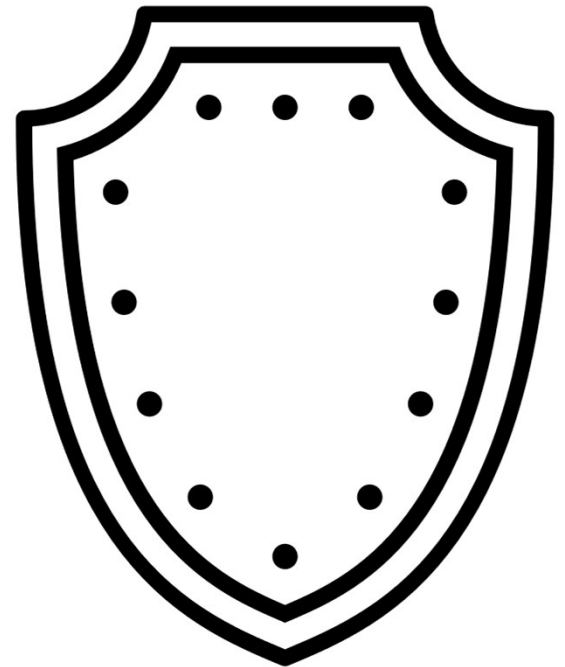
## DUI Investigation



- Smells Alcohol
- Slurring words
- Admits to drinking
- Fly down
- Swearing at LEO
- Threatening LEO
- Refuses all SFSTs
- Refuses BAC testing (breath)

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# Arrest

- Must have probable cause to believe Defendant is guilty of an offense.
- The substance of all probable cause definitions is a reasonable belief of guilt, less than evidence which would justify convictions, but more than bare suspicion.
  - Reasonable to believe crime committed?
  - Reasonable to believe Defendant committed it?
- Initial seizure = Particularized Suspicion
- Arrest = Reasonable Belief of guilt

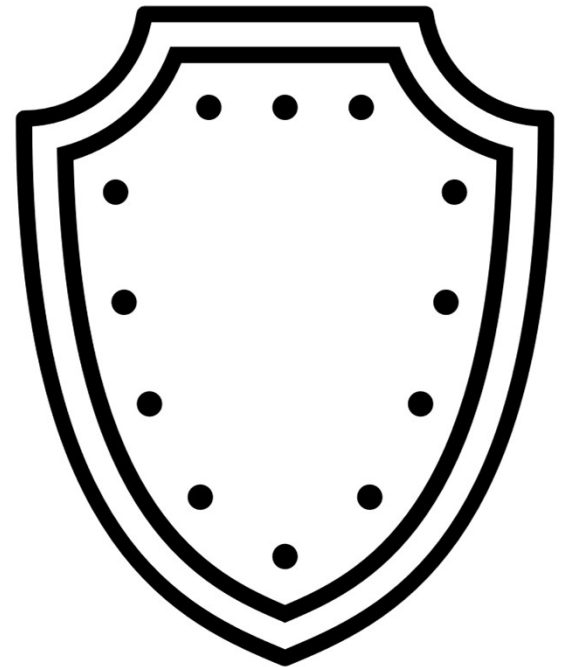


- Officer Danzer's Observations
- Traffic violations
- Smells Alcohol
- Slurring words
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# Blood Warrants

- If we have probable cause a person is guilty of DUI, they are under arrest, and they have refused BAC testing, we can request a judge issues a search warrant to draw a DUI suspect's blood for testing.\*
- \*Unsettled law re: certain additional requirements



# Blood Warrant



BAC = 0.208



Court |

# Trial

- To find the defendant guilty of the offense of Driving Under the Influence, the State must prove beyond a reasonable doubt that the defendant:
  - Drove or was in actual physical control of a vehicle;
  - Upon a way of the state open to the public, and;
  - While under the influence of alcohol.

# Trial

- Proof beyond a reasonable doubt is proof of such a convincing character that a reasonable person would rely and act upon it in the most important of his or her own affairs. Beyond a reasonable doubt does not mean beyond any doubt or beyond a shadow of a doubt.
- Highest burden of proof under law.

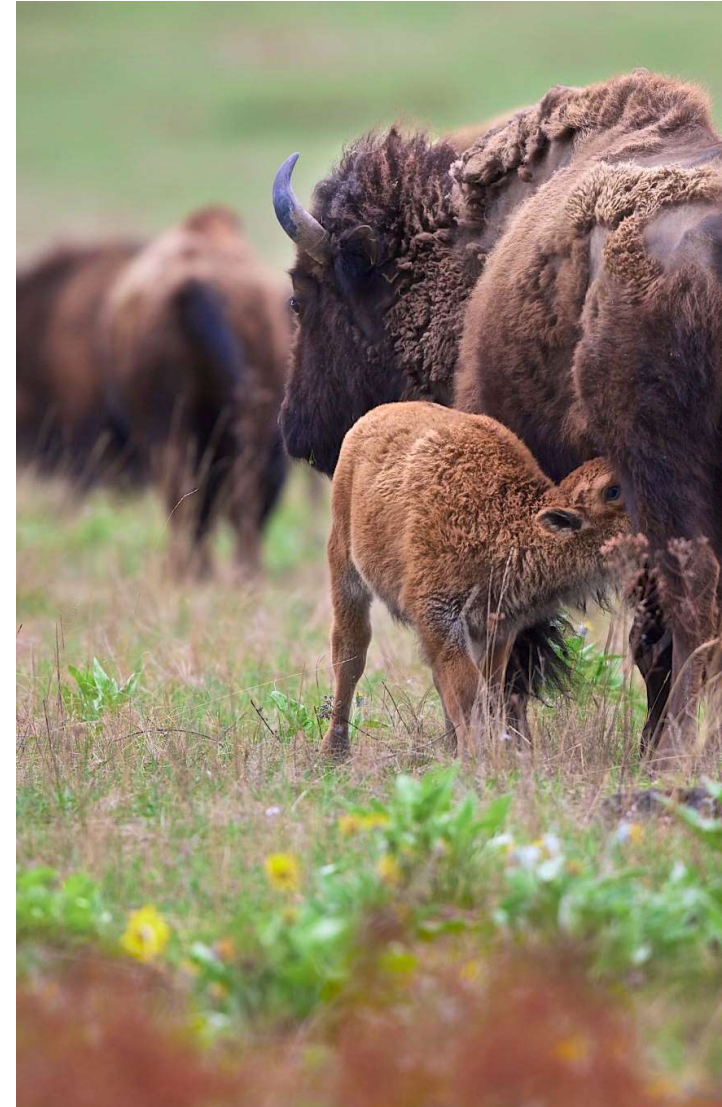
# The Burden of Jury Trial – A Thought Experiment





# Beyond a Reasonable Doubt

- Every part of the buffalo.
  - Time?
  - Location?
  - Reason for stop?
  - Danzer's observations?
  - Deception?
  - Traffic violations?
  - Emotions?
  - Admissions?
  - Threats?
  - Standardized Field Sobriety Tests? (If applicable)
  - Refusals? (If applicable)
  - BAC results? (If applicable)





## Final Thoughts:

- Every step of a DUI investigation must be supported by sufficient evidence.
- As investigation progresses our burdens increase.
- Trial burden of beyond a reasonable doubt is highest legal burden.