

## Office of the Kane County State's Attorney



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### **HALLOWEEN WEEKEND NO-REFUSAL NETS FOUR DRUNKEN DRIVERS SIX POLICE AGENCIES PARTICIPATE; ONE RECORDED BAC WAS .290**

November 13, 2012

Kane County's pre-Halloween weekend No-Refusal operation, a collaboration of the Kane County State's Attorney's Office and six law-enforcement agencies, resulted in four DUI arrests.

The operation included three Fox River communities – St. Charles, Geneva, Batavia – along with Illinois State Police District 2, Illinois State Police District 15 and the Kane County Sheriff.

Authorities obtained four blood-alcohol concentration samples – all breath samples. Of the four BAC breath samples obtained, two were more than twice Illinois' threshold of .08, and one was in excess of three times the .08 threshold – .290.

"Our goal is zero DUI arrests. That means people are being responsible. But we are pleased that we were able to get BAC samples from everyone charged, and we are pleased that four intoxicated drivers were removed from the roadways," Kane County State's Attorney Joe McMahon said.

"This office will continue to use the No-Refusal initiative as a law-enforcement tool, and as a means to deter and educate about the dangers and consequences of drunken driving. We believe the process has been effective."

The next No-Refusal will be Wednesday, Nov. 21, the evening before Thanksgiving.

The October 26-27, 2012, No-Refusal was the third in Kane County held relative to Halloween. The first Halloween No-Refusal was in October 2009. Thirteen agencies participated and 14 motorists were charged with DUI during that initiative. The second Halloween No-Refusal was in October 2011. Six agencies participated and seven motorists were charged with DUI.

#### **Pre-Halloween Weekend – the details**

From 11 p.m. Oct. 26 to 3 a.m. Oct. 27 and from 11 p.m. Oct. 27 to 3 a.m. Oct. 28, 2012, officers who stopped and then arrested a suspected drunken driver – a driver who was lawfully stopped for a moving violation and subsequently displayed signs of impairment or intoxication – transported the suspect to the local police station.

At the station, each suspect was asked to submit a blood-alcohol concentration sample in the form of breath. Any suspect who refused to provide the sample was instructed that a search warrant would be sought ordering them to provide the sample if they continued to refuse. Any suspect who continued to refuse to submit to chemical testing after a being presented with a search warrant likely would have faced additional sanctions. Illinois courts have consistently held that there is no right to refuse chemical testing when probable cause exists.

Of the four who were arrested, one initially refused to provide the lawfully requested BAC sample. When told that law enforcement would obtain a search warrant that gives police the authority to collect a blood, breath or urine sample, the defendant agreed to provide the breath sample. No blood samples were collected.

The BAC breath samples collected were .102, .157, .191 and .290.

Illinois law states that a person is presumed to be unlawfully intoxicated for the purposes of operating a motor vehicle if his or her BAC is .08 or higher.

One of those arrested faces additional felony charges for driving without a valid license. One had a prior DUI offense.

According to numerous sources, impairment becomes severe when a person's BAC reaches .250, and a person with a BAC of .300 likely is in a state of stupor and at risk of alcohol poisoning and death.

### **The participating agencies and those charged:**

#### **BATAVIA**

None

#### **GENEVA**

None

#### **ILLINOIS STATE POLICE DISTRICT 2**

Manuel Vazquez, 35 (d.o.b. 4-28-1977), of the 0-99 block of West Street, Aurora, was charged with two counts of DUI, each a Class A misdemeanor, and other offenses. His next court appearance is set for 9 a.m. Nov. 28, 2012, in Courtroom 123 in front of Associate Judge Thomas J. Stanfa.

Presley S. Clark, 21 (d.o.b. 3-16-1991), of the 500 block of Leah Lane, Woodstock, was charged with two counts of DUI, each a Class A misdemeanor, and other offenses. His next court appearance is set for 9 a.m. Nov. 28, 2012, in Courtroom 123 in front of Judge Stanfa.

#### **ILLINOIS STATE POLICE DISTRICT 15**

None

#### **KANE COUNTY SHERIFF**

None

## **ST. CHARLES**

Frank J. Pastorino III, 48 (d.o.b. 12-14-1963), of the 100 block of South George Street, Barrington, was charged with two counts of DUI, each a Class A misdemeanor, and other offenses. His next court appearance is set for 10:30 a.m. Nov. 28, 2012, in Courtroom 123 in front of Judge Stanfa.

Claudio A. Kienzle, 24 (d.o.b. 1-18-1988), of the 100 block of Kensington Place, St. Charles, was charged with two counts of DUI, each a Class A misdemeanor. His next court appearance is set for 10:30 a.m. Nov. 28, 2012, in Courtroom 123 in front of Judge Stanfa.

## **Background**

The pre-Halloween weekend 2012 No-Refusal initiative was the 10<sup>th</sup> to be conducted in Kane County; the first was in May 2008. In the nine prior No-Refusals, a total of 87 motorists were charged. Most have pleaded guilty to DUI, although many cases are pending.

The initiative is designed to thwart suspected drunken drivers who refuse to submit to a breath test after an arrest on DUI charges. Through the No Refusal strategy, officers expedite the DUI booking process. With guidance from an assistant state's attorney, officers efficiently seek a search warrant to compel a DUI suspect to submit to a lawfully requested BAC test as required by Illinois' Implied Consent statute.

The operation is buoyed by Illinois law and the courts, including the fact that driving is not a right but a privilege granted by the Secretary of State; Illinois' Implied Consent statute, which is based on the principle that when people drive on Illinois streets and roads, they have implicitly consented to submit to a lawfully requested test to determine the alcohol content of their blood, breath, urine or other bodily substance; and Schmerber vs. California, in which the U.S. Supreme Court in 1966 ruled that taking blood against a person's wishes did not violate a person's right against unreasonable searches and seizures or compelled self-incrimination.

For the last several years, however, according to the Illinois Secretary of State's Office, approximately 50,000 motorists each year are cited for DUI. Of those, about 40 percent, or 20,000, refuse to submit to a BAC test, denying the state lawfully allowed evidence needed to prosecute a criminal case. The No-Refusal operation is designed to ensure that the evidence is lawfully collected.

## **NHTSA National DUI Facts**

- Between midnight and 3 a.m., drunken driving claims a life every 23 minutes
- Every day, 1,440 people are injured and 29 are killed because of drunken driving
- 11,000 people die on U.S. roads every year because of drunken driving
- 1.4 million people were charged with DUI in 2009 in the United States

The charges against those named above are not proof of guilt. A defendant is presumed innocent and is entitled to a fair trial in which it is the state's burden to prove his or her guilt beyond a reasonable doubt.