

**Minutes**  
**ICI/INDOT/IOSHA/ISP Safety Joint Cooperative Forum**  
**October 26, 2016**

The ICI/INDOT/IOSHA/ISP Safety Joint Cooperative Forum met at 10:00 a.m. on Wednesday, October 26 at the association office in Indianapolis.

Attending: Amber Ahlersmeyer (Gridlock Traffic Systems, Inc.), Tommy Blair (HIS Constructors, Inc.), Keegan Brennan (Rieth-Riley Construction Co., Inc.), Greg Bridges (Specialties Company, LLC), Josh Coulter (The Hoosier Company, Inc.), Melony Geary (E & B Paving, Inc.), Tricia Hanrath (Superior Construction Co., Inc.), April S. Hecht (American Contracting & Services, Inc.), Terry Jones (Irving Materials, Inc.), (Chris Keith (Fox Contractors Corp.), Derek Kintner (Harmon Steel, Inc.), Rob Konopinski (Rieth-Riley Construction Co., Inc.), Bernie Kruse (C-Tech Corporation, Inc.), Don Littrell (Dave O'Mara Contractor, Inc.), Dan Livingston (Rieth-Riley Construction Co., Inc.), Mark Michael (E & B Paving, Inc.), Bob Montel (Rieth-Riley Construction Co., Inc.), Keith Mullens II (The Hoosier Company, Inc.), Richard Olson (Earth Exploration, Inc.), Darrell Pruitt (Superior Construction Co., Inc.), Russell Randle (Milestone Contractors, L.P.), Derek Ray (Primco, Inc.), Todd Scott (Gridlock Traffic Systems, Inc.), Gary Smith (State Safety & Compliance), Rick Smith (RoadSafe Traffic Systems, Inc.), Steve Sweet (Calumet Civil Contractors, Inc.) and Sheryl Wisner (Fox Contractors Corp.).

Guest speakers attending: Chris Daniel (Indiana Prosecuting Attorneys Council) and Christina Gull (Marion County Prosecuting Office).

Staff attending: Calvin Lee and Lori Lynn.

**Welcome**

Mr. Lee welcomed and thanked everyone for attending the meeting and submitting third-quarter safety metric data. He briefly reviewed the agenda, and welcomed and introduced the featured speakers, Traffic Safety Resource Prosecutor Chris Daniels and Marion County Prosecutor Christina Gull. Mr. Lee explained the representatives from IDOL, INDOT and the Indiana State Police would not be in attendance due to scheduling conflicts.

**Safety Metrics**

Mr. Lee thanked the 30 members who provided their quarterly safety metrics, and provided an overview and analysis of the safety metric charts. He asked members to review the [Safety Metrics Summary chart](#) to compare the group's rates to the federal and state rates. Although the group's rates are below both federal and state rates, he stated the group logged more days away than job restricted days. Mr. Lee directed the group's attention to the [Injury Comparison chart](#) to discuss injury trends. The most prevalent injury categories to target year-to-date are caught in between, cuts and struck. The group discussed lessons learned as they reviewed the [Safety Metrics Injury Report](#). The lessons learned to avoid injury concerning discussions of

caught in between injuries were to know where you are in relation to your surroundings to avoid injury, and use the appropriate tools for the job. The group discussed the scenario of a contractor nurse or medical staff who conducted a full evaluation that revealed a diagnosis different from a specialist's diagnosis. In all likelihood, the contractor nurse or medical staff will not override the specialist. Although a contractor can call for a functional capacity evaluation that tests physical fitness to meet jobsite requirements after a worker gets injured off the job, the expense of approximately \$3,000 is prohibitive, especially if the contractor may be obligated to perform the test on all subsequent injuries. Several members revisited the question of what makes an injury recordable, e.g., in the case of a back sprain requiring job restrictions. Members also discussed cases where individuals who sustained injuries at the end of a season, boasted to fellow workers about intentionally becoming injured to receive payments during the off season. One member discussed how a truck mounted attenuator prevented a worker from being injured more severely. The worker sustained a broken rib with 45 days of restricted duty. One member discussed an on-the-job fatality on I-65 near Gary, Indiana in addition to many near miss reports. A member reported about an incident where police pulled over a driver who drove 60 miles per hour in a work zone and the prosecutor denied the driver's arrest. Despite lane restrictions, members continue to work with INDOT to get barrier walls or at least a buffer lane. The group discussed various work zone injuries and harassments caused by motorists. A flagger was life lined after thrown 10 to 15 feet into a side ditch after being struck by a car driven by a 73-year-old woman. Another incident involved a worker who was hit by a driver blinded by the sun.

Mr. Lee shared that the ICI Board of Directors is working to find ways to improve work zone safety. One way is to have ICI members work in small task groups to identify when and where safety measures should be in place. It is critical for contractors to identify jobs where lane closures are the safest way to complete a project. Several stakeholders are working to effect change with regard to worker safety in work zones. INDOT is digging into processes to make changes to various policies including the lane closure policy. ACEC and ICI members met to discuss legislative measures. INDOT Commissioner Hendrickson dedicated the first segment of the most recent Team Indiana meeting to address work zone safety and INDOT's willingness to help address the issues.

The group concurred that violators need to be held accountable and would like to know what they can do to help convict them. Mr. Lee introduced Mr. Daniels as a prosecution specialist on traffic issues, as well as a liaison and resource for contractors.

#### **Work Zone Violator Convictions Presentation**

Mr. Daniels and Ms. Gull discussed the ongoing struggle of dealing with lots of statutes that cover work zones and affect how they prosecute cases, as when a driver is reckless, knowingly or with negligence or commits reckless homicide. As part of their job, they strive to change

and improve statutes, educate legislators, increase penalties and utilize language that helps to modify public perception, e.g. work zone “accidents” is replaced with work zone “crashes” providing a clearer perception of a driver fault-based incident. Ms. Gull gave an example of the importance of educating legislators on why statutes need to be changed, and how the battle of public perception makes it tougher to modify a statute’s wording from “may” to “will” because of public opposition against more stringent statutes.

Ms. Gull said a big part of any case is public perception. She was instrumental in prosecuting and convicting a driver for killing two workers in a work zone in 2014. It was the first Indiana case where a driver was found to be in disregard of a traffic device in a highway work zone and convicted of reckless driving that resulted in death.

Ms. Gull said many factors must come together to obtain a conviction and sentencing. She shared that what went well in this case was that everyone at the work site and others associated with this project was “onboard.” She cited examples of what was helpful to do and what to provide the prosecutor and police. It helps to have witnesses to prove the contractor did everything right and the driver was in the wrong. Everyone must show up, be onboard, answer phone calls, and provide as much data as possible. Documentation is crucial in getting a conviction, and she gave the following documentation examples of maps, weekly traffic control lists, signs permanently in place, work site layouts, photos, images, witnesses, contractor plans, what went into the job and job site, codes, standards, explanations of what occurred, a temporary sign list (which can be difficult when it involves a mobile site), and signs to show the difference to jurors, such as placards, tapers, barrels, etc.

According to Ms. Gull, what happens after a crash is critical, i.e., determining who did what, identifying moved items, etc. To convict a violator, she must prove the driver was reckless, was negligent or intentionally disregarded all signs and warnings resulting in reckless homicide versus committing involuntary manslaughter/homicide.

Generally, when the public hears about a work zone crash, their perception is that it was an accident which implies no fault because they relate to themselves as a driver and would not want to be considered negligent or reckless. Also, the public generally perceives road construction to be an inconvenience, which can be a detriment to obtaining reckless convictions. Ms. Gull said she is tasked with separating driver conduct from normal conduct.

Title 35 covers all murders, rape, etc. and Title 9 covers traffic issues. Changes in the law statutes include a new definition of highway work zones and removal of the wording “in compliance with INDOT’s IMUTCD.” In order to charge a driver, a bizarre statute requires that it must be proven that the driver had intent to injure or damage, which is a Class A

misdemeanor. It must be proven that the incident involved aggressive driving or was in a speed contest, which requires at least three things, and especially requires witnesses. Criminal Code Reform is designed to focus on criminals and issues of fear versus people who we're mad at in traffic scenarios, such as work zone violators.

If a crash involves injury, the penalty is considered a Level 6 felony; whereas if death occurs, the penalty is considered a Level 5 felony. Title 35 lowered penalties that affect Title 9. To ensure prosecution of traffic infractions, such as speeding tickets, lots of data must be pulled together.

Prosecutors must address many issues:

1. When workers are present as witnesses, they may need to take off work to testify.
2. Statutes may need to be explained.
3. Safety measures may not be in place, i.e., the road narrowed; the lane was closed.
4. May need to differentiate between a work zone or work site, because the public perception of a work zone may be too large in cases that concern a sudden slow down for example.
5. Help define work zone with maps, images, diagram, videotaping within hours of the incident, or data explained in layman's terms
6. In certain scenarios, barrier walls may prevent police from catching speeders in work zone areas until outside the work zone.

Members inquired on when and to whom they should provide data and documentation concerning a work zone crash. Because prosecutors may not know all the evidence a contractor may possess, Ms. Gull said contractors should call the prosecutor's office and offer to provide their data as soon as possible to help the prosecutor with the charging decision and the argument to the judge. To keep a work zone crash in the forefront of the minds of the state police and prosecutors, keep asking questions and provide information the sooner the better regardless of whether an investigating officer can discourage it.

In closing, Ms. Gull related that during a trial, jurors who empathize with a work zone violator/driver will put themselves in the driver's place and opt to soften the penalty or prosecution. Jurors wouldn't want to be charged with reckless driving if they were negligent from distracted driving, but Indiana doesn't have penalties for negligence. She added that although laws can be frustrating, they do continue to improve when people continue to put forth the effort such as contractors providing their stories to their prosecutors who can then work with legislators and train other prosecuting attorneys. Mr. Lee thanked Ms. Gull and stated that she is a liaison to the prosecutor's office for ICI and other associations like ICI.

Mr. Daniels emphasized utilizing creativity in approaching the issues of spreading the word about work zone safety or ways to enforce speed limits. One idea was to display the I-65 conviction of a work zone violation on a billboard. Another was to build a deer stand in a work zone where a patrolman would have a radar gun and radio ahead to the patrolman at the end of the work zone to issue a ticket to the speeding driver. Mr. Daniels said that a new law states that if a driver gets a second work zone violation in a 12-month period, a judge could suspend driving privileges for up to 60 days.

**Open Discussion**

With no further business to discuss, Mr. Lee adjourned the meeting at 12:00 p.m.