Effective Ways to Change Ineffective Laws

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As law enforcement officers, our method of handling problems is to solve them. Sometimes we can simply clear up a dilemma by putting someone in jail for the night to calm the situation at hand. When this does not resolve the issue, an alternative solution is sometimes necessary. These options might include things such as substance abuse treatment, anger management, or even ultimately sending someone to prison to protect innocents from any further harm. We are problem solvers; it is what we do. But what do we do when the statutes we use to solve these problems are broken or ineffective? You would think we could simply make a phone call, explain the issue, and the problem would get solved. Unfortunately it isn't that simple.

In the state of Arkansas court cases are lost daily -- not because of bad police work but because of poorly worded or ineffective statutes. This paper is meant to give a few active examples of ineffective or poorly worded laws, explain why they are ineffective or poorly worded, and then show simple solutions which would remedy the problem. After reviewing examples of these issues, we will review the method found to be most effective for getting proposed changes put in front of the legislators, hopefully providing a straightforward solution to the problem.

Ineffective Statutes

Poorly Written Statutes

Example one

27-37-601. Noise or smoke producing devices prohibited.

(a) Every motor vehicle shall, at all times, be equipped with a factory-installed muffler or one duplicating factory specifications, in good working order and in constant operation, to prevent excessive or unusual noise and annoying smoke.

> **(b)** No person shall use on a motor vehicle upon the public roads, highways, streets, or alleys of this state, nor shall any person sell for use on a motor vehicle upon the public roads, highways, streets, or alleys of this state, a muffler, other than as defined in subsection (a) of this section, cutout, bypass, similar device, or any type device which produces excessive or unusual noise or smoke.
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> HISTORY: Acts 1937, No. 300, § 126; Pope's Dig., § 6786; Acts 1959, No. 219, § 1; A.S.A. 1947, § 75-726. (*Arkansas Criminal and Traffic Law Manual*, 2013, p. 974)

This was my first introduction to a poorly worded statute as a rookie officer. I pulled over a vehicle that was, for lack of a better phrase, "dusting for mosquitoes." I honestly thought there was a vehicle on fire somewhere in front of me, because I could not see it through the smoke. I had no idea what was going on. I finally worked my way through the smoke and found an early 1980s Toyota pickup in front of all the smoke, creating the fog. It was apparent the origin of the smoke was the Toyota's tailpipe. I conducted a traffic stop on the vehicle and spoke to the driver. He told me they were not going to put the money into the truck to fix it, however he intended to continue to drive it. This prompted me to write him a citation for violating A.C.A. 27-37-601, "Noise or smoke producing devices prohibited" (*Arkansas Criminal and Traffic Law Manual*, 2013, p. 974).

Several months later I went to court and testified, figuring it was going to be a simple case. The public defender started questioning the defendant as to the condition of the vehicle. He testified that the truck had a bad motor, and that the motor was what caused the excessive smoke. The attorney then presented his defense by pulling up the statute and arguing that the muffler on the vehicle was in working order. Since it was not noisy as required by statute, and the smoke was actually coming from the engine, he argued that mufflers are not capable of preventing

“excessive or unusual smoke,” and so the statute was not applicable. The judge agreed and the defendant was found to be not guilty.

The intent of that law was to stop vehicles from producing excessive smoke. However, its architect was most likely not mechanically savvy enough to know where smoke really comes from or what the actual function of a muffler is. The solution in this case is simple. The statute should be worded in such a way that requires not only the muffler to be in good working order and to prevent excessive noise, but also for the motor to be in good working order and not produce excessive smoke.

Example two

27-37-304. Obstruction of interior prohibited.

(a) (1) (A) It is unlawful for any person to operate a motor vehicle which has any substance or material except rearview mirrors and decals required by law attached to the windshield at any point more than four and one-half inches (41/2") above the bottom of the windshield if the substance or material obstructs the operator's view or the safe operation of the vehicle.

(B) It is unlawful for any person to operate a motor vehicle which has any substance or material attached to the window of either front door except substances or materials attached by the manufacturer if the substance or material obstructs the operator's view or the safe operation of the vehicle.

(2) The provisions of this section shall not apply to motorists driving motor vehicles registered in other states that have enacted legislation regulating the shading of windshields or windows of motor vehicles and who are driving on Arkansas roads and highways.

> (b) Nothing in this section shall prohibit the shading or tinting of windows of newly manufactured automobiles so long as the newly manufactured automobiles comply with all federal laws pertaining thereto.
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> (c) Violation of this section shall constitute a Class C misdemeanor.
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> HISTORY: Acts 1983, No. 315, §§ 1-3; 1985, No. 1072, § 1; A.S.A. 1947, §§ 75-730.1 -- 75-730.3; Acts 1999, No. 1251, § 2. (*Arkansas Criminal and Traffic Law Manual*, 2013, p. 971)

This is an excellent example of a poorly worded statute. Officer Travis Caldwell (2009) of Conway Police Department performed a traffic stop on a car for a violation of this statute. The vehicle had been stopped because there was a "large set of dice" hanging from the rearview mirror (Caldwell, 2009, p. 3). During a consensual search of the vehicle, a baggy containing crack cocaine was found hidden inside a cheeseburger in the front passenger compartment of the vehicle. An arrest was made, and the driver admitted to being the owner of the cocaine. All in all, it was a good stop and after some good police work, an arrest was made for possession of a controlled substance with intent to deliver and $420 was seized (Caldwell, 2009).

When the probable cause hearing was conducted the judge refused to accept the obstructed view as probable cause. His interpretation of the statute was that the item causing the obstruction had to be "attached to the window" as written in the statute (*Arkansas Criminal and Traffic Law Manual*, 2013, p. 971). Based on the officer's report, the dice were hanging from the "mirror that was attached to the window" (Caldwell, 2009, p. 3). Without the direct attachment, there was no probable cause for the stop and a warrant was denied. The suspect was released, his money was returned, and the charges were dropped.

The intent of the statute was to prevent people from driving with their view obstructed to the point that it becomes unsafe. I saw the dice that were hanging from the mirror that day, and they were *large* fuzzy dice. They could have easily blocked the view of a street sign, stop light, walking pedestrian, or other traffic control device. Seeing the device in person, I believed they met the statutory requirement of obstructing the operator's view and thereby preventing the safe operation of the vehicle.

The solution would be to simply amend the statute to remove the “attached to the window” segment, making it so ANY obstruction of the driver’s view would be unlawful. Blocking a driver’s view and creating an unsafe situation is the relevant point in this issue, and the intention of the law was to establish that. Where the blockage is attached should not be relevant.

Poorly Thought Out Laws

Example three

27-51-403. Signals for turning, stopping, changing lanes, or decreasing speed required.

(a) No person shall turn a vehicle from a direct course upon a highway unless and until the movement can be made with reasonable safety and then only after giving a clearly audible signal by sounding the horn if any pedestrian may be affected by the movement or after giving an appropriate signal in the manner provided in subsection (b) of this section in the event any other vehicle may be affected by the movement.

(b) A signal of intention to change lanes or to turn right or left shall be given continuously during not less than the last one hundred feet (100') traveled by the vehicle before changing lanes or turning.

(c) No person shall stop or suddenly decrease the speed of a vehicle without first giving

> an appropriate signal in the manner provided in this subchapter to the driver of any vehicle immediately to the rear when there is opportunity to give such signal.
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> HISTORY: Acts 1937, No. 300, § 67; Pope's Dig., § 6725; A.S.A. 1947, § 75-618; Acts 2007, No. 364, § 1. (*Arkansas Criminal and Traffic Law Manual*, 2013, p. 1017)

This has been a point of conversation recently at Conway Police Department. It is basically the "no turn signal" statute, requiring the driver to signal when changing directions or changing lanes. This statute has been instrumental in identifying impaired drivers because it requires the divided attention of the driver to perform the task. When someone is impaired divided attention tasks are hard to perform. It is even listed by the National Highway Transportation Safety Administration as one of the indicators of an impaired driver. According to their "DWI Detection and Standardized Field Sobriety Testing Student Manual" it is an indicator of impairment 55%-65% of the time (2004).

> Failure to Signal or Signal Inconsistent with Action· A number of possibilities exist for the driver's signaling to be inconsistent with the associated driving actions. This cue occurs when inconsistencies such as the following are observed: failing to signal a turn or lane change; signaling opposite to the turn or lane change executed; signaling constantly with no accompanying driving action; and driving with four-way hazard flashers on.
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> (*National Highway Transportation Safety Administration, 2004, p V-6*)

Recently an attorney in Central Arkansas defended a driving while intoxicated (DWI) case on the basis that the statute requires turn signal usage only if "any other vehicle may be affected by the movement" (*Arkansas Criminal and Traffic Law Manual*, 2013, p. 1017). The officer testified during the trial that there were no other vehicles in the area other than his own. So the attorney's position was basically if there are no vehicles in the area when you turn or

change lanes, turn signal usage is not mandatory. To further support his client's position, he provided an Arkansas Attorney General opinion which stated:

> In summary, then, a court faced with your question would likely hold that section 27-51-403 unambiguously requires motorists to signal a lane change only if others may be affected by that change. Alternatively, if a court is persuaded of the plausibility of other arguments based on the statute's wording, then the court would declare the statute ambiguous. Nevertheless, after employing the rules of statutory construction, the court, in my opinion, would likely find the statute requires motorists to signal an intent to change lanes only if the movement might affect others. (*2010 Opinion Attorney General. No. 2010-142*)

This supported his position based on the wording of the statute. The judge accepted that interpretation and the probable cause, along with several subsequent cases based on the same probable cause, were thrown out.

This statute is an example of one that was not worded improperly, but is an example of an ineffective law -- one that does not work when you compare the purpose to the results it obtains. It is my opinion the architect intended for motorists to only have to use turn signals when "any other vehicle may be affected by the movement" thus not requiring turn signal usage all the time (*Arkansas Criminal and Traffic Law Manual*, 2013, p. 1017). A turn signal is intended to warn people that a vehicle is turning so that the other motorists can be aware of it and take any necessary action to prepare for it. If one motorist cannot see another motorist, due to them being in a blind spot, they will not signal because they do not think they are required to. They will then perform the maneuver without warning the other motorist and most certainly cause an accident. If the turn signal was used, even though the motorist did not think anyone would be affected,

there is a chance that the other motorist would see the signal and take action to prevent a collision, thus following through with the intent of the statute.

The solution for this would be to remove the "any other vehicle may be affected by the movement" section of the statute. This would do two things. It would create a statute with the ability to help prevent accidents, and it would allow officers to better utilize the law for DWI detection.

Example four

In this example I am only going to give you a portion of a city ordinance. I will not bore you with the other six and a half pages because they are well written and not relevant to the topic. I will however give you a little background so that you can see where this ordinance falls short.

Like any other city, the City of Conway has door to door solicitors that come from all over the country. They come by the van load, descend upon our city, and sell our citizens all of the wonderful things that you can only get from a door to door salesman. The problem is that these "salesman" are not always on the up and up and do not usually like to take "No" for an answer. They curse the homeowners, stick their feet in the doors as they are being closed and even go so far as to defecate on the lawns of the owners who refuse to accept their generous "one time" offers. This has been a problem for years. These people come from out of state, they often do not carry identification, and they migrate back out of our state within a short period of time.

The previous ordinance before this one was not enforceable; the only recourse available was to go after any misdemeanor violations that occurred (such as criminal trespass, harassment, and criminal mischief). Since those are all misdemeanors and did not occur in the presence of an officer, it required the use of the warrant process. This process is slow and labor intensive on the

part of the victim, requiring the victim to pay for a copy of the report and fill out an affidavit for the prosecutor to review and the judge to sign. All steps of the process have to be completed before a warrant can be issued. This can usually take up to or exceed 30 days. Once the warrant has been issued, it is entered into the Arkansas Crime Information Center (ACIC) database so that the subject can be picked up if located. That is only if they are still in state. Misdemeanors are not extradited outside the state of Arkansas. Normally within 30 days the subjects are long gone, which means they will not be extradited and the warrant will sit stale. No arrests will ever be made.

The other issue is that when you make contact with a solicitor, it is very difficult to identify them since they usually do not carry photo identification and usually tell you they have never had one. So all you can do is put down the information they give you, with no way to verify who they really are.

The Conway City Council wrote a new ordinance that had numerous requirements for the solicitors. It requires any would-be solicitor to register with the Police Department, be screened, and submit photographs, etc. before being given a permit to solicit. Overall it is a well written ordinance with strict requirements. Except for one small part -- the violation and penalty section:

> O-15-31 Controlling Door to Door Soliciting Peddlers
>
> Section 18. Violations and Penalty.
>
> (a) Violation of any of the provisions of this Ordinance shall be treated as a violation, and shall, upon conviction, be punishable by a fine of Two Hundred Fifty ($250.00) Dollars.
>
> (b} The penalty for subsequent offenses that occur within twelve {12) months of the prior offense shall be Five Hundred ($500.00) Dollars.

(c) Each day of a continuing violation of the provisions of this Ordinance may be treated as a separate offense. (*Conway Municipal Code, 2015*)

They did not make violating this ordinance a misdemeanor. They made it a violation. They also made it where a new day constitutes a separate offense meaning someone can finish out their day, make their money, and not be cited twice. Why is this so important you ask? Let me tell you why. Because if it had been categorized as a misdemeanor then it would have given officers the power to arrest violators not just cite them. That is important because when you find the solicitor who bypassed the registration process you would actually have the ability to stop them from soliciting by arresting them and making them post a bond. You could also identify them by fingerprint at the time of arrest rather than simply using an unconfirmed name. This would allow you to actually enforce the ordinance and confirm the identity of the violator. The way it is currently written, a citation will be issued. This actually makes the time frame even longer than the warrants process because District Court dates are usually over 1 month away; if they fail to appear then the process for a warrant will take another 30 days thus giving them an extra 30 days to get out of state. The solution to that would be to change it from a violation to a misdemeanor and give officers the ability to enforce the ordinance in a way that will best serve the citizens.

Solutions

I have given you four examples of statutes/ordinances that I feel were either poorly written or written in a manner that makes them ineffective. Based on my research I believe I have found a way to get them fixed. I started by contacting my legislator, Senator Jason Rapert, and found out that during every legislative session they have a “clean up bill,” which address statutes that need tweaked (personal communication, March 13, 2015). He seemed very eager to

help. When I gave him examples of statutes, he seemed as interested as I was in making sure they got fixed. Unfortunately, I got to him too late in the session to get the statutes added.

After speaking to Senator Rapert I spoke to the Conway Chief of Police, A.J. Gary, because I know he is active with the Arkansas Association of Chiefs of Police (AACP). It turned out that he is the Chairman of the Legislative Committee. When I brought my concerns to his attention, he also seemed very willing to help, and said that if I could get him the information he would look at getting it to the lobbyist for the next legislative session. He explained that utilizing a lobbyist is the most efficient way to get law changes accomplished because the lobbyist works constantly at these things and has relationships built up with the legislators. The lobbyist can find a sponsor and provide the leg work. He agreed to look at the issues I presented him, submit them to the board, and then to the lobbyist if the board agreed the statutes need addressed (A.J. Gary, personal communication, March 16, 2015).

After delving a little further, I found that many other law enforcement entities are represented by lobbyists. The Arkansas Association of Chiefs of Police, The Fraternal Order of Police, The Southern States Police Benevolence Association, and the Sheriff's Association all have representatives, so finding one should be pretty simple (A.J. Gary, personal communication, March 16, 2015).

The biggest problem I found during this process is not that it is hard to get the ball rolling, or even that it's hard to find someone to help. The biggest issue I found was the disconnect between those entities that can help and the officers with boots on the ground dealing with the laws daily. The communication between those groups of people needs to be addressed. Doing so will help these laws get fixed and create a pathway for future dialogue. This avenue of communication, if established, could lead to input from law enforcement officers and prosecutors

prior to laws being written so that these issues are avoided. Officers could then enforce these laws as they were intended. Arkansas has many outdated, ineffective, and broken laws. No one can deny that. The majority of them were created with good intentions and the welfare of the citizens in mind. Bringing the end user into the process could be an instrumental step in solving these problems and preventing future ones like it.

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