

*Drugged Driving Enforcement:  
“Unpuzzling” the Puzzle*



*Drugged Driving Enforcement:  
“Unpuzzling” the Puzzle*

**Lieutenant Don Marose**

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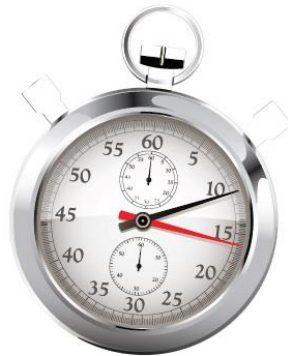
# The Problem



## Crime/Crash Clock 2016 Values

### Crime

- 1** murder every **30.6** minutes
- 1** violent crime every **25.3** seconds
- 1** property crime every **4.0** seconds
- 1** burglary every **20.9** seconds



### Crash

- 1** fatality every **14** minutes
- 1** person injured\* every **13** seconds
- 1** property damage\* crash every **7** seconds
- 1** law-enforcement-reported\* crash every **5** seconds

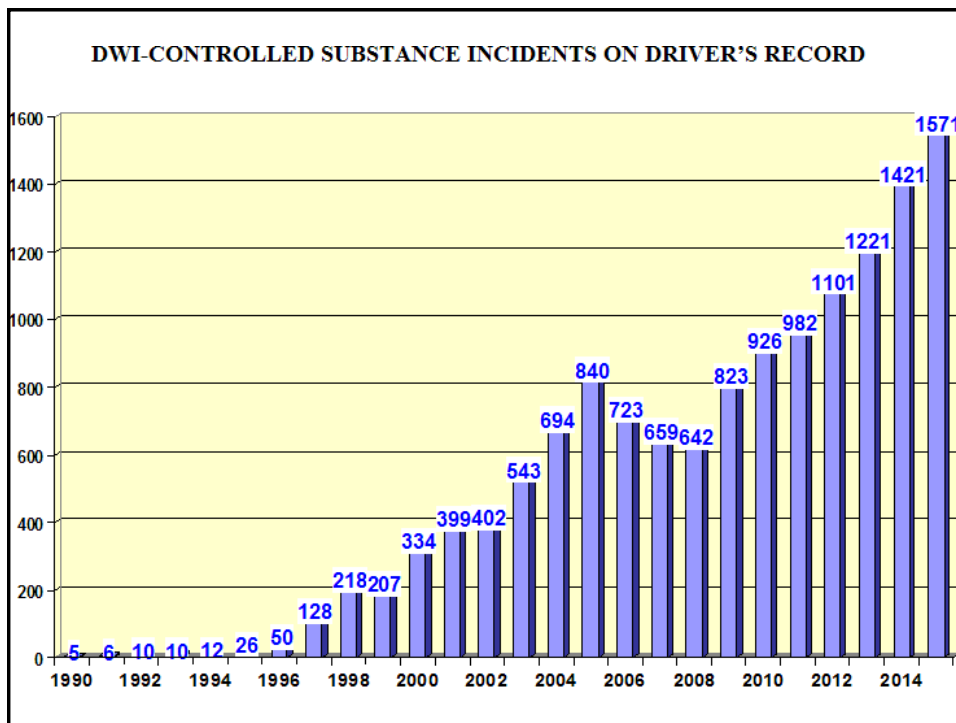
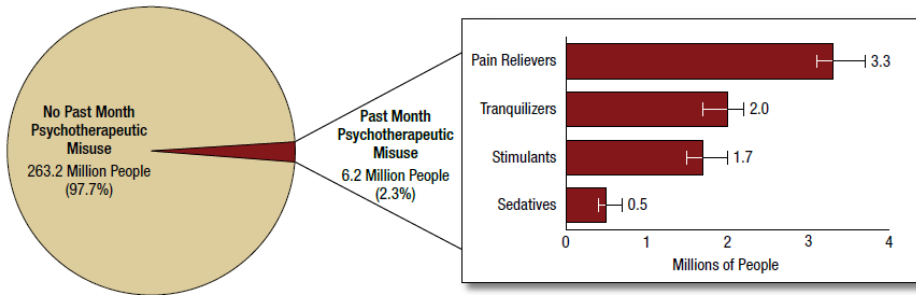
## **2013-14 National Roadside Survey of Alcohol and Drug Use by Drivers**

- 30,000+ drivers participated - 60 locations
- About 20% of drivers tested positive for at least one drug
- 12.6% of the drivers had evidence of marijuana use in their systems
- 15+% of drivers tested positive for at least one illegal drug

## **2016 National Survey Drug Use and Health (NSDUH)**

- 11.8 million people reported they drove under the influence of illicit drugs during the last year
- 28.6 million Americans (12+) were current illicit drug users (past month)
- Marijuana used by approximately 84% of all current illicit drug users

# National Drug Use

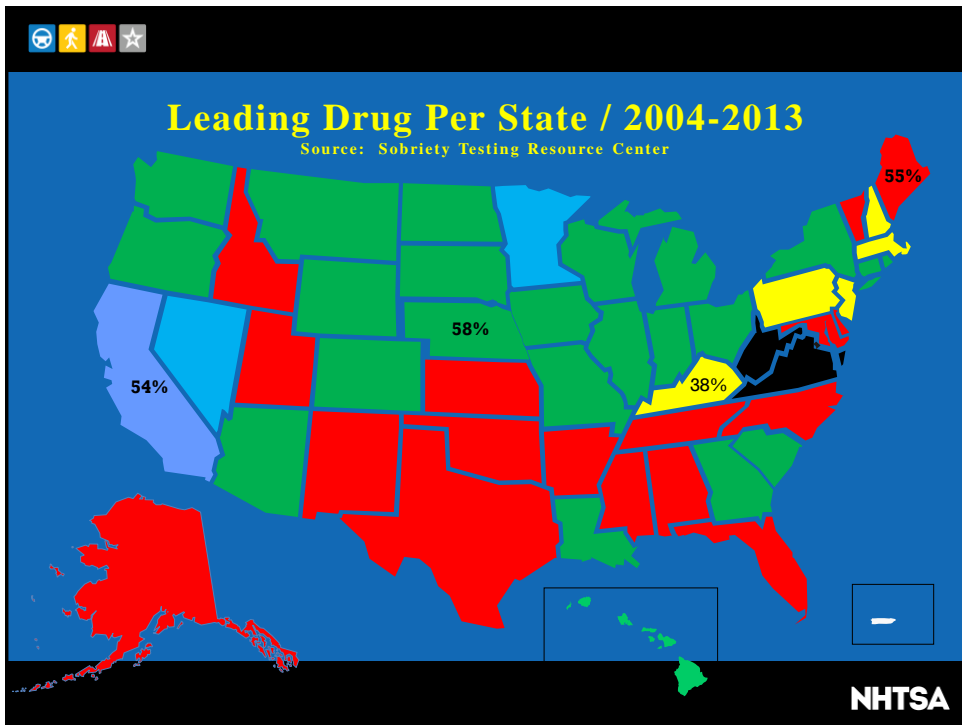


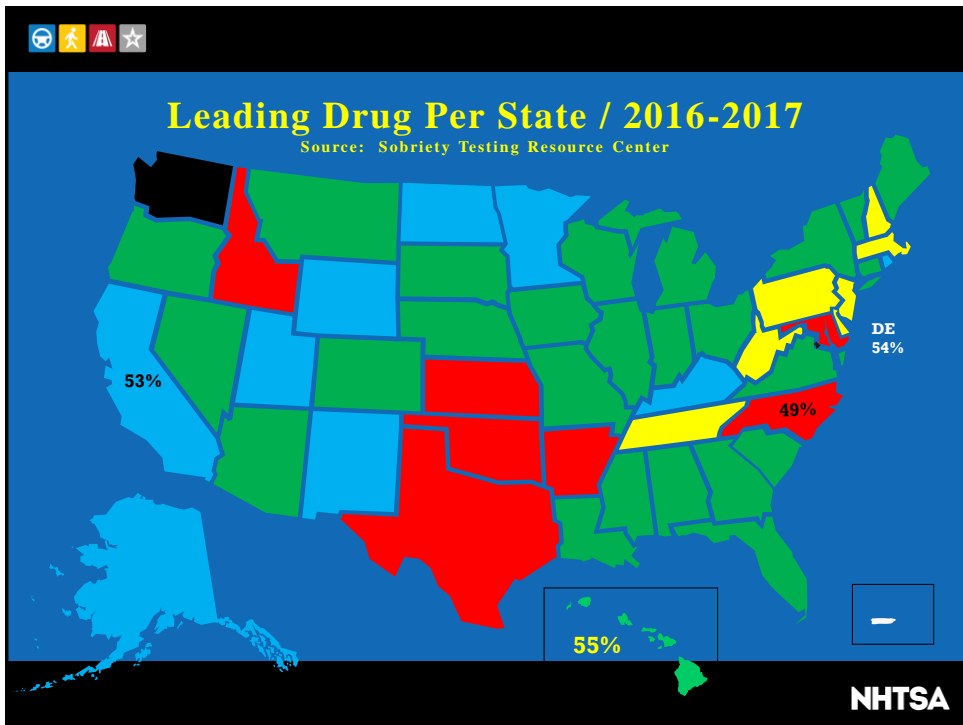
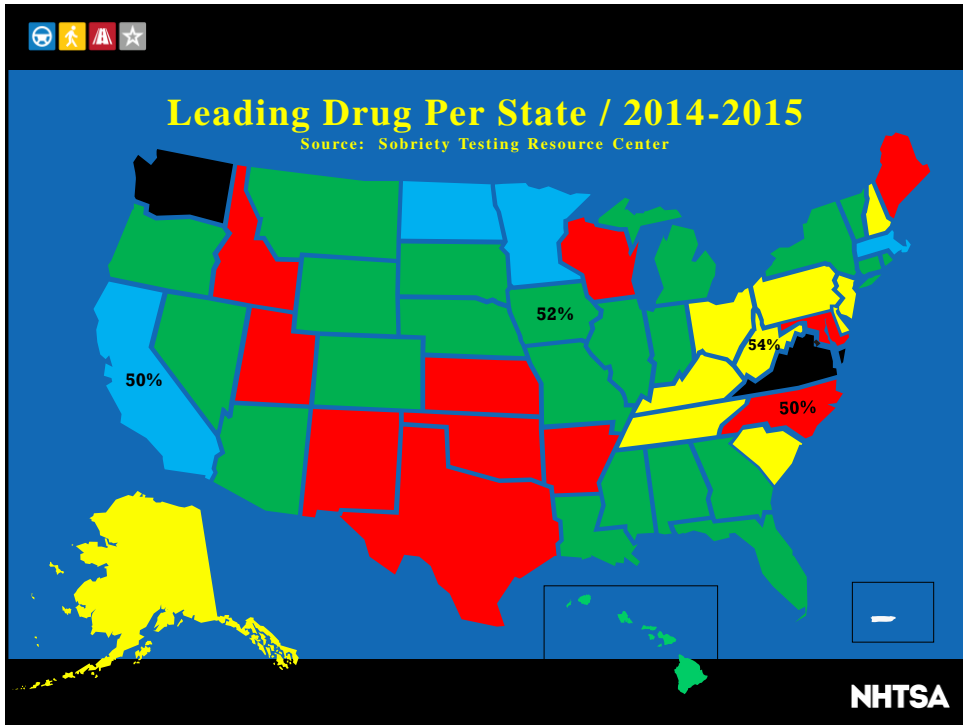
NHTSA

COURTESY OF:

BILL O'LEARY

BILL.O'LEARY@DOT.GOV





# MINNESOTA BCA FORENSIC TOXICOLOGY SERVICES

<https://dps.mn.gov/divisions/bca/bca-divisions/forensic-science/Pages/drugs-of-abuse.aspx>

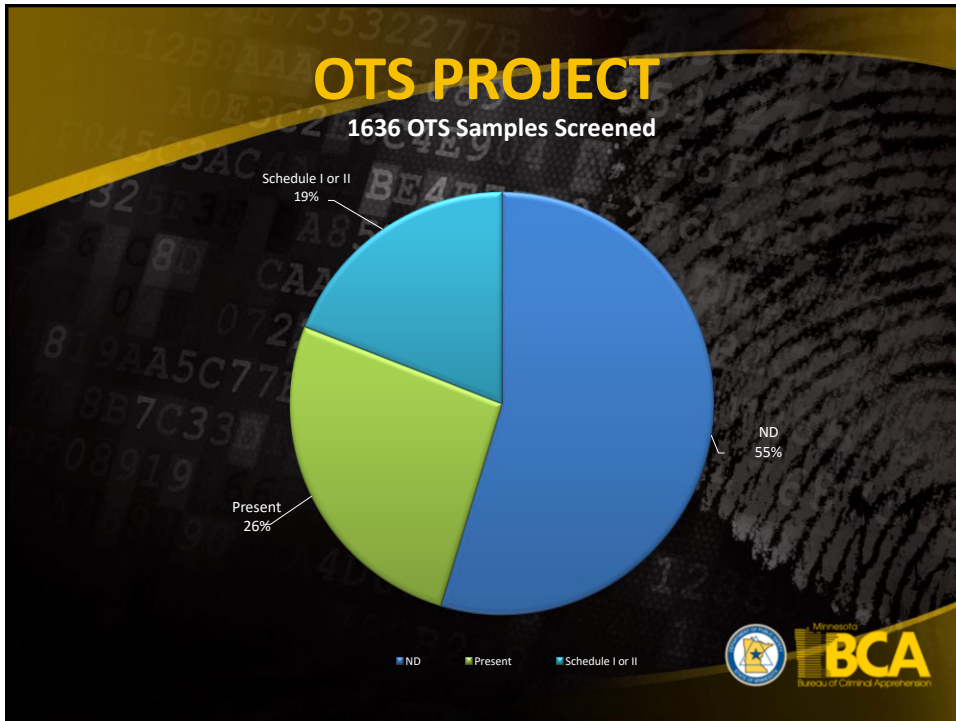
651-793-2900



## OTS PROJECT

- Urine samples, previously only tested for alcohol, were screened to see what drugs were presumptively positive
- 1636 samples screened from January 2016 – July 2018
  - 45.3% (751) had a drug presumptively positive
  - 19.1% (312) had a Schedule I or II presumptively positive





## NOW IS THE TIME!

March 2018:

NHTSA Deputy Administrator, Heidi King, held a Summit/Call to Action to address the issue of drugged driving in the U.S.

Following meetings were held in 4 locations with a 5<sup>th</sup> in Chicago this Friday.



## **What can we do?**

## **Ultimate Goal:**

Increase DWI deterrence and decrease alcohol related crashes, deaths and injuries



## **DWI: MSS 169A.20**

- 1) influence of alcohol
- 2) influence of controlled substance
- 3) under the influence of an intoxicating substance that person knows or has reason to know has the capacity to cause impairment
- 4) combination of (1) and/or (2) and/or (3)
- 5) alcohol concentration .08 or more at time of incident or w/in 2 hours
- 6) alcohol concentration over .04 while in commercial vehicle
- 7) body contains any amount of controlled substance or their metabolites listed in schedule I or II (other than Marijuana or THC)

## **Intoxicating Substance 169A.03 Subd. 11a**

“a drug or chemical.....that when introduced into the human body impairs the central nervous system or impairs the human audio, visual, or mental processes.”

# DWI Detection Phases



1. Vehicle In Motion



2. Personal Contact



3. Pre-Arrest Screening



## Phase One: Vehicle In Motion



## Divided Attention



Concentrating on more than one thing at a time  
(mental tasks and physical tasks)

## Typical Simultaneous Capabilities Required for Driving

- Information Processing
- Short-term Memory
- Judgment/Decision Making
- Balance
- Quick Reactions
- Clear Vision
- Small-Muscle Control
- Coordination of Limbs



## Phase One: Vehicle in Motion

Initial Observation  
of the Vehicle  
in Operation

*Should I Stop the  
Vehicle?*

?



Observation of  
the Stop

## Phase Two: Personal Contact



## Phase Two: Personal Contact



## Personal Contact

### *What Do You See?*

- Body/eye tremors?
- Facial itching?
- Dry mouth?
- Drowsy/'On the Nod'?
- Rigid muscle tone?
- Nausea?
- Restlessness?
- Anything Else?



## Personal Contact

### *What Do You Hear?*

- Talkative?
- Slurred speech?
- Bruxism/Grinding of teeth?
- Low, raspy speech?
- Repeating questions/comments?
- Statements of hallucinations?
- Repetitive speech?
- Repetitive speech?
- Anything Else?



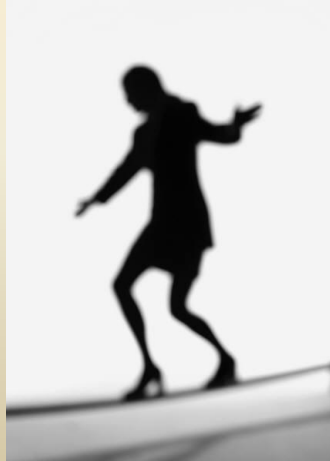
## Personal Contact

### *What Do You Smell?*

- Chemical odor?
- Burnt marijuana?
- Paint, glue, gas, etc.?
- Anything Else?



## Phase Three: Pre-Arrest Screening



## Phase Three: Pre-Arrest Screening

Psychophysical  
(Field) Sobriety  
Testing

Preliminary  
Breath Testing

?

*Should I Arrest?*



## Psychophysical Tests



**Methods of examining  
mental and/or physical impairment**

## VALID vs. VALIDATED

- A *valid* FST is anything that divides a subject's attention
- A *validated* FST is one where research has determined a level of reliability

## **VALID**

Finger to Nose

Alphabet

Counting

Finger Dexterity

Anything that divides attention

## **VALIDATED**

Horizontal Gaze Nystagmus

Walk and Turn

One Leg Stand

# VALIDATED

Focus on the validated clues

But don't disregard additional indicators

- Didn't stop as directed
- Miscalculated
- Counted fast or slow
- 2<sup>nd</sup> nine steps were worse
- Rigid movements
- Exaggerated or depressed reflexes
- Eyelid or body tremors

# PBT



## **Basic Purpose of Preliminary Breath Testing**

Demonstrate Association of Alcohol with  
the Observable Evidence of the Suspect's  
Impairment

**It is really very simple**

## **It is really very simple**

Articulate reason for contact

*Vehicle in Motion*

Record reason to have then exit their vehicle

*Personal Contact*

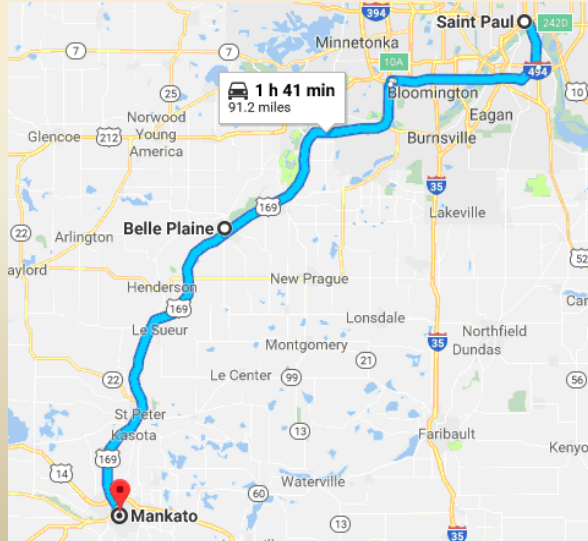
Document evidence of impairment

*Pre-Arrest Screening/SFSTs*

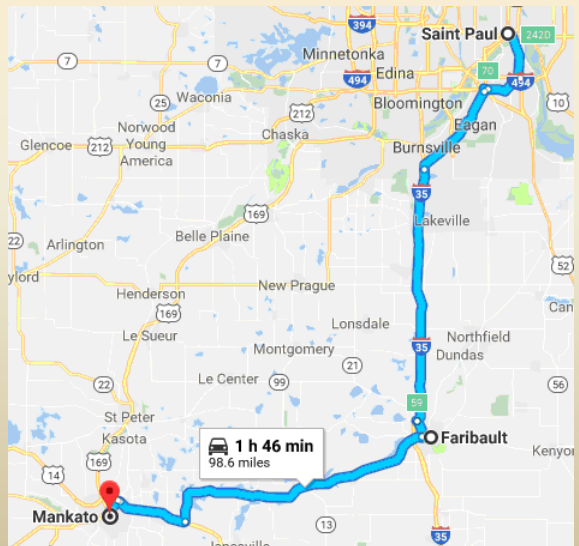
***If they are impaired, ARREST THEM***

## **Processing the drug impaired driver**

# How do I get there?



# How do I get there?



## **Call a DRE**

### **Why call a DRE?**

Provide expertise and assistance in impaired driving investigations

Normally has a “Post-Arrest” involvement

Requested when impairment is not consistent with the arrestee’s AC

## **Why call a DRE?**

Articulate suspicion of drug influence

Subject may refuse fluid testing

Identify psychoactive impairment

Reduce testing costs

Identify need for medical intervention

## **Why call a DRE?**

It is the investigation of a crime

Presence does not mean impairment

Noting a DRE's opinion on the search warrant provides the judge with 'expert' evidence

A search warrant is just a method to obtain a test, it is no different than the BTA for alcohol

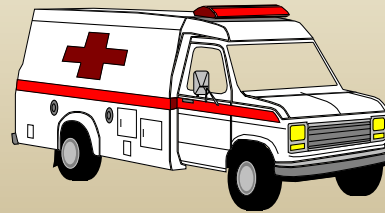


## Three Determinations of a DRE

Is the subject is impaired?

Is the impairment drug or medically related?

If drug related, the DRE determines which category of drug(s) is likely causing the impairment



## Drug Influence Evaluation

- 12 Step standardized and systematic process
- DREs are trained to follow an evaluation checklist
- Proceeds from AC through assessment of signs of impairment to toxicological analysis
- Similar to standard medical diagnosis procedures

DRE	Step 6
Procedures	Step 7
Step 1	Step 8
Step 2	Step 9
Step 3	Step 10
Step 4	Step 11
Step 5	Step 12

## **Standardized and Systematic**

- Breath Alcohol
- Interview of arresting officer
- Preliminary exam
- Eye exams
- Divided attention
- Vital signs

## **Standardized and Systematic**

- Darkroom checks
- Muscle tone
- Injection sites
- Subject interview
- Opinion of the evaluator
- Toxicological sample testing

## Reasons for Standardization

- Ensures no mistakes are made
- No steps are omitted
- Eliminates extraneous or unreliable “indicators”
- Promotes professionalism
- Helps secure acceptance in court

## How do I get there?

- |                 |                 |
|-----------------|-----------------|
| ✓ Arrest        | ✓ Arrest        |
| ✓ BTA           | ✓ Warrant       |
| ✓ DMT           | ✓ Fluid test    |
| ✓ Report to DVS | ✓ Report to DVS |
| ✓ Book/release  | ✓ Book/release  |

## How do I get there?

- |                 |                 |
|-----------------|-----------------|
| ✓ Arrest        | ✓ Arrest        |
| ✓ BTA           | ✓ Warrant       |
| ✓ DMT           | ✓ Fluid test    |
| ✓ Report to DVS | ✓ Report to DVS |
| ✓ Book/release  | ✓ Book/release  |

## Blood or Urine Tests

- Must obtain a search warrant or have a judicially recognized exception (exigency, etc.)
- Must advise driver that *refusal to submit to a blood or urine test is a crime*
- No formal advisory to read
- No right to counsel
- Must direct alternative if first directive refused

## ***Some Examples of Exigency***

- Complexity of the crash scene
  - Number of vehicles
  - Number of people injured/requiring assistance
- PBT result
  - If close to legal limit, time is more of an issue
- Number of other people available to assist

## ***Some Examples of Exigency***

- Distances/time required to obtain the warrant
- Busy at hospital or jail
- Good faith attempts to locate a judge have failed
- The time to get a test within 2 hours is waning
- Other facts creating urgency to gather the blood evidence

## Exigency

Approach it like you would probable cause

- Is 'odor' enough to arrest?
- How about if we add eyes?
- Speech?
- Balance?
- SFSTs?

## Exigency

- Be vigilant and articulate everything that lead to the need for exigency
- This is especially important in the gross misdemeanor CVO cases
- If exigency does not exist, get a warrant

## **Refusing a warrant...?!?**

- No legal “right” to refuse the DWI fluid warrant
- Uncomfortable using force or restraint to draw blood from an uncooperative misdemeanor offender, even though lawfully authorized.
- A decreasing number of medical facilities were willing to draw blood when the driver objected.

## **Refusing a warrant...?!?**

- Law reduces risk and liability by reserving force for CVO/CVH investigations
- Non-CVO Cases
  - Instead of fighting...
  - Driver charged with crime of refusing
  - Driver’s license revoked
  - Reduced risk to LEO and driver
  - Avoids conflict with hospital policies

# HOW DO I OBTAIN A SEARCH WARRANT?

Once you have identified that you need a blood test (or in rare cases a urine test), you can start the process to obtain a warrant!

## DWI SEARCH WARRANTS

Application 1-1

STATE OF MINNESOTA, COUNTY OF ) DISTRICT COURT  
STATE OF MINNESOTA ) )  
COUNTY OF ) SS. APPLICATION FOR SEARCH WARRANT AND  
SUPPORTING AFFIDAVIT.

I, , being duly sworn upon oath, hereby makes application to this Court for a warrant to search the person hereinafter described, for the property and things hereinafter described.

Affiant knows the contents of this application and supporting affidavit, and the statements herein are true of his/her own knowledge, save as to such as are herein stated on information and belief, and as to those, he/she believes them to be true.

Affiant has good reason to believe, and does believe, that the following described property and things, to wit:

A Blood  sample from:

DOB:

Is on the person described as:

DOB:

Located in the County of:

State of Minnesota.

This affiant applies for issuance of a search warrant upon the following grounds: The property above-described constitutes evidence which tends to show a crime has been committed, or tends to show that a particular person has committed a crime.



eCharging Login

Login

Welcome to eCharging

**NOTICE:** The Implied Consent law does not apply when blood (or urine) samples are obtained as a result of a search warrant. If eCharging is used to process a search warrant DWI, the DWI event should be archived and not published.

The Implied Consent law does cover the taking of blood (or urine) from an unconscious driver. Those tests results should be reported to the Department of Public Safety via eCharging even if a search warrant was obtained.

PLEASE REPORT ANY ISSUES TO THE BCA SERVICE DESK:

Phone: 888-234-1119 or 651-793-2500  
 eCharging "IN-CUSTODY" DWI After Hours support line: 651-793-3060  
 Email: [bca.servicedesk@state.mn.us](mailto:bca.servicedesk@state.mn.us)

Log In

User Name:  Login Page Help

Password:  Available Documentation

\*\*Current Release Notes - NEW - Uploaded 3/29/2016

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[Forgot password?](#)

Latest Client Software Install for Fingerprint Readers

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Select Form to Create

Add

Advanced Search

Saved Charges

Select the eCharging Document to Create:

Charging Instrument	DWI Admin Form	Incident Report	Search Warrant
Criminal Complaint	<a href="#">DWI Forms Wizard</a>	Incident Reporting System	<a href="#">Search Warrant</a>
Citation	<a href="#">CVO Form Wizard</a>		

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# ADVISORY OPT-OUT

eCharging Current Agency/District: State Patrol (Golden Valley) First/Last name or Case/Citation # Search Logout Welcome Kent Coptes

[My Work](#) [Manage Forms](#) [Notifications](#) [Preferences](#) [Reports](#) [Help](#)

DWI Wizard - Implied Consent Advisory DWI saved successfully.

**Assigned to Law Enforcement** (click for history)

Responsible Agency: **State Patrol (Golden Valley)**

Document Type: DWI Form	Case Numbers:
Defendant: AL EDWARD TWO	Law Enforcement:
eCharging Id: 61113	Prosecution:
Document Id: 13650	Court:

[Back](#) [Next](#) [Save](#) [Assign](#) [Help](#)

Type of Incident

Was the offender operating a commercial vehicle?\*  No  Yes

**If the offender was operating a snowmobile, ATV, or watercraft, do not process this incident through eCharging.**  
You must use the paper Off Road Recreational DWI & Implied Consent forms provided by the Department of Natural Resources (DNR). These are available for download from the **Available Documents** list on the eCharging login page.

Opt Out of Implied Consent Advisory

If the Implied Consent Advisory was not read, check this box:  **Previously entered ICA data will be lost if this option is selected.**

[Back](#) [Next](#) [Save](#) [Assign](#) [Help](#)

Type of Incident

Was the offender operating a commercial vehicle\*  No  Yes

**If the offender was operating a snowmobile, ATV, or watercraft, do not process this incident through eCharging.**  
You must use the paper Off Road Recreational DWI & Implied Consent forms provided by the Department of Natural Resources (DNR). These are available for download from the **Available Documents** list on the eCharging login page.

Opt Out of Implied Consent Advisory

If the offender was unconscious or unable to refuse consent, and you subsequently obtained a blood test **without a search warrant**, check this box:  **Previously entered ICA data will be lost if this option is selected.**

Opt Out Reason

Explain why the Implied Consent Advisory was not read:

Enter up to 5000 characters. 5000 remaining.

Your narrative report and the explanation above should describe the reasons why the ICA was not read. You should also:

- indicate if the offender was unconscious or otherwise unable to refuse the test
- include the names and titles of medical personnel able to affirm your opinions and observations

Minn. Stat. §169A.51 Subd. 6 provides that a "...person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is deemed not to have withdrawn the consent provided by Subdivision 1 and the test may be given."

# ADVISORY OPT-OUT

Was the offender operating a commercial vehicle?\*  No  Yes

**If the offender was operating a snowmobile, ATV, or watercraft, do not process this incident through eCharging.**

You must use the paper Off Road Recreational DWI & Implied Consent forms provided by the Department of Natural Resources (DNR). These are available for download from the **Available Documents** list on the eCharging login page.

Opt Out of Implied Consent Advisory

If the Implied Consent Advisory was not read, check this box:  **Previously entered ICA data will be lost if this option is selected.**

Opt Out Reason

**In the field below, explain why the Implied Consent Advisory was not read.** Include the following information:

- Was a search warrant used?
- Was the offender unconscious or otherwise unable to refuse the test? If so, what were the circumstances?
- If appropriate, provide the names and titles of medical personnel able to affirm your opinions and observations.

Search Warrant applied for. |

Enter up to 5000 characters. 4973 remaining.

Start Search Warrant Application

Clicking this button will take you to the 'Search Warrant' module. To return to the 'DWI Forms Wizard', open it from your work queue.

Your narrative report should also describe the reasons why the Implied Consent Advisory was not read.

## Reason for Warrant

- Be very detailed and descriptive
- Use terms the judge recognizes (HGN, Walk and Turn, One Leg Stand)
- Include the fact that a DRE formed an opinion of the driver's impairment

# Contact Judge For Review/Signing

- LEO contacts on-call Judge by telephone to confirm availability
- After verifying correct Judge, Officer will assign in eCharging
  - Email notification will be sent to Judge
  - Document will appear in Judge’s work queue

**eCharging** Current Agency/District: Carver County Sheriff First/Last name or Case/Citation # [Search] Welcome Virgil Flowers [Logout]

My Work Manage Forms Notifications Preferences Reports Help

**Search Warrant - Summary**

Search Warrant Type  
Search Warrant Application  
Search Warrant Summary  
Advanced Search

**Draft** (click for history)

Document Type: DWI Search Warrant Case Numbers: 1000011  
 Defendant: Richard M. Jackson Law Enforcement: Prosecution: Court:  
 eCharging Id: 27507  
 Document Id: 948

Print Preview Help

Currently Assigned to: Virgil Flowers, at the Carver County Sheriff

**Sign and Submit to Judge**

I declare under penalty of perjury that everything stated in this document is true and correct.

**Place of Signature**  
 Country: State: Minnesota

**Select Judge**  
 Courthouse: Carver County District Court Judge: Jones, Judy

Save and Close Save

Application 1 - 3  
 DISTRICT COURT  
 SEARCH WARRANT

STATE OF MINNESOTA, COUNTY OF CARVER  
 APPLICATION 1 - 3  
 DISTRICT COURT  
 SEARCH WARRANT

I, Virgil Flowers, a licensed peace officer, of Minnesota, make an application to this Court for a warrant to search the following, for the property and things described below.

I know the content of this application and affirm that the statements contained in this application are true based on my own knowledge, or are believed to be true.

I believe that the following described property and thing(s), namely:  
**A Blood sample from Richard M. Jackson Jr, Date of Birth 08/15/1975**

eCharging Current Agency/District: Carver County Sheriff First/Last name or Case/Citation #   Welcome Virgil Flowers

My Work Manage Forms Notifications Preferences Reports Help

Search Warrant - Summary

Assigned to Judge (click for history)

Document Type: DVI Search Warrant	Case Numbers: Law Enforcement: 12345678
Defendant: Richard M. Jackson	Prosecution: Court:
eCharging Id: 27916	
Document Id: 927	

Currently Assigned to: Judy Jones, at Carver County District Court

Application 1 - 3

STATE OF MINNESOTA, COUNTY OF CARVER      DISTRICT COURT

**APPLICATION FOR SEARCH WARRANT**

I, Virgil Flowers, a licensed peace officer in the State of Minnesota, make an application to this Court for a warrant to search the person described below, for the property and things described below.

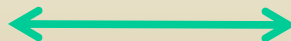
I know the content of this application and affirm that the statements contained in this application are true based on my own knowledge, or are believed to be true.

I believe that the following described property and thing(s), namely:

**A Blood sample from Richard M. Jackson Jr, Date of Birth 08/15/1975**

## WHAT TO DO WITH THE PAPERWORK?

Once you complete the chemical testing, there are still a few more steps to complete the process!



## WHAT TO DO WITH THE PAPERWORK?

- Provide the subject with a copy of the search warrant, along with the property receipt
- DO NOT give copy of the affidavit to the subject.
  - It contains all the probable cause information
  - Once the warrant is filed this becomes all public data
  - This can become problematic if we are investigating a case
- Add your signature to the property receipt prior to you providing it to the subject

## REPORTING BCA RESULTS TO DVS

Minnesota has a two-track (parallel) DWI system

- Criminal: misdemeanor to felony
- Civil: D/L revocation, license plate impoundment, vehicle forfeiture

An impaired driver will always follow the criminal track

Occasionally, the civil track deviates from the criminal track

# REPORTING BCA RESULTS TO DVS

LEOs and DVS have three reasons to revoke driving privileges prior to the completion of the criminal track:

- 1) Test .08 or higher
- 2) Test refusal
- 3) Presence of Schedule-I or Schedule-II controlled substance or its metabolite (other than marijuana)

There is often confusion about option #3 (Presence of Schedule I-II)

# REPORTING BCA RESULTS TO DVS

When the LEO receives the test results from the Lab, they must go back into eCharging to answer one question

Test Type: \*  
 Refused  Breath  Blood  Urine  
Alcohol Content: \*  For evidentiary test only. Do NOT enter PBT result.  
Sample Date: \* 03/22/2018 Time: \* 03:30  
Kit Number: B123456 Expiration Date: 02/01/2020  
If you had this blood sample tested for controlled substances, have lab results been received? If you did not request a controlled substance test, select No.  Yes  No  
Was a schedule I or II controlled substance or its metabolite, other than marijuana or THC, found? \*  
 Yes  No

**It is imperative that this is answered correctly!**

## **REPORTING BCA RESULTS TO DVS**

LEOs should check the substance to ensure that it is a Schedule I or II.

If answered incorrectly, the driver and/or plates will get revoked when they shouldn't be

**Only answer 'YES' if the substance was a  
Schedule I or II, other than marijuana**

If in doubt, don't guess. Find the correct answer.

## **REPORTING BCA RESULTS TO DVS**

Thousands of Schedule III-V controlled and Intoxicating substances will impair a driver and result in a DWI arrest

Only Schedule I and II substances trigger a revocation prior to conviction

The Schedule III-V and Intoxicating substances will trigger a revocation after convicted

In cases where the answer is 'NO', the eCharging event should be archived



**It is really very simple**

**It is really very simple**

Articulate reason for contact

*Vehicle in Motion*

Record reason to have then exit their vehicle

*Personal Contact*

Document evidence of impairment

*Pre-Arrest Screening/SFSTs*

***If they are impaired,  
ARREST THEM and call a DRE***

**November 5**

If you can't explain it **simply**, you  
don't understand it well enough.

– Albert Einstein

