Drugged Driving Enforcement: “Unpuzzling” the Puzzle

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The Problem

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
Leading Drug Per State / 2004-2013

Source: Sobriety Testing Resource Center

54%

58%

38%

55%
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 5th 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)

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**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

Interview and Observation of the Driver

Should Driver Exit?

Observation of the Exit

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?

What Do You Smell?

- Chemical odor?
- Burnet marijuana?
- Paint, glue, gas, etc.?
- Anything Else?
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 say stop as directed
  - Miscounted
  - Counted fast or slow
  - 2nd 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*

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Processing the drug impaired driver
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 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
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
- ✓ BTA
- ✓ DMT
- ✓ Report to DVS
- ✓ Book/release

- ✓ Arrest
- ✓ Warrant
- ✓ Fluid test
- ✓ Report to DVS
- ✓ Book/release
How do I get there?

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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
ADVISORY OPT-OUT

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 DVI & 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

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.11 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

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Opt Out of Implied Consent Advisory

If the Implied Consent Advisory was not read, check this box: Preceding 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. 4773 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
Once you complete the chemical testing, there are still a few more steps to complete the process!

WHAT TO DO WITH THE PAPERWORK?
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
  o Criminal: misdemeanor to felony
  o 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
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)

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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

![Image of eCharging form]

It is imperative that this is answered correctly!
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.

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

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