

Drugs, Drivers, and Damage on Our Roads



**IF YOU FEEL DIFFERENT
YOU DRIVE DIFFERENT
DRIVE HIGH GET A DUI**

Lieutenant Don Marose
Minnesota State Patrol

651-297-7132

don.marose@state.mn.us



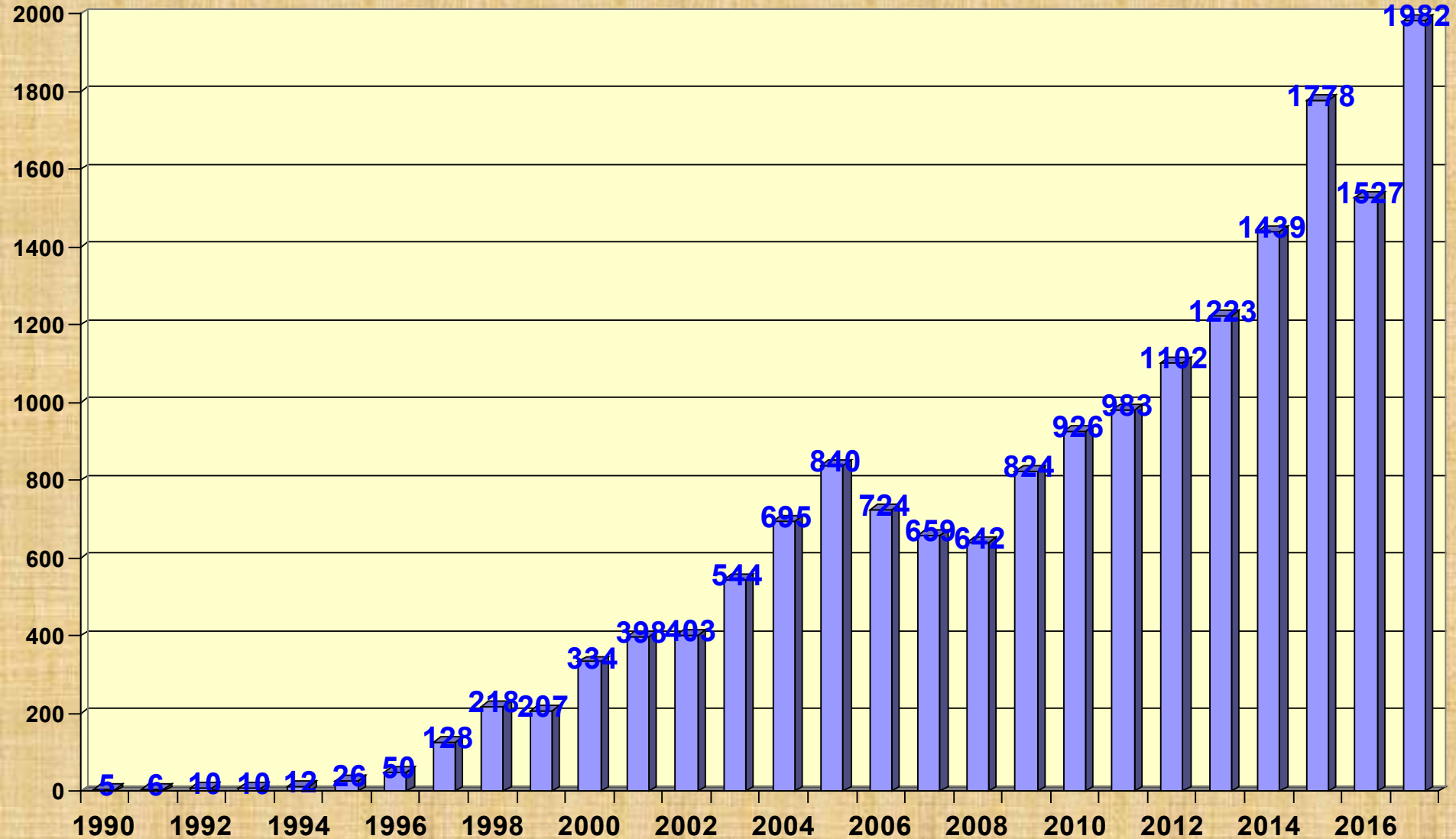


Arrests for driving while impaired rise in Minnesota

...Hanson attributed part of the recent uptick in DWI arrests to vigorous enforcement and changes in state law. Law enforcement also has become better at detecting and arresting impaired drivers, particularly drug-impaired drivers, he said.

The number of arrests of drug-impaired drivers from 2013 to 2017 was 78% higher than such arrests from 2008 to 2012, DPS data shows.

DWI-Controlled Substance Incidents on Driver's Record





MSS 169A.20 DWI

Subdivision 1: drive, operate, or physical control while

- 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)

Controlled Substance

152.02 – Five Schedules

152.02 subd. 7 – Board of Pharmacy is authorized to regulate and define additional controlled substances

Minn. Rules 6800.4210 *et. seq.* – Substances scheduled by rule are incorporated in the statutory schedules

Intoxicating Substance

169A.03 Subd. 11a.

...a **drug or chemical**, as those terms are defined in section 151.01, that when introduced into the human body **impairs the central nervous system or impairs the human audio, visual, or mental processes.**

The term does not include alcohol or controlled substances

Intoxicating Substance

151.01 Subd. 5. Drug

...all medicinal substances

...all substances ... for external and internal use in the diagnosis, cure, treatment, or prevention of disease

...other than food

...any compound (et. Al) not approved for human consumption

when introduced into the body, induces an effect similar to that of a Schedule I or II controlled substance

Intoxicating Substance

151.01 Subd. 8. Chemical

...all medicinal or industrial substances

...whether of organic or inorganic origin



Intoxicating Substance

Keys to successful prosecution....

Investigative work needs to go deeper to ensure standard is met

Good questions at roadside to develop probable cause

Tremendous value in asking questions again in a post Miranda interview

Intoxicating Substance

Keys to successful prosecution....

For prescribed, licit substances:

“Were you advised that this may affect your ability to drive or operate machinery?”

“Was there a warning label on your prescription that said.....?”

Intoxicating Substance

Keys to successful prosecution....

“Did you know that this medication causes drowsiness?”

Document the specific prescription or OTC medication and the warnings on the OTC packaging/prescription bottle



Intoxicating Substance

Keys to successful prosecution....

For illicit substances:

“Why did you take this substance/chemical?”

“How does this make you feel?”

“Do you feel the effects right now?”

Building a Strong Case



Personal Contact



Vehicle In Motion



Pre-Arrest Screening



Executive Function

Mental processes that enable us to:

- Plan
- Focus attention
- Remember instructions
- Divide Attention
- Filter distractions
- Prioritize tasks
- Set and achieve goals
- Control impulses

Executive Function

- Attention
- Concentration
- Decision-making
- Impulsivity
- Inhibition



- Reaction Time
- Risk Taking
- Verbal Fluency
- Working Memory





Vehicle in Motion

- Drive with wheels over lane lines
- Leave insufficient space between their own vehicle and the vehicle in front
- Dangerous braking
- Violate the speed limit
- Involved in collisions



Utilize Squad/Body Cam Video

- Do roadside tests in front of squad
- Adjust camera to face suspect in the back of the squad
- Keep recording – drunken ramblings are great in trial
- Document your observations and opinions
- Narrate observations to the video - protects from accusations that you made something up
- Will help refresh your recollection when preparing for court

Personal Contact

- This phase focuses more on officer than driver
- What did you see, smell, and hear?
- Don't short-cut this step!
- Odor of alcohol usually leads to DWI investigation
- Odor/observation of drugs rarely leads to DWI investigation

Personal Contact

Focus and document more than just physical impairment during SFSTs:

Do they make strange comments before, during or after the test?

Do they stop during SFSTs because they forgot instructions?

Were the second nine steps worse than the first nine?



Pre-Arrest Screening

Psycho-Physical Tests

Noticeably slow or fast performance

Muscle tone

Information processing

Likely diminished

Impaired memory & comprehension

Poor thought formation

Lack of concentration

Cognitive impairment



Pre-Arrest Screening

Focus and document more than just physical impairment during SFSTs:

Do they move their head during HGN?

Do you have to repeat instructions/remind them? How many times?

Do they forget to count out loud during WAT or OLS?



Proving Drug Impairment

- If a Schedule I or II controlled substance, *per se* charge applies - Easy to prove
- If a defendant has a prescription for a Schedule I or II controlled substance, can still prove impairment - More difficult to prove
- If a Schedule III, IV, or V controlled substance or intoxicating substance, must prove impairment - Most difficult to prove



Proving Impairment: When presence is not enough

Of the seven elements of DWI, **FOUR** require proving impairment beyond a reasonable doubt

- 1) influence of alcohol
- 2) influence of controlled substance
- 3) influence of an intoxicating substance
- 4) combination of (1) and/or (2) and/or (3)

Proving Impairment: Jury Instructions

- What the prosecutor needs to prove (CRIMJIG 29.04)
- Defendant drove, operated, was in physical control of a motor vehicle
- No set standard on the quantity of substance to be under the influence
- “Person does not possess the clearness of intellect and control of him/herself as he/she otherwise would have....”



Proving Impairment: Jury Instructions

Use buzz words in testimony:

Lost control

Not normal

Involuntary

Driving Conduct – “defendant did not have normal control of the vehicle”

Bloodshot Eyes/Dilated Pupils – involuntary reaction; not normal



Proving Impairment: Jury Instructions

Slurred speech – lost control; lost clearness of intellect;
impaired mental processes

HGN/VGN – involuntary movement of the eyes

Divided Attention Tests – lost control of bodily movements

Modified Romberg – checking internal clock – lost
clearness of intellect

Pulse/Body Temp/Blood Pressure – involuntary reaction to
substances

Utilizing a DRE in Your Impaired Driving Cases



WHY...?



WHY NOT...???

- Utilize expertise like you would with photos, crash reconstruction, interview/interrogation, etc.
- Warrants are just the process to obtain the test (like BTA)
- DRE opinion important for warrant PC statement
- Provide the best service to the victim. Leave no stone unturned.



WHY NOT...???

- It's an investigation of a crime
- The driver is the crime scene
- The DRE is your crime scene tech
- DREs document specific impairment

Presence does not mean impairment.



WHY NOT...???

Officers...

- Do SFSTs
- Find a DRE
- Get ARIDE training
- Impairment beyond the validated clues
- SFSTs are validated for IMPAIRMENT



WHY NOT...???

DREs...

- Do your complete evaluation
- Influence does not need to have psychophysical clues
- More clues than just the matrix
- SFSTs validated for IMPAIRMENT

WHY NOT...???

Prosecutors...

- Find a DRE
 - ✓ Check with your agencies
 - ✓ Check with other jurisdictions
- DRE reconstruction
 - ✓ Use one at trial if none at scene
- Don't panic when 'no drugs found'
 - ✓ Especially now with "intoxicating substance"

Training Courses

- ✓ Standardized Field Sobriety Testing (SFST)
- ✓ DWI-SFST Update
- ✓ Advanced Roadside Impaired Driving Enforcement (ARIDE)
- ✓ Drug Evaluation and Classification (DECP)
 - aka DRE School

Resources

The International Drug Evaluation & Classification Program
www.decp.org

Minnesota DWI Task Force
www.dwitaskforce.com

Minnesota State Patrol Drugged Driving page

NHTSA – Drug and Human Performance Fact Sheet

National Traffic Law Center (National District Attorneys Association) – Traffic Law page



THANK YOU!

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