



Legal Update 2023

Speakers:

- David Bernstein
 - Deputy Minneapolis City Attorney
 - Chair, Minnesota DWI Task Force
- Amy Tripp-Steiner
 - Assistant Minneapolis City Attorney
 - DRE Steering Committee Member
- Moderator: Bill Lemons, TSRP

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- A close-up photograph of a hand holding a scale of justice. The hand is positioned at the top right, gripping the top of a metal beam. The scale's pan hangs down on the left side. The background is dark and moody, with a bright light source from the right creating a strong highlight on the hand and the scale's beam. The overall tone is serious and legal.
- Today's Topics:
 - * Legislative Changes
 - * Cannabis Law Updates
 - * Case Law Updates

Traffic Safety & Funding

H.F. 2887 / S.F. 3157

Transportation Finance and Policy Omnibus Bill



Hands-Free Law

H.F. 2887 / S.F. 3157, effective 8/1/23

Minn. Stat. § 169.475, subds. 2 and 3

A person operating a motor vehicle in motion or a part of traffic is prohibited from:

- 1) *Holding a wireless communication device with one or both hands; or*
- 2) Using a wireless communication device to:
 - Text, phone call, access content

Further expanded that even in voice-activated or hands-free mode, the person cannot be holding the device.

Fatality Crash Reporting

H.F. 2887 / S.F. 3157, Effective 8/1/23

Minn. Stat. § 169.09, subd. 8

Current requirement: File report to DPS within 10 days

Added requirement: Report “basic circumstances of the accident” to DPS within 48 hours.

Speed Safety Cameras

H.F. 2887 / S.F. 3157



Speed Safety Cameras

H.F. 2887 / S.F. 3157

Report due to legislature by Nov. 1, 2024:

At a minimum, the report must include consideration and analysis of:

- (1) methods to identify the owner, operator, and any lessee of the motor vehicle;
- (2) compliance with federal enforcement requirements related to holders of a commercial driver's license;
- (3) authority of individuals who are not peace officers to issue citations;
- (4) data practices, including but not limited to concerns related to data privacy;
- (5) due process, an appeals process, and the judicial system;
- (6) technology options, constraints, and factors;
- (7) other legal issues; and
- (8) recommendations regarding implementation, including but not limited to any legislative proposal and information on implementation costs.

Traffic Advisory Safety Council

H.F. 2887 / S.F. 3157

Chair, rotates every two years:

- DPS – Office of Traffic Safety
- DoT – Office of Traffic Engineering
- Dept. of Health – Injury & Violence Prevention Section

28 other members rotate as vice chair, including reps from:

- TZD Coordinators (one statewide + one regional)
- Minnesota State Patrol
- MN Chiefs of Police Association
- Minnesota Sheriffs' Association
- DPS Law Enforcement Liaison

Traffic Advisory Safety Council

H.F. 2887 / S.F. 3157

- Committee meets every other month
- Duties include:
 - Advise the Governor and commissioners on policies, programs, and services affecting public safety
 - Encourage state agencies to conduct research
 - Review all traffic safety grants
- www.minnesotatzd.org/about/ACTS
- Interested in learning more?
 - Sign up for email list on website listed above

Data Analytics Center

H.F. 2887 / S.F. 3157



Ted Foss Move Over Law

H.F. 2887 / S.F. 3157, Effective 7/1/23

Minn. Stat. § 169.18, subd. 11 and 11a

Subdivision 11 – still the same and applies to emergency vehicles

ADDED subdivision 11a – “Passing stalled or disabled vehicle”

- Stalled vehicle means any that is disabled, parked, inoperable, or otherwise stopped on or next to a street or highway;
- Vehicles approaching a stalled vehicle that either has its hazard lights activated or people visibly present must:
 - If safe to do so, move over as to leave at least a full lane between stalled vehicle and driver; OR
 - Slow down if impossible to move over.

Carjacking

S.F. 2909 / H.F. 2890, Effective 8/1/23

Minn. Stat. § 609.247



“Carjacking” means taking a motor vehicle from the person or in the presence of another while having knowledge of not being entitled to the motor vehicle and using or threatening the imminent use of force against any person to overcome the person's resistance or powers of resistance to, or to compel acquiescence in, the taking of the motor vehicle.

Carjacking

S.F. 2909 / H.F. 2890, Effective 8/1/23

Minn. Stat. § 609.247



Felony level offenses:

- 1st Degree = armed with weapon or article used in manner to lead victim to reasonably believe it's a weapon, or inflicts bodily harm upon another
- 2nd Degree = Implied, by word or act, possession of dangerous weapon
- 3rd Degree = commits under any other circumstances

PBT

S.F. 2909 / H.F. 2890, Effective day after enactment (now)

Minn. Stat. § 169A.41, subd. 2(8)



Can use a PBT in prosecution for a violation of state or federal regulations for CDL drivers

- State: Minn. Stat. § 221.0314 and 221.605
- Federal: CFR Title 49, Part 392, as adopted in Minn. Stat. §§221.0314 and 221.605

PBT result is admissible in court for these offenses



Ignition Interlock

S.F. 2909 / H.F. 2890, Effective day after enactment (now)

Minn. Stat. § 169A.44, subd. 3

Ignition interlock is authorized as an alternative to mandatory remote electronic alcohol monitoring (REAM) while on conditional release



License Plate Impoundment

S.F. 2909 / H.F. 2890, Effective 8/1/23

Minn. Stat. § 169A.60, subd. 2

License plate impoundment is limited to the vehicle involved in the incident and no longer applies to all registered vehicles in the offender's name.

Minnesota
WA0000

JAN

10,000 lakes

YEAR

DWI Detentions

S.F. 2909 / H.F. 2890, Effective the day following enactment (now)

Minn. Stat. § 169A.40, subd. 3

Custodial arrest required for:

- 1) 1st degree (felony) DWI
- 2) 2nd degree (GM) DWI
- 3) 3rd degree (GM) DWI if offender is under 19
- 4) Enhanced DWI if child in the vehicle and/or alcohol concentration of .16 or more
- 5) Driver is DAC-IPS

Required to be held in-custody to 1st court appearance only for provisions (1) and (5)

Gross Misdemeanor Sentences

S.F. 2909 / H.F. 2890, Effective the day after enactment (now) and retroactive by petition

Minn. Stat. § 609.0342

Maximum penalty for gross misdemeanors is 364 days (changed from 365)

Gross Misdemeanor Sentences

S.F. 2909 / H.F. 2890, Effective the day after enactment (now) and retroactive

Minn. Stat. § 609.135, subd. 2

Maximum probationary periods changed:

- Any felony (with exceptions) = 5 years (increase from 4)
- CVH/CVO = 4 years (same)
- (GM) DWI = 4 years (decrease from 6)

Driver's Licenses for All

S.F. 27 / H.F. 4, Effective 10/1/23

Minn. Stat. § 171.06.3



Minnesotans will be able to obtain a driver's license regardless of immigration status

Undocumented immigrants can apply for identification cards

Application forms are prohibited from inquiring as to citizenship status

**DRIVE
HIGH
GET A DUI**



Cannabis
August 1, 2023



Cannabis Possession



- ▶ Legal to Possess/transport:
 - **Marijuana Flower**
 - Limit: 2 ounces
 - **Concentrates (oils, wax)**
 - Limit: 8 grams
 - **Topicals**
 - **Edibles (candy, gummies, beverages)**
 - Limit: 800 mg
 - **Cannabis plants and seeds**
 - **Hemp-derived THC products**
- ▶ Minn. Stat. § 152.027, subd. 3, Possession of 1.4 grams or more of marijuana in a motor vehicle, was repealed ... retroactively

Open Package Law



▶ Minn. Stat. § 169A.36

- ▶ Mirrors open bottle law for alcohol - must be closed container in the cabin of the vehicle. If open, must be in the trunk.
- ▶ Violations:
 - In package or container that does not comply with the law
 - Has been removed from packaging
 - Seal broken
 - Packaging with contents partially removed

Driving While Impaired



▶ **Minn. Stat. § 169A.20.1(8)**

▶ **Newly-created provision for DWI-cannabis**

It is a crime for any person to drive, operate, or be in physical control of a motor vehicle when:

the person is under the influence of cannabis flower, a cannabis product, a lower-potency hemp edible, a hemp-derived consumer product, an artificially derived cannabinoid, or tetrahydrocannabinols.

EXPLORE [Minnesota.com](https://www.minnesota.com)

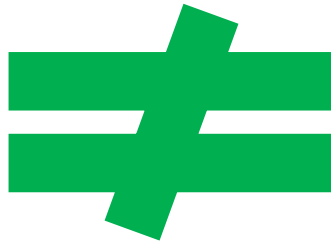
DWI TASK FORCE

FEB

www.dwitaskforce.com

Est. 1982

Driving While Impaired





Driving While Impaired

NATIONAL SAFETY COUNCIL



Research Document
Marijuana and Driving
September 2017

- ▶ “It is concluded that it is unsafe to operate a vehicle or other complex equipment while under the influence of cannabis, due to the increased risk of death or injury to the operator and the public.”
- ▶ It is further concluded that due to rapid changes in blood THC concentrations over time, there is no minimum safe threshold blood concentration below which a driver can be considered to have been unaffected while driving following recent cannabis use. Consequently, there is no scientific basis for the adoption of THC per se laws for driving.”

Driving While Impaired



▶ **Minn. Stat. § 169A.20.1(4)**

▶ **Under the Influence of a Combination of Substances**

Combination:

- Alcohol
- Controlled Substances
- Intoxicating Substances
- Cannabis/THC

Driving While Impaired



► Polydrug Use

► Additive Effect: $1 + 1 = 10$

► Cannabis +

- Alcohol
- CBD
- Xanax
- Prescription Drugs

MARIJUANA AND ALCOHOL

Consumption of any amount of alcohol with weed significantly increases THC levels in the user's blood, leading to a worsened marijuana intoxication



- Nausea
- Anxiety
- Tremors
- Headaches
- Bloodshot eyes
- Memory problems
- Increased appetite
- Sleepiness & fatigue
- Onset of hallucinations
- Decreased coordination

Bureau of
Criminal
Apprehension
Funding and
Testing
Expansion



-
- **Funds are being allocated to the BCA to test for cannabis, including when other substances are found**
 - **Enforcement**
 - **Treatment**
 - **Data**

Bureau of Criminal Apprehension Funding and Testing Expansion



MINNESOTA DEPARTMENT OF PUBLIC SAFETY
Bureau of Criminal Apprehension - Forensic Science Laboratory

Lab No. XXXXXX
Report No. 1

Results of Laboratory Examination

The following are results confirmed by Liquid Chromatography/Mass Spectrometry:

<u>Type of Drug:</u>	<u>Concentration</u>	<u>Associated Expanded Uncertainty</u>	<u>Units</u>
delta-9-tetrahydrocannabinol (delta-9-THC)	2.95	±0.52	ng/ml
11-hydroxy-delta-9-tetrahydrocannabinol (an active metabolite of delta-9-THC)	1.07	±0.16	ng/ml
11-nor-9-carboxy-delta-9-tetrahydrocannabinol (an inactive metabolite of delta-9-THC)	65	±15	ng/ml
delta-8-tetrahydrocannabinol (delta-8-THC)	Not Detected		
Cannabidiol (CBD)	Not Detected		
Cannabinol (CBN)	Not Detected		
Cannabigerol (CBG)	Not Detected		

DREs



**\$15 Million to train new
DRE Officers**

**Goal: 500 new DRE
Officers**

DWI-Cannabis Investigations

**We will do the best we
can with what we have**



Oral Fluid Pilot Project



Commissioner of Public Safety must design, plan, and implement a pilot program to study oral fluid roadside testing instruments to determine the presence of controlled or intoxicating substances.

9/1/2023 – 8/31/2024

Must consult with law enforcement, prosecutors, defense attorneys, and judges when designing and evaluating the project.

Oral Fluid Pilot Project



The scope of this pilot project is limited at this time.

- Not to be used as probable cause to arrest
- Not to be admissible in court

Right now, just trying to determine if these are accurate and helpful to law enforcement.

A faded background image showing a hand in a white glove holding a wooden beam of a scale of justice. The scale is partially visible, with a metal pan hanging from the left side. The overall tone is light and professional.

Notable Case Law

Notable Case Law

SEARCH WARRANT ADVISORY

Nash v. Commissioner of Public Safety, 989 N.W.2d 705 (Minn. Ct. App. 2023), review granted (Minn. Jul. 18, 2023).

- Law enforcement obtained a search warrant for blood or urine. Advised driver, “I applied for a search warrant for a blood draw, and refusal to take a test is a crime.” Driver submitted to the blood test.
- Driver argued that advisory given did not comply with statutory requirements of Minn. Stat. § 171.177, subd. 1, which requires that “at the time a blood or urine test is directed pursuant to a search warrant . . . the person must be informed that refusal to submit to a blood or urine test is a crime.”
- Court of Appeals found that advisory given to driver did not comply with statutory requirements, and thus the license revocation could not be sustained.
- Matter is pending review at Minnesota Supreme Court with oral argument set for December 4, 2023.

TAKE AWAY (for now)

- **Inform person you have a search warrant and that refusal to submit to a blood or urine test is a crime.**

Notable Case Law

AUTOMOBILE SEARCHES

State v. Torgerson, 995 N.W.2d 164 (Minn. 2023)

Facts:

- Officers could smell the odor of burnt marijuana coming from vehicle, driver denied possession of marijuana, and officers did not recall seeing any indicia driver was impaired.
- Based on odor of marijuana, officers ordered everyone out of the car to be able to search the vehicle.
- Search of vehicle revealed other controlled substances.

Holdings:

- Odor of marijuana, **on its own**, was insufficient to create probable cause to search vehicle under automobile exception to warrant requirement.
- “The odor of marijuana is one of the circumstances in the totality of the circumstances analysis that should be considered in determining if there is a ‘fair probability’ that contraband or evidence of a crime will be found in the location search.”



Notable Case Law

AUTOMOBILE SEARCHES

State v. Torgerson, 995 N.W.2d 164 (Minn. 2023)

THREE TAKE AWAYS:

1.) *Torgerson* was decided under previous marijuana laws.

The court noted that *Torgerson* was decided based on 2021 laws related to marijuana.

2.) As of August 1, 2023, use of cannabis products is prohibited by anyone in the motor vehicle as well new restrictions upon open packages. *See* Minn. Stat. §§ 169A.36 and 342.09.

3.) Remember, it is a totality of the circumstances analysis as to whether there is “fair probability that contraband or evidence of a crime will be found in a particular place.” Detailed investigations, including well documented reports, will benefit all parties in assessing the legality of an automobile search.



Notable Case Law

HEMP VS. THC

State v. Loveless, 987 N.W.2d 224 (Minn. 2023)

Facts:

- Executed search warrant found Loveless in possession of three pounds of plant material (suspected marijuana) and vaporized cartridges filled with an amber-colored liquid. Also found guns, ammunition, and \$4,600.
- Charged with felony fifth-degree controlled substance crime.
- At trial, no testimony was presented about the delta-9 THC concentration of either the plant material or liquid mixture in the cartridges.

Holding:

- Because hemp was explicitly excluded from the definition of marijuana, the State must prove beyond a reasonable doubt that the delta-9-tetrahydrocannabinol concentration of a substance exceeds .03 percent on a dry weight basis to obtain a conviction for fifth-degree controlled substance crimes.



Notable Case Law

HEMP VS. THC

State v. Loveless, 987 N.W.2d 224 (Minn. 2023)

TWO TAKE AWAYS:

1.) The BCA has since developed testing procedures to determine the delta-9 THC concentration in both plant materials and liquid samples.

2.) The law changed. Significantly. New sections added specifically for cannabis possession/sale crimes. *See* Minn. Stat. §§ 152.0263 and 152.0264.

These changes address a wide range of cannabis and hemp products.



Notable Case Law

HANDS FREE VIOLATION

State v. Gutzke, 996 N.W.2d 219 (Minn. Ct. App. 2023)

Facts:

- Driver of semitruck pulled out his ringing cellphone to glance at the screen to identify the caller, which displayed “spam.”
- The distraction caused driver to veer off the roadway, tip the truck over, and spill the load of soybeans.
- Driver charged with driving with a suspended license and operating a motor vehicle while using a cellular device.

Holdings:

- Based on the then-applicable statute, the act of looking at the screen did not violate the statute because driver was not initiating, composing, sending, retrieving, or reading an electronic message.
- “Electronic message” does not include data transmitted automatically without direct initiation by a person.



Notable Case Law

HANDS FREE VIOLATION

State v. Gutzke, 996 N.W.2d 219 (Minn. Ct. App. 2023)

TAKE AWAY:

Minn. Stat. § 169.475, subd. 2 was amended during the pendency of the appeal. The new provision now prohibits a motorist from even “holding a wireless communication device with one or both hands.”



Notable Case Law

STOPS

State v. Peterson, A22-0674, 2023 WL 2230587 (Minn. Ct. App. Feb. 27, 2023)

Facts:

- Deputy ran the license plate of a vehicle through the Driver and Vehicle Services (DVS) system and learned that the owner's driving status was canceled-inimical to public safety.
- Deputy saw owner get in car and drive off. Conducted stop. Arrested for DWI.
- Driver challenged the basis of the stop asserting that there was no evidence in the record that the information from DVS was correct.

Holding:

- Law enforcement is permitted to rely on information in the DVS system and can use that information to as part of the basis to perform a lawful stop.
 - Unless law enforcement has information that would make an assumption that the records are not accurate.

The background of the slide features a photograph of a classical building's entrance. It shows several large, fluted columns on the right side, with a wide set of light-colored stone steps leading up to the base of the columns. The lighting is bright, suggesting a sunny day.

Next Session?

- Traffic Safety Cameras
- Cannabis Clean Up?
- *Per Se* Levels for CDL/Bus Drivers?
- More Surprises?

Questions & Contact Info.



Questions?

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