DRUGGED DRIVING

EMERGING TRENDS IN SAFETY

Holly Reese
Traffic Safety Resource Prosecutor
Vehicular homicide victims are just as dead as intentional homicide victims.
Holly Reese
Traffic Safety Resource Prosecutor

- Ohio Traffic Safety Office
- NHTSA funded
- 15 year Prosecutor
- Train L.E., prosecutors, judges
- Traffic safety, SFST, ARIDE, DRE, Crash to Court, PDD
- DRE graduate
- Courtroom assistance
- SHSP Steering Committee/ TZD

Contact information:
Holly Reese, TSRP
hreesetsrp@gmail.com
(330)904-8971
Drugged Driving Trend

16% of all fatalities
### 10 years - Drugs/Alcohol Fatalities

<table>
<thead>
<tr>
<th>Year</th>
<th>Alcohol and Drugs Suspected</th>
<th>Alcohol Suspected</th>
<th>Drugs Suspected</th>
<th>HBD Not impaired</th>
<th>Grand Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>93</td>
<td>414</td>
<td>31</td>
<td>6</td>
<td>544</td>
</tr>
<tr>
<td>2007</td>
<td>90</td>
<td>405</td>
<td>14</td>
<td>2</td>
<td>511</td>
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<tr>
<td>2008</td>
<td>75</td>
<td>385</td>
<td>30</td>
<td>9</td>
<td>499</td>
</tr>
<tr>
<td>2009</td>
<td>79</td>
<td>318</td>
<td>33</td>
<td>4</td>
<td>434</td>
</tr>
<tr>
<td>2010</td>
<td>92</td>
<td>357</td>
<td>50</td>
<td>5</td>
<td>504</td>
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<tr>
<td>2011</td>
<td>67</td>
<td>306</td>
<td>48</td>
<td>9</td>
<td>430</td>
</tr>
<tr>
<td>2012</td>
<td>82</td>
<td>411</td>
<td>26</td>
<td>6</td>
<td>525</td>
</tr>
<tr>
<td>2013</td>
<td>123</td>
<td>185</td>
<td>45</td>
<td>8</td>
<td>361</td>
</tr>
<tr>
<td>2014</td>
<td>80</td>
<td>225</td>
<td>60</td>
<td>6</td>
<td>371</td>
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<tr>
<td>2015</td>
<td>98</td>
<td>229</td>
<td>59</td>
<td>3</td>
<td>389</td>
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<tr>
<td>2016</td>
<td>119</td>
<td>214</td>
<td>90</td>
<td>9</td>
<td>432</td>
</tr>
<tr>
<td>2017</td>
<td>94</td>
<td>210</td>
<td>90</td>
<td>6</td>
<td>400</td>
</tr>
<tr>
<td>Grand Total</td>
<td>1092</td>
<td>3659</td>
<td>576</td>
<td>73</td>
<td>5400</td>
</tr>
</tbody>
</table>
Over 40% of our screens are opiate/opioid positive

<table>
<thead>
<tr>
<th>Substance</th>
<th>Count</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>6-MAM</td>
<td>25</td>
<td>4.85%</td>
</tr>
<tr>
<td>AMP</td>
<td>36</td>
<td>6.99%</td>
</tr>
<tr>
<td>BARB</td>
<td>20</td>
<td>3.88%</td>
</tr>
<tr>
<td>BENZO</td>
<td>51</td>
<td>9.90%</td>
</tr>
<tr>
<td>COC</td>
<td>32</td>
<td>6.21%</td>
</tr>
<tr>
<td>MDMA</td>
<td>18</td>
<td>3.50%</td>
</tr>
<tr>
<td>Methadone</td>
<td>1</td>
<td>0.19%</td>
</tr>
<tr>
<td>Opiates</td>
<td>64</td>
<td>12.43%</td>
</tr>
<tr>
<td>THC</td>
<td>153</td>
<td>29.71%</td>
</tr>
<tr>
<td>Buprenorphine</td>
<td>27</td>
<td>5.24%</td>
</tr>
<tr>
<td>SOMA</td>
<td>1</td>
<td>0.19%</td>
</tr>
<tr>
<td>Fentanyl</td>
<td>41</td>
<td>7.96%</td>
</tr>
<tr>
<td>Oxycodone</td>
<td>35</td>
<td>6.80%</td>
</tr>
<tr>
<td>Tramadol</td>
<td>7</td>
<td>1.36%</td>
</tr>
<tr>
<td>Zolpidem</td>
<td>4</td>
<td>0.78%</td>
</tr>
<tr>
<td>Total Positives</td>
<td>515</td>
<td></td>
</tr>
</tbody>
</table>

Total Cases 274
Impaired driving

Types of Narcotic Analgesics

- Morphine
  - Heroin (Diacetylmorphine), Dilaudid (Hydromorphone) “AKA” Drug Store Heroin

- Codeine
  - Hydrocodone- Lortab, Vicodin

- Thebaine (Semi- Synthetic)
  - Buprenorphine (Suboxone), Oxycodone

- Synthetics
  - Fentanyl, Carfentanil, Demeral, Alfentanil
Impaired driving

Narcotic Analgesics:

*In a medical setting, these drugs are referred to as opioid analgesics:*

Indicators of use:

- Constricted pupils
- Slowed reflexes
- Sedation
- On the Nod
- Slowed respirations
- Track marks or fresh puncture wounds

Overdose Signs:

- Blue skin from poor circulation
- Slowed respiration/ RESPIRATORY DEPRESSION
- Unresponsive
- **CALL 911**
Impaired driving

Narcotic Analgesics

- Source: Drugs and Human Performance, NHTSA, 2004

Effects on Driving/ Narcotic Analgesics:

- observations included slow driving
- weaving, poor vehicle control,
- poor coordination,
- slow response to stimuli,
- delayed reactions,
- difficultly in following instructions
- falling asleep at the wheel.
DRUGGED DRIVING STATS

OhioHighwaySafetyOffice.ohio.gov

2018 ARIDE & SFST Manuals
The Value of a Strong DRE Program

“The DRE program is the most effective tool currently available to law enforcement officers for the documentation of behavior and impairment in drug-impaired drivers.”

-2004 - National Toxicologists, DREs, and Prosecutors
(National Safety Council’s Committee on Alcohol and Other Drugs – CASPO)
DRE School
January 2017

Working Definition of "Drug" = A DRUG =
- Any Substance that, when taken into the human body, can impair the ability of the person to operate a vehicle safely.

Polydrug USE
- Ingesting drugs from two or more drug categories.

Seven Drug Categories
- CNS Depressants
- CNS Stimulants
- Hallucinogens
- Dissociative Anesthetics
- Narcotic Analgesics
- Inhalants
- Cannabis

Fact - California Study
Young male drivers fatally injured in crashes found that 51% had used drugs other than alcohol. NHTSA - 1985

LA Field Study
- Poly Drug 72% found to have 2 or more drugs (categories)

Major Difference Between Frye & Daubert
- Zion's Standard by the Admissibility of Scientific Evidence
- Daubert deals with the admissibility of expert witness testimony
the DRE "Matrix" should be:

- a reference tool
- may refer to before, during, or subsequent to conducting an evaluation
- it does not make the decision of Impairment
- or drug-category/categories

<table>
<thead>
<tr>
<th>Indicators Consistent with Drug Categories</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
</tr>
<tr>
<td>HGN</td>
</tr>
<tr>
<td>VGN</td>
</tr>
<tr>
<td>LACK OF CONVERGENCE</td>
</tr>
<tr>
<td>PUPIL SIZE</td>
</tr>
<tr>
<td>REACTION TO LIGHT</td>
</tr>
<tr>
<td>PULSE RATE</td>
</tr>
<tr>
<td>BLOOD PRESSURE</td>
</tr>
<tr>
<td>BODY TEMPERATURE</td>
</tr>
<tr>
<td>MUSCLE TONE</td>
</tr>
</tbody>
</table>

FOOTNOTE: These indicators are those most consistent with the category. Keep in mind that there may be variations due to individual reaction, dose taken and drug interactions.

1. Some, sedatives and some antidepressants usually dilate pupils
2. Quaaludes, ETOH and some antidepressants may elevate
3. Certain psychedelic amphetamines may cause slowing
4. Normal, but may be dilated
5. Down with anesthetic gases, up with volatile solvents and aerosols
6. Pupil size possibly normal

*Located in Session 22 of the 7-day school, Overview of Signs and Symptoms*
What Does SFST Show?

“The best of these tests exercise the same mental and physical capabilities that a person needs to drive safely”

(NHTSA 2015 Manual-Session 7.9)
"Drug" means:
1. Any article recognized in the United States pharmacopoeia and national formulary, or any supplement to them, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;
2. Any other article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;
3. Any article, other than food, intended to affect the structure or any function of the body of humans or animals;
4. Any article intended for use as a component of any article specified in division (E)(1), (2), or (3) of this section; but does not include devices or their components, parts, or accessories.

"Dangerous drug" means any of the following:
1. Any drug to which either of the following applies:
   a. Under the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, the drug is required to bear a label containing the legend "Caution: Federal law prohibits dispensing without prescription" or "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian" or any similar restrictive statement, or the drug may be dispensed only upon a prescription;
   b. Under Chapter 3715. or 3719. of the Revised Code, the drug may be dispensed only upon a prescription;
2. Any drug that contains a schedule V controlled substance and that is exempt from Chapter 3719. of the Revised Code or to which that chapter does not apply;
3. Any drug intended for administration by injection into the human body other than through a natural orifice of the human body;
4. Any drug that is a biological product, as defined in section 3715.01 of the Revised Code.

DRUG:
Any substance that, when taken into the human body, can impair the ability of the person to operate a vehicle safely.
ORC 4511.19(A)(1)(j): “Per se”:

Amphetamine, Cocaine, Cocaine Metabolite, Heroin, Heroin Metabolite (6-monoacetylmorphine), L.S.D., Marijuana, Marijuana Metabolite AND under the influence, Marijuana Metabolite, Methamphetamine, Phencyclidine, Salvia divinorum and salvinorin A

(see OVI chart)
• No enhanced penalties (H/L)
• One standard for all ages (no OVUAC)
DRE AS EXPERT WITNESS

RULE 702. Testimony by Experts
A witness may testify as an expert if all of the following apply:
(A) The witness' testimony either relates to matters beyond the knowledge or experience possessed by lay persons or dispels a misconception common among lay persons;
(B) The witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony;
(C) The witness' testimony is based on reliable scientific, technical, or other specialized information. To the extent that the testimony reports the result of a procedure, test, or experiment, the testimony is reliable only if all of the following apply:
(1) The theory upon which the procedure, test, or experiment is based is objectively verifiable or is validly derived from widely accepted knowledge, facts, or principles;
(2) The design of the procedure, test, or experiment reliably implements the theory;
(3) The particular procedure, test, or experiment was conducted in a way that will yield an accurate result.
DRE AS EXPERT WITNESS

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A witness may testify as an expert if all of the following apply:
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(B) The witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony;
(C) The witness' testimony is based on reliable data or other specialized information. To the extent that the testimony reports the result of a procedure, test, or experiment, the testimony is reliable only if all of the following apply:
(1) The theory upon which the procedure, test, or experiment is based is objectively verifiable or is validly derived from widely accepted knowledge, facts, or principles;
(2) The design of the procedure, test, or experiment reliably implements the theory;
(3) The particular procedure, test, or experiment was conducted in a way that will yield an accurate result.
DAUBERT factors:

(1) whether the methods used have been **tested**

(2) whether the theory has been subject to **peer review and publication**

(3) the known or potential **rate of error**

(4) the maintenance of **standards** controlling its operation

(5) whether the theory has **general acceptance** in the relevant scientific community
DRE AS EXPERT WITNESS

• RELEVANT?

• RELIABLE?
DRE AS EXPERT WITNESS

Daubert does not impose a checklist for reliability

Daubert establishes a framework that requires a Court assess the principles underlying the submission using its own methodology.
December 1, 2016

Sergeant Burkhart
Ohio State Patrol
Ohio DRE State Coordinator
1570 West Broad Street
Columbus, OH 43223

This letter serves as official documentation that the State of Ohio was approved as a Drug Evaluation and Classification Program state on October 22, 2010. This was the result of Ohio making a formal application to the International Association of Chiefs of Police (IACP) Drug Recognition Expert (DRE) Technical Advisory Panel (TAP).

The TAP reviewed the Ohio request at their annual meeting on October 22, 2010 and the State of Ohio was approved at that time along with the State of Michigan.

Chuck Hayes
International Association of Chiefs of Police
Drug Evaluation and Classification Program

Serving the Leaders of Today, Developing the Leaders of Tomorrow®
Ohio DRE Case Law

Akers

Cook
Ohio DRE Case Law

• 15 “expert” court findings

• Harrell, Sproul, Morr opinions

• USE your DRE for ALL of your OVI cases: Thoma
STATE V. GLAZE

FIELD OBSERVATIONS:
• Slow speech
• Pinpoint pupils
• On the nod
• No smell of alcohol
• Admits to taking Oxycodone and Xanax

DRE OBSERVATIONS:
• Constricted pupils
• Bloodshot, watery eyes
• Ptosis
• Slow reaction to light
• Low, slow, raspy voice
• On the nod
• WAT – 4 clues
• OLS – 3 clues
• Finger to nose: hovered
• Blood pressure down
• Flaccid muscle tone
• No nose hair
• White lines from nostrils to neck
• Admits Oxy, Xanax, Lithium

DRE OPINION:
Narcotic Analgesics

OSP LAB REPORT:
• Benzoylecgonine (urine)
• None detected (blood)
Common Challenges

• Critical Insignificance
• Articulation/Description
• What If…? Explanations
• Non-Validated Clues
• Eyes & Drugs
• Terminology
• Miscellaneous DUI Topics
Common Challenges

- Subjective Opinion = Guess
- Unconfirmed Results
- Therapeutic Doses
- Dr. DRE (he’s still a cop)
- Rush to judgment
- Swing & Sway
- Other…
Prosecuting the Drugged Driver
OSHP Academy January 2018
QUESTIONS?

HOLLY REESE
TRAFFIC SAFETY RESOURCE
PROSECUTOR
(330)904-8971
hreesetsrp@gmail.com