Drug Impaired Driving – What’s Going On?

40% of fatally-injured drivers with a known test result tested positive for drugs, almost the same level as alcohol at any positive BAC.

Source: 2013 Fatality Analysis Reporting System (FARS)

Brian Ursino, AAMVA Director of Law Enforcement
March 15, 2017
In November 2016, voters in four states (California, Maine, Massachusetts and Nevada) passed measures to legalize recreational use of marijuana.

Those results raised the number of states that legalized recreational pot to **eight** (joining Colorado, Washington, Oregon, and Alaska).
Meanwhile, 30 states have made marijuana legal for medicinal purposes.

All of that activity has occurred despite the fact that the federal government still classifies marijuana as an illegal substance.
States have been able to proceed because the federal government has essentially ignored the growing legalization movement.

U.S. Attorney General Jeff Sessions has been a vocal opponent of marijuana legalization efforts. As attorney general, he has the ability to prosecute pot sellers, even if a state licensed them. We are waiting to see what impacts may result from the change in administration and changing policy priorities.

What will the new administration do?
On December 31, 2016, Governor Charlie Baker (MA) signed off on a measure that delays several parts of the state's new marijuana legalization law, postponing the likely opening date for recreational retail shops in Massachusetts to July 2018.

Because parts of the new law that allow growing, gifting, possessing, and consuming marijuana are already in force, the delay will prolong a legal conundrum: Buying, smoking, growing, and giving marijuana away will be legal, but selling will not.
What is a Plant? (Imagine 15 of these being legal)
# More Research is Needed

**Drugged driving** is more complicated than drunk driving.

<table>
<thead>
<tr>
<th></th>
<th>DRUGGED DRIVING</th>
<th>DRUNK DRIVING</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Number:</strong></td>
<td>Hundreds of drugs</td>
<td>Alcohol is alcohol</td>
</tr>
<tr>
<td><strong>Data on Use by Drivers &amp; Crashes:</strong></td>
<td>Limited</td>
<td>Abundant</td>
</tr>
<tr>
<td><strong>Use by Drivers:</strong></td>
<td>Increasing</td>
<td>Decreasing</td>
</tr>
<tr>
<td><strong>Impairment:</strong></td>
<td>Varies by type</td>
<td>Well-documented</td>
</tr>
<tr>
<td><strong>Crash Risk:</strong></td>
<td>Varies by type</td>
<td>Precise</td>
</tr>
<tr>
<td><strong>Beliefs &amp; Attitudes:</strong></td>
<td>No strong attitudes – public indifferent</td>
<td>Socially unacceptable</td>
</tr>
</tbody>
</table>

GHSA - RESPONSIBILITY.ORG

Safe Drivers · Safe Vehicles · Secure Identities · Saving Lives
Drugged driving legislation is not as straightforward as other established impaired driving laws:

- Existing technology is limited in determining drug levels and resulting impairment; there is no agreed upon limit for which impairment can be reliably demonstrated.

- Some drugs can be detected for days or even weeks after initial consumption further complicating the issue of proving impairment.

- There is an ever expanding number of substances (synthetic and designer drugs) being manufactured that could potentially impair driving ability.
Number of Drivers in Washington State Fatal Crashes Under the Influence of Alcohol and/or Drugs

- **POLYdrug** (Drug Positive for two or more drugs OR any alcohol and drugs)
- **BAC>=.08 ONLY**
- **ONE Drug Only** (Drug Positive for one drug OR Alcohol less than .08)

**Number of Drivers:**
- POLYdrug: 116, 107, 94, 133, 78, 149
- BAC>=.08 ONLY: 140, 133, 149
- ONE Drug Only: 43, 50
• In 2010, 44.4% of cannabinoid-positive drivers were positive for delta-9 THC.

• In 2014, 84.3% of cannabinoid-positive drivers were positive for delta-9 THC.

• From 2010-2014, half or more of drivers positive for delta-9 THC exceeded the 5ng/ml per se.
Washington Statewide Blood Tests

Year | Number of Tests
---|---
2009 | 4,809
2010 | 5,014
2011 | 5,131
2012 | 5,298
2013 | 5,468
2014 | 6,270
2015 | 7,043
## Drivers in Fatal Crashes with THC

<table>
<thead>
<tr>
<th>Toxicology Outcomes</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015pre</th>
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</thead>
<tbody>
<tr>
<td>Not Tested</td>
<td>219</td>
<td>226</td>
<td>224</td>
<td>212</td>
<td>272</td>
<td>375</td>
</tr>
<tr>
<td>No Drugs, No Alcohol</td>
<td>147</td>
<td>151</td>
<td>151</td>
<td>147</td>
<td>116</td>
<td>155</td>
</tr>
<tr>
<td>Alcohol Only &lt; 0.079</td>
<td>15</td>
<td>8</td>
<td>6</td>
<td>7</td>
<td>10</td>
<td>10</td>
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<tr>
<td>Alcohol Only &gt; 0.080</td>
<td>67</td>
<td>67</td>
<td>60</td>
<td>69</td>
<td>51</td>
<td>47</td>
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<tr>
<td>THC Only</td>
<td>9</td>
<td>7</td>
<td>13</td>
<td>7</td>
<td>20</td>
<td>24</td>
</tr>
<tr>
<td>Carboxy-THC Only</td>
<td>11</td>
<td>10</td>
<td>7</td>
<td>3</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td>THC + Alcohol &lt; 0.079</td>
<td>3</td>
<td>1</td>
<td>0</td>
<td>3</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>THC + Alcohol &gt; 0.080</td>
<td>16</td>
<td>16</td>
<td>12</td>
<td>16</td>
<td>23</td>
<td>26</td>
</tr>
<tr>
<td>Carboxy-THC + Alcohol</td>
<td>12</td>
<td>6</td>
<td>11</td>
<td>9</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>THC + Drugs + Alcohol &lt; 0.079</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>THC + Drugs + Alcohol &gt; 0.080</td>
<td>2</td>
<td>5</td>
<td>2</td>
<td>3</td>
<td>6</td>
<td>10</td>
</tr>
<tr>
<td>Carboxy-THC + Drugs + Alcohol</td>
<td>10</td>
<td>2</td>
<td>5</td>
<td>2</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>THC + Drugs</td>
<td>6</td>
<td>3</td>
<td>8</td>
<td>5</td>
<td>17</td>
<td>12</td>
</tr>
<tr>
<td>Carboxy-THC + Drugs</td>
<td>10</td>
<td>5</td>
<td>3</td>
<td>7</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td>Other Drugs Only</td>
<td>47</td>
<td>42</td>
<td>46</td>
<td>71</td>
<td>52</td>
<td>77</td>
</tr>
<tr>
<td>Other Drugs + Alcohol Only</td>
<td>20</td>
<td>18</td>
<td>19</td>
<td>20</td>
<td>24</td>
<td>18</td>
</tr>
</tbody>
</table>
WA avoided disaster in *Baird* with a 6-3 split favoring admissibility of breath tests and breath test refusals. Following the 2013 upheaval in *Missouri v. McNeely* (warrants required for all blood cases) breath test cases in King County were targeted with suppression motions to test the limits of McNeely. The two cases were *Baird* (a breath test) and *Adams* (a breath test refusal).

At issue was whether these tests require a warrant under either the state or federal constitutions. The district court concluded a warrant was required and no exception was shown. The breath test was suppressed. King County appealed, and the case went directly to the State Supreme Court in 2014 (decided in December 2016). Supreme Court found that the implied consent warnings are considered a search incident to arrest as an exception to the warrant requirement.
October 12, 2016

No on 64 Campaigns and SAM Action

California voters are being told that they will see the crime rate go down if they vote to legalize marijuana commercially; this has not been the case in the state of Colorado or the city of Denver. Since the legalization of recreational marijuana in Colorado in 2013 traffic related marijuana deaths have increased 48%, marijuana related emergency room visits have increased 49%, and marijuana related calls to the poison center have increased 100%. According to the Colorado Bureau of Investigations in 2015 statewide homicides in Colorado rose 14.7% over the previous year. Pueblo, Colorado had the highest homicide rate in the state with 11.1 killings per 100,000 residents. Aurora, Colorado’s homicide rate more than doubled from 2014. Additionally more places in Colorado were robbed and more thefts occurred, especially cars, as 193,115 motor vehicles were reported stolen, up 27.7% in 2015 from the previous year. In 2015, sexual assaults rose 10% in Colorado with Denver, Aurora, Lakewood, Westminster and Pueblo all reporting higher numbers as well.

In the city of Denver since the legalization of recreational marijuana the number of crimes in Denver has grown by about 44%, according to annual figures the city reported to the National Incident Based Reporting System. In 2015 in Denver alone crime rose in every neighborhood in the city. The murder rate hit a decade high, 1405 more cars were broken into, there were 903 more auto thefts, 321 more aggravated assaults and 231 more homes were broken into compared to 2014.

California voters are also being told that legalizing recreational marijuana will free up law enforcement to work on other criminal activities. Again that has not been the case in Denver. Besides the overall increase in crime we have experience, the Denver police department is dealing with a 900% increase in the unlawful cultivation and manufacture of marijuana concentrate, and a 99% increase in the unlawful distribution of marijuana and marijuana concentrate. The quantity of illegal marijuana seized by the Denver police has increased 3,424% on average per case. The volume of marijuana seized per case has increased from an average of 162 pounds to 5724 pounds. In Denver unlawful public consumption of marijuana citations has increased over 300% per year since the legalization of recreational marijuana. The Denver police department is busier enforcing marijuana laws and investigating crimes directly related to marijuana, including murderers, robberies, and home invasions, than any other time in the history of the city.

Sincerely,

[Signature]

Mitchell R. Morrissey
Denver District Attorney
What Can We Do NOW?

Report authored by Dr. Jim Hedlund

Recommendations formed by an expert panel consisting of representatives from:

- NHTSA
- ONDCP
- GHSA
- National Traffic Law Center
- AAMVA
- Colorado HSO
- WTSC
- Institute for Behavior and Health
- Responsibility.org

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What Can We Do NOW?

- **Planning** - assess your state’s drugged driving issues; build broad partnerships; create a drugged driving strategic plan
- **Education** - develop and implement a campaign
  - Great examples in CO and WA (*Drive High, Get A DUI*)
- **Laws and Sanctions** - zero tolerance for illegal drugs; zero tolerance for drivers under 21 for all drugs; per se law for marijuana if recreational use is legal; enhanced penalties for polysubstance use; consider ALR for drugged drivers
  - Examine your DUID laws and revise as needed – e.g., screening tests, implied consent, separate DUI and DUID charges, etc.
What Can We Do NOW?

- **Train practitioners** - law enforcement (ARIDE and DEC); prosecutors and judges.

- **Testing** - test all fatally-injured drivers for drugs; test all DUID arrestees for drugs; ensure that labs will provide timely drug test results.

- **Prosecution and adjudication** - screen and assess all DUID and DUI offenders; use DWI/Drug Courts, intensive supervision, and treatment interventions as appropriate.

- **Data** - track DUID and DUI separately in crash, arrest, court data; use surveys to track public knowledge and attitudes.
What Can We Do NOW?

• Evaluate the effectiveness of:
  • drugged driving laws
  • education/awareness campaigns

• Continue research on establishing the impairment produced by different concentrations of the most widely-used drugs.
For More Information
Contact:

Brian Ursino
bursino@aamva.org
703-350-5103
THE POST-BIRCHFIELD WORLD

OR

READING A BOOK OF LAW IS LIKE HOLDING JELLO

Tom Kimball, Director
National Traffic Law Center
TERMS:

- Implied Consent
- Breath Test
- Blood Test
- Search Incident to Arrest
- Refusal
- Exigent Circumstances
CASES:

Birchfield & Bernard
McNeeley
Baird
• Birchfield v North Dakota was argued with Bernard v Minnesota

• Birchfield was a blood draw

• Bernard was a breath test

• Neither involved a search warrant
One of these is.....
• The 4th Amendment permits warrantless breath tests.

• The impact on privacy is slight.

• The need for blood alcohol concentration is great.

• NO WARRANT IS NEEDED!
A Breath Test may be administered as a search incident to arrest!
Consent is not consent, if there is a threat of a Criminal Penalty to obtain consent.
• Blood tests require more.

• Consent, a search warrant or exigent circumstances are required.
• Both North Dakota and Minnesota made refusal to test a crime.

• Refusal to take a breath test can be prosecuted as a crime after Bernard v Minnesota, not so for the more intrusive needle.
• How is license suspension as an administrative, civil penalty effected?

Not one iota or in Greek: ïˈōdə/

synonyms: bit, speck, mite, scrap, shred, ounce, scintilla, atom, jot, grain, whit, trace;
BAIRD WAS NOT UNANIMOUS!

• STATE V BAIRD
• WASHINGTON SUPREME COURT, 2016

• Baird refused a breath test...
• Refusal is admissible in DUI trial
• No constitutional right to refuse
• Refusal is evidence of guilt
For More Information
Contact:

Tom Kimball
Director, Natl Traffic Law Center

tkimball@ndaajustice.org
703.519.1641
Florida’s Experience Post-Birchfield
• Immediate
  • Implied Consent
  • Training
  • Refusal Forms
  • Prosecutorial Issues

• Future
  • Statute Revisions
    • DUI
    • Implied Consent
    • Search Warrant

• Administrative
What does Florida law provide?

• Under Florida law, an officer cannot seek a search warrant for blood testing in a misdemeanor DUI case.

• This is based on the Fifth DCA’s interpretation of s. 933.02, Florida Statutes, the search warrant statute, in *State v. Geiss*. 
What does Florida law provide?

In felony cases, *McNeely* is still applicable. Blood can only be drawn in felony DUI cases when one of the following conditions is met:

- By consent; or
- By warrant; or
- Through documentation of exigent circumstances.

- If the suspect is treated at a hospital, blood records can be obtained by getting a search warrant for the records or by requesting that a prosecutor obtain a subpoena for the records.
What does *Birchfield v. North Dakota* mean for law enforcement in Florida?

**IMPLIED CONSENT**

- The US Supreme Court did not eliminate Implied Consent Warnings regarding blood tests.
- However, no mention of criminal penalties for refusing warrantless blood testing should be included in our Implied Consent Warnings.
- Criminal penalties may attach to breath test refusals. Drivers can still be criminally charged for a second refusal of breath testing.
- Due to the good faith exception to the exclusionary rule, this is also the case even if the first refusal was for blood and occurred prior to June 23, 2016, but the second refusal is now for breath or urine.
What does *Birchfield v. North Dakota* mean for law enforcement in Florida?

Obtaining blood/blood results:

- **Felony cases:**
  - Consent
  - Search Warrant
  - Exigent Circumstances

- **Misdemeanor cases as of October 2016:**
  - Consent
  - Seek medical records through SAO
New DHSMV Blood Test
Refusal Affidavit
STATE OF FLORIDA
DEPARTMENT OF HIGHWAY SAFETY & MOTOR VEHICLES
AFFIDAVIT OF REFUSAL TO SUBMIT TO
BREATH AND/OR URINE TEST

I, ____________________________, a duly certified Law Enforcement Officer or Correctional Officer,

am a member of __________________________________________, and I do swear or affirm that on or about the _______ day of __________, 20 ____, at _______ P.M. _______ A.M.

DRIVER

(TITLE OF OFFICE) ____________________________

FIRST NAME ____________________________

MIDDLE OR MAIDEN NAME ____________________________

LAST NAME ____________________________

DL# ____________________________________________, state of ____________________________, was placed under arrest in the county of ____________________________, and

Board of County Commissioners ____________ County.

That on or about the _______ day of _______ , 20 ____, at _______ P.M. _______ A.M. in ____________________________ County.

I requested that the driver submit to a _______ breath and/or _______ urine test to determine his or her blood alcohol level and/or the presence of chemical or controlled substances. I informed the driver that the refusal to submit to each test(s) would result in the suspension of his or her driving privilege for a period of one (1) year for a first refusal; or for a period of eighteen (18) months if his or her driving privilege had been previously suspended for refusing to submit to a breath, urine or blood test. I also informed the driver that he or she commits a misdemeanor by refusing to submit to a lawful test as requested above if his or her driving privilege has been previously suspended for refusal to submit to a lawful test of his or her breath, urine, or blood. Additionally, I informed the driver that if he or she holds a CDL or is operating a CMV, refusal will result in the disqualification of the Commercial Driver’s License/driving privilege for a period of one (1) year in the case of a first refusal or permanently if he or she has previously been disqualified as a result of a refusal to submit to any such lawful test. Nonetheless, the driver refused to submit to the test(s) requested.

Signature of Law Enforcement Officer or Correctional Officer

THE AFFIDAVIT MUST BE NOTARIZED OR ATTESTED TO (F.S. 177.19)

THE AFFIDAVIT MUST BE NOTARIZED OR ATTESTED TO (F.S. 177.19)

For the following instrument was sworn and subscribed before me:

__________________________

Title

__________________________

Date

Signature of Notary Public

__________________________

Notary Public

HSMV-BAR1001 (REV. 10/2016)
State Of Florida Implied Consent Warning
(*Not applicable with Voluntary Consent Warning*)

SECTION 1 – BREATH OR URINE TEST

I am now requesting that you submit to a lawful test of your BREATH or URINE for the purpose of determining your blood alcohol content and/or the presence of chemical or controlled substances.

WILL YOU TAKE THE TEST?   YES   NO

SECTION 2 - READ ONLY IF THE ANSWER IS NO

If you refuse to take the test I have requested of you, your driving privilege will be suspended for a period of one (1) year for a FIRST REFUSAL, OR eighteen (18) months if your driving privilege has been PREVIOUSLY SUSPENDED for refusing to submit to a lawful test of your breath, urine or blood.

Additionally, if you refuse to take the test I have requested of you, and if your driving privilege has been previously suspended for a refusal to submit to a lawful test of your breath, urine, or blood you will be committing a misdemeanor, in addition to any other penalties which can be imposed by law. Refusing to submit to testing is admissible as evidence in any criminal proceeding.

If you are a CDL holder, or were driving a CMV, your refusal to submit to testing will result in the loss of your commercial driving privilege for a period of one year from today. If this is your SECOND REFUSAL, you will be permanently disqualified from operating a commercial motor vehicle.

DO YOU STILL REFUSE TO SUBMIT TO THIS TEST?   YES   NO
STATE OF FLORIDA IMPLIED CONSENT WARNING
(*Not applicable with Voluntary Consents*)

SECTION 1 – BLOOD TEST

I am now requesting that you submit to a lawful test of your BLOOD for the purpose of determining your blood alcohol content and/or the presence of chemical or controlled substances.

WILL YOU TAKE THE TEST?  YES  NO

SECTION 2 - READ ONLY IF THE ANSWER IS NO

If you refuse to take the test I have requested of you, your driving privilege will be suspended for a period of one (1) year for a FIRST REFUSAL, OR eighteen (18) months if your driving privilege has been PREVIOUSLY SUSPENDED for refusing to submit to a lawful test of your breath, urine or blood.

Refusing to submit to testing is admissible as evidence in any criminal proceeding.

If you are a CDL holder, or were driving a CMV, your refusal to submit to testing will result in the loss of your commercial driving privilege for a period of one year from today. If this is your SECOND REFUSAL, you will be permanently disqualified from operating a commercial motor vehicle.

DO YOU STILL REFUSE TO SUBMIT TO THIS TEST?
YES  NO
• DUI and Refusal Prosecutions
  • Slight effect

• Administrative Issues
  • *Birchfield* not applicable to our Administrative refusals and suspensions
  • Still early in the game

• Statutory Revisions
  • 316.1932 – “Implied Consent”
    • Body of statute does NOT reflect *Birchfield*
    • Incapacitation and Unconscious
  • 933.02 – “Search Warrants”
933.02  Grounds for issuance of search warrant. — Upon proper affidavits being made, a search warrant may be issued under the provisions of this chapter upon any of the following grounds:

(1)    When the property shall have been stolen or embezzled in violation of law;

(2)    When any property shall have been used:
   (a)    As a means to commit any crime;
   (b)    In connection with gambling, gambling implements and appliances; or
   (c)    In violation of s. 847.011 or other laws in reference to obscene prints and literature;

(3)    When any property constitutes evidence relevant to proving that a felony has been committed;

(4)    When any property is being held or possessed:
   (a)    In violation of any of the laws prohibiting the manufacture, sale, and transportation of intoxicating liquors;
   (b)    In violation of the fish and game laws;
   (c)    In violation of the laws relative to food and drug; or
   (d)    In violation of the laws relative to citrus disease pursuant to s. 581.184; or

(5)    When the laws in relation to cruelty to animals, as provided in chapter 828, have been or are violated in any particular building or place;

(6)    When a sample of the blood of a person constitutes evidence relevant to proving that a violation of s. 316.193 or s. 327.35 has been committed.
For More Information
Contact:

Rebecca Pettit
813-558-1802
rebeccapettit@flhsmv.gov
DRUNK & DRUGGED DRIVING IS A PROBLEM ... ANY QUESTIONS ???????????