What the Recreational Marihuana Law Means for Prosecutors and Law Enforcement on OWI Cases

Presented by:
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April 2019
Traffic Safety Resource Prosecutors
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MARIHUANA AMOUNTS

- **Gram**: ~1-2 joints worth
- **Eighth (1/8)**: ~3.5 grams
- **Quarter (1/4)**: ~7 grams
- **Half (1/2)**: ~14 grams
- **1 Ounce**: ~28 grams
THC Levels

- Marihuana - 25% (2018)
- Hash – 30 - 50% (2018)
- Concentrates - Vary
Changing world, are we prepared?

Big Alcohol Companies Now Considering Creating Cannabis Cocktails

Butane Hash Oil (BHO)
Inside the Seed Business

HIGH TIMES

GHOST TRAIN
HAZE #1
THC ANALYSIS:
27.46%

SoCal's
BEST BUDS

WOMEN
WHO GROW

POT AND
PTSD

THE
STRONGEST
STRAINS
ON EARTH

WHOOP!
ON WEED
Budtenders
Michigan Marihuana Acts

- **Michigan Medical Marihuana Act (MMMA):** 2008 statewide ballot initiative that set up medical marihuana qualified patient and registered caregiver system.

- **Medical Marihuana Facilities Licensing Act (MMFLA):** passed by legislature in 2016; set up state licensing system for licensed medical marihuana facilities to serve medical marihuana patients and caregivers.

- **Michigan Regulation and Taxation of Marihuana Act (MRTMA):** statewide ballot initiative that went into effect on December 6, 2018; allows individuals anywhere in Michigan to use marihuana for individual recreational purposes as long as they comply with the Act; also allows for recreational marihuana establishments, which will be implemented by the state after December 6, 2019.
Protection from Arrest, April 1, 2013

• It requires a qualifying patient or primary caregiver to present both his or her registry identification card and a valid driver license or government-issued photo ID card, in order to be protected from arrest. MCL 333.26424.
Transporting Medical Marihuana in the Vehicle

- A patient is prohibited from transporting or possessing a **marihuana-infused product** in or upon a motor vehicle unless:
  - The product is in a sealed and labeled package, carried in the trunk of the vehicle (or if there is no trunk, carried so as not to be readily accessible from the interior of the vehicle).
  - The label must state the weight of the marihuana-infused product in ounces, name of the manufacturer, date of manufacture, name of the person from whom the product was received, and date of receipt.
  - Violation is a civil fine of not more than $250.00. MCL 333.26424(b)(2).
  - This statute does not apply to the transportation of “usable marihuana.”
Usable Marihuanna Equivalent

- Define "usable marihuana equivalent" as the amount of usable marihuana in a marihuana-infused product.
- To determine usable marihuana equivalency, it would specify that one ounce of usable marihuana would be considered equivalent to:
  - 16 ounces of marihuana-infused product if in a solid form;
  - 7 grams if in a gaseous form
  - 36 fluid ounces if in a liquid form.
- In determining whether a patient or primary caregiver exceeded the 2.5 ounces-per-patient possession limit, the combined total of both usable marihuana equivalents and usable marihuana would have to be considered. MCL 333.26424(c).
Michigan Regulation and Taxation of Marihuana Act (MRTMA)

- MCL 333.27951 – MCL 333.27967:
  - MCL 333.27951 – Short Title
  - MCL 333.27952 – Purpose
  - MCL 333.27953 – Definitions
  - MCL 333.27954 – Restrictions on act
  - MCL 333.27955 – Permitted acts
  - MCL 333.27956 – Ordinances
  - MCL 333.27957 – Implementation of act
  - MCL 333.27958 – Promulgation of rules
  - MCL 333.27959 – Application for state license
  - MCL 333.27960 – Additional permitted acts
  - MCL 333.27961 - Cultivation, processing, sale, or display of marihuana or marihuana accessories visible from public place prohibited
  - MCL 333.27962 – State deductions for marihuana establishments
  - MCL 333.27963 – Excise tax
  - MCL 333.27964 – Marihuana regulation fund
  - MCL 333.27965 – Punishment for prohibited conduct
  - MCL 333.27966 – Submission of application to municipality
  - MCL 333.27967 – Construction of act
WHAT THE MRTMA LAW ALLOWS

- Individuals age 21 and older can:
  - Possess, use or consume, internally possess, purchase, transport, or process up to 2.5 ounces or less of marihuana - MCL 333.27955.1(a)
  - Possess, use or consume, internally possess, purchase, transport, or process up to 15 grams of marihuana concentrate – MCL 333.27955.1(a)
  - Possess, store, or process not more than 10 ounces of marihuana and any marihuana produced by marihuana plants cultivated on the premises, and – MCL 333.27955.1(b)
  - Cultivate not more than 12 plants for personal use, provided that no more than 12 marihuana plants are possessed, cultivated, or processed on the premises at once – MCL 333.27955.1(b)
  - Give away or otherwise transfer without remuneration up to 2.5 ounces of marihuana, except that no more than 15 grams of marihuana may be in the form of marihuana concentrate, to a person 21 years of age or older, as long as the transfer is not advertised or promoted to the public – MCL 333.27955.1(d)
  - Sell or distribute marihuana accessories to individuals who are age 21 years of age or older – MCL 333.27955.2
WHAT THE MRTMA LAW DOES NOT ALLOW

- Operating or being in control of a motor vehicle, aircraft, snowmobile, ORV or motorboat while under the influence of marihuana – MCL 333.27954.1(a)
- Transferring marihuana, marihuana-infused products, or marihuana accessories to anyone under 21 – MCL 333.27954.1(b)
- Possessing, consuming, purchasing, cultivating, transporting or selling marihuana if under the age of 21 – MCL 333.27954.1(c)
- Separation of plant resin by butane extraction or another method that utilizes a substance with a flashpoint below 100 degrees Fahrenheit in any public place, motor vehicle, or within the curtilage of any residential structure – MCL 333.27954.1(d)
- Consuming marihuana in a public place or smoking marihuana where the owner, occupant, or manager of a property prohibits it – MCL 333.27954.1(e)
- Cultivating marihuana plants if the plants are visible from a public place without the use of binoculars, aircraft, or other optical aids or outside of an enclosed area equipped with locks or other functioning security devices that restrict access to the area – MCL 333.27954.1(f)
- Consuming marihuana or marihuana-infused products while operating, navigating or being in control of a motor vehicle, aircraft, snowmobile, ORV or motorboat or smoking marihuana within the passenger area of a vehicle upon a public highway – MCL 333.27954.1(g)
- Possessing marihuana accessories or possessing or consuming marihuana on the grounds of a public or private school where children attend classes in preschool programs, kindergarten programs, or grades 1 through 12, in a school bus, or on the grounds of any correctional facility – MCL 333.27954.1(h)
- Possessing more than 2.5 ounces of marihuana within your residence unless the excess is in a locked container or locked area – MCL 333.27954.1(i)
Sec. 15. A person who commits any of the following acts, and is not otherwise authorized by this act to conduct such activities, may be punished only as provided in this section and is not subject to any other form of punishment or disqualification, unless the person consents to another disposition authorized by law:

1. Except for a person who engaged in conduct described in sections 4(1)(a), 4(1)(b), 4(1)(c), 4(1)(d), 4(1)(g), or 4(1)(h), a person who possesses not more than the amount of marihuana allowed by section 5, cultivates not more than the amount of marihuana allowed by section 5, delivers without receiving any remuneration to a person who is at least 21 years of age not more than the amount of marihuana allowed by section 5, or possesses with intent to deliver not more than the amount of marihuana allowed by section 5, is responsible for a civil infraction and may be punished by a fine of not more than $100 and forfeiture of the marihuana.
CIVIL INFRACTIONS IN BOLD FOR SECTION 1

- Operating or being in control of a motor vehicle, aircraft, snowmobile, ORV or motorboat while under the influence of marihuana – MCL 333.27954.1(a)
- Transferring marihuana, marihuana-infused products, or marihuana accessories to anyone under 21 – MCL 333.27954.1(b)
- Possessing, consuming, purchasing, cultivating, transporting or selling marihuana if under the age of 21 – MCL 333.27954.1(c)
- Separation of plant resin by butane extraction or another method that utilizes a substance with a flashpoint below 100 degrees Fahrenheit in any public place, motor vehicle, or within the curtilage of any residential structure – MCL 333.27954.1(d)
- Consuming marihuana in a public place or smoking marihuana where the owner, occupant, or manager of a property prohibits it – MCL 333.27954.1(e)
- Cultivating marihuana plants if the plants are visible from a public place without the use of binoculars, aircraft, or other optical aids or outside of an enclosed area equipped with locks or other functioning security devices that restrict access to the area – MCL 333.27954.1(f)
- Consuming marihuana or marihuana-infused products while operating, navigating or being in control of a motor vehicle, aircraft, snowmobile, ORV or motorboat or smoking marihuana within the passenger area of a vehicle upon a public highway – MCL 333.27954.1(g)
- Possessing marihuana accessories or possessing or consuming marihuana on the grounds of a public or private school where children attend classes in preschool programs, kindergarten programs, or grades 1 through 12, in a school bus, or on the grounds of any correctional facility – MCL 333.27954.1(h)
- Possessing more than 2.5 ounces of marihuana within your residence unless the excess is in a locked container or locked area – MCL 333.27954.1(i)
Sec. 15. 2. **Except for a person who engaged in conduct described in section 4,** a person who possesses not more than twice the amount of marihuana allowed by section 5, cultivates not more than twice the amount of marihuana allowed by section 5, delivers without receiving any remuneration to a person who is at least 21 years of age not more than twice the amount of marihuana allowed by section 5, or possesses with intent to deliver not more than twice the amount of marihuana allowed by section 5:

(a) for a first violation, is responsible for a civil infraction and may be punished by a fine of not more than $500 and forfeiture of the marihuana;

(b) for a second violation, is responsible for a civil infraction and may be punished by a fine of not more than $1,000 and forfeiture of the marihuana;

(c) for a third or subsequent violation, is guilty of a misdemeanor and may be punished by a fine of not more than $2,000 and forfeiture of the marihuana.
WHAT THE MRTMA LAW DOES NOT ALLOW

- Operating or being in control of a motor vehicle, aircraft, snowmobile, ORV or motorboat while under the influence of marihuana – MCL 333.27954.1(a)
- Transferring marihuana, marihuana-infused products, or marihuana accessories to anyone under 21 – MCL 333.27954.1(b)
- Possessing, consuming, purchasing, cultivating, transporting or selling marihuana if under the age of 21 – MCL 333.27954.1(c)
- Separation of plant resin by butane extraction or another method that utilizes a substance with a flashpoint below 100 degrees Fahrenheit in any public place, motor vehicle, or within the curtilage of any residential structure – MCL 333.27954.1(d)
- Consuming marihuana in a public place or smoking marihuana where the owner, occupant, or manager of a property prohibits it – MCL 333.27954.1(e)
- Cultivating marihuana plants if the plants are visible from a public place without the use of binoculars, aircraft, or other optical aids or outside of an enclosed area equipped with locks or other functioning security devices that restrict access to the area – MCL 333.27954.1(f)
- Consuming marihuana or marihuana-infused products while operating, navigating or being in control of a motor vehicle, aircraft, snowmobile, ORV or motorboat or smoking marihuana within the passenger area of a vehicle upon a public highway – MCL 333.27954.1(g)
- Possessing marihuana accessories or possessing or consuming marihuana on the grounds of a public or private school where children attend classes in preschool programs, kindergarten programs, or grades 1 through 12, in a school bus, or on the grounds of any correctional facility – MCL 333.27954.1(h)
- Possessing more than 2.5 ounces of marihuana within your residence unless the excess is in a locked container or locked area – MCL 333.27954.1(i)
Sec. 15. 3. **Except for a person who engaged in conduct described by section 4(1)(a), 4(1)(d), or 4(1)(g),** a person under 21 years of age who possesses not more than 2.5 ounces of marihuana or who cultivates not more than 12 marihuana plants:

(a) for a first violation, is responsible for a civil infraction and may be punished as follows: (1) if the person is less than 18 years of age, by a fine of not more than $100 or community service, forfeiture of the marihuana, and completion of 4 hours of drug education or counseling; or (2) if the person is at least 18 years of age, by a fine of not more than $100 and forfeiture of the marihuana.

(b) for a second violation, is responsible for a civil infraction and may be punished as follows: (1) if the person is less than 18 years of age, by a fine of not more than $500 or community service, forfeiture of the marihuana, and completion of 8 hours of drug education or counseling; or (2) if the person is at least 18 years of age, by a fine of not more than $500 and forfeiture of the marihuana.
CIVIL INFRACTIONS IN BOLD FOR SECTION 3

- Operating or being in control of a motor vehicle, aircraft, snowmobile, ORV or motorboat while under the influence of marihuana – MCL 333.27954.1(a)
- Transferring marihuana, marihuana-infused products, or marihuana accessories to anyone under 21 – MCL 333.27954.1(b)
- Possessing, consuming, purchasing, cultivating, transporting or selling marihuana if under the age of 21 – MCL 333.27954.1(c)
- Separation of plant resin by butane extraction or another method that utilizes a substance with a flashpoint below 100 degrees Fahrenheit in any public place, motor vehicle, or within the curtilage of any residential structure – MCL 333.27954.1(d)
- Consuming marihuana in a public place or smoking marihuana where the owner, occupant, or manager of a property prohibits it – MCL 333.27954.1(e)
- Cultivating marihuana plants if the plants are visible from a public place without the use of binoculars, aircraft, or other optical aids or outside of an enclosed area equipped with locks or other functioning security devices that restrict access to the area – MCL 333.27954.1(f)
- Consuming marihuana or marihuana-infused products while operating, navigating or being in control of a motor vehicle, aircraft, snowmobile, ORV or motorboat or smoking marihuana within the passenger area of a vehicle upon a public highway – MCL 333.27954.1(g)
- Possessing marihuana accessories or possessing or consuming marihuana on the grounds of a public or private school where children attend classes in preschool programs, kindergarten programs, or grades 1 through 12, in a school bus, or on the grounds of any correctional facility – MCL 333.27954.1(h)
- Possessing more than 2.5 ounces of marihuana within your residence unless the excess is in a locked container or locked area – MCL 333.27954.1(i)
Sec. 15. 4. **Except for a person who engaged in conduct described in section 4,** a person who possesses more than twice the amount of marihuana allowed by section 5, cultivates more than twice the amount of marihuana allowed by section 5, or delivers without receiving any remuneration to a person who is at least 21 years of age more than twice the amount of marihuana allowed by section 5, shall be responsible for a misdemeanor, but shall not be subject to imprisonment unless the violation was habitual, willful, and for a commercial purpose or the violation involved violence.
WHAT THE MRTMA LAW DOES NOT ALLOW

▪ Operating or being in control of a motor vehicle, aircraft, snowmobile, ORV or motorboat while under the influence of marihuana – MCL 333.27954.1(a)

▪ Transferring marihuana, marihuana-infused products, or marihuana accessories to anyone under 21 – MCL 333.27954.1(b)

▪ Possessing, consuming, purchasing, cultivating, transporting or selling marihuana if under the age of 21 – MCL 333.27954.1(c)

▪ Separation of plant resin by butane extraction or another method that utilizes a substance with a flashpoint below 100 degrees Fahrenheit in any public place, motor vehicle, or within the curtilage of any residential structure – MCL 333.27954.1(d)

▪ Consuming marihuana in a public place or smoking marihuana where the owner, occupant, or manager of a property prohibits it – MCL 333.27954.1(e)

▪ Cultivating marihuana plants if the plants are visible from a public place without the use of binoculars, aircraft, or other optical aids or outside of an enclosed area equipped with locks or other functioning security devices that restrict access to the area – MCL 333.27954.1(f)

▪ Consuming marihuana or marihuana-infused products while operating, navigating or being in control of a motor vehicle, aircraft, snowmobile, ORV or motorboat or smoking marihuana within the passenger area of a vehicle upon a public highway – MCL 333.27954.1(g)

▪ Possessing marihuana accessories or possessing or consuming marihuana on the grounds of a public or private school where children attend classes in preschool programs, kindergarten programs, or grades 1 through 12, in a school bus, or on the grounds of any correctional facility – MCL 333.27954.1(h)

▪ Possessing more than 2.5 ounces of marihuana within your residence unless the excess is in a locked container or locked area – MCL 333.27954.1(i)
California. It’s legal.

MedMen
PLANET 13
RECREATIONAL MARIJUANA AVAILABLE NOW
1/2 MILE AHEAD - LEFT ON SUNSET - 4850 W SUNSET RD
KEEP OUT OF REACH OF CHILDREN | FOR USE ONLY BY ADULTS 21 YEARS OF AGE AND OLDER | MM DEVELOPMENT CO., LLC

KCI

RIGHT LANE MUST TURN RIGHT

EAST
McCarran Airport Rental Car Return

George Crockett Rd

DAB SAFELY!

CANNABIS EXTRACTS, CONCENTRATES OR DABS ARE EXTREMELY STRONG.

SIT DOWN WHEN DABBING! DRINK WATER.

CALL AN EMT IF YOU NEED HELP.
How Serious?
Challenges: Perception of Risk

- Some people think that:
  - Drugged driving is not a serious problem.
  - Drug use does not adversely affect driving and may improve it.
  - There are no laws prohibiting drugged driving (i.e., it is not illegal).
  - The likelihood of detection and apprehension for drugged driving is low.
Woman killed in 100 mph crash

- A 48-year-old woman died after her vehicle was struck by a Camaro going in excess of 100 mph early Wednesday, according to the Port Huron Police Department.
- Wreckage was scattered throughout the area. "Debris everywhere; it was like a bomb went off."
- The engine from the victim’s vehicle had ended up on property a few hundred feet away.
- The defendant to stand trial for second degree murder.
People v Ashley Baker

- Defendant was driving to McDonalds
- Failed to stop at intersection
- Struck white car occupied by four friends on way home from dinner
- White car forced into opposing traffic, struck by red pickup
- All four occupants of white vehicle were killed
- No SFSTs were performed
- Consent draw of Baker’s blood
- 1 nanogram of THC
People v Ashley Baker

- Baker did not possess MMMA card
- First denied smoking marihuana
- Admitted to hospital staff, during blood draw, smoked marihuana before crash
- Five days later told probation agent that she smoked marihuana day before crash
- Later admitted at DLAD hearing to smoking marihuana at 9 a.m. on date of crash
Teen pleads guilty in tow truck driver’s death

- Defendant pled guilty in the death of Preferred Towing’s Jason Schultz.
- “By having THC in your body by the operation of that vehicle did cause the death of Jason Schultz, how do you plead?” Judge asked. “Guilty,” defendant said.
- Defendant was southbound when he swerved to the right onto the shoulder to avoid the tow truck, striking Schultz, the tow cable and stuck vehicle.
- Schultz is survived by his widow and three children younger than 10.
2 motorcyclists critical in crash; driver likely high on marijuana

POSTED 1:40 AM, APRIL 24, 2018, BY FOX 17 NEWS, UPDATED AT 07:32AM, APRIL 24, 2018
OWI LAW
(1) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person is operating while intoxicated. As used in this section, "operating while intoxicated" means any of the following:

(a) The person is under the influence of alcoholic liquor, a controlled substance, or other intoxicating substance or a combination of alcoholic liquor, a controlled substance, or other intoxicating substance.

(b) The person has an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or, beginning October 1, 2021, the person has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(c) The person has an alcohol content of 0.17 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
“UNDER THE INFLUENCE”

Because of drinking alcohol and/or the use or consumption of a controlled substance and/or the use or consumption of other intoxicating substance the defendant’s ability to operate a motor vehicle in a normal manner was substantially lessened. The test is whether, because of drinking alcohol and/or the use or consumption of a controlled substance and/or the use of other intoxicating substance, the defendant’s mental or physical condition was significantly affected and the defendant was no longer able to operate a vehicle in a normal manner.

CJI2d 15.3

“OPERATING WITH AN UNLAWFUL BODILY ALCOHOL LEVEL”

To prove the defendant operated while intoxicated the prosecutor must prove beyond a reasonable doubt that the defendant operated the vehicle with a bodily alcohol level of .08 grams or more per 100 milliliters of blood/210 liters of breath/67 milliliters of urine.

CJI2d 15.3
The arresting officer in the case stopped defendant’s vehicle for a corroded, obscured license plate.

When speaking with defendant, the officer observed him to have glassy, bloodshot eyes, and he smelled of intoxicants. Defendant admitted that he had two or three beers. Consequently, the officer administered the HGN test, the walk-and-turn, and the one-leg stand.

Defendant was convicted, and he appealed the conviction to the circuit court. Because there was no proof of bad or erratic driving, the circuit court dismissed the case.

The Court of Appeals ruled “The statute states that it is a person’s ability to operate a vehicle that must be visibly impaired, and that this could be proven by other evidence besides driving, such as defendant failing a sobriety test, stumbling out of a vehicle, or speaking incoherently.”
Traffic stop for non-working license plate lights. Officers had to yell twice and pull their weapons before defendant placed his hands on the steering wheel. Odor of intoxicants and burnt marihuana.

Officers had defendant exit vehicle and immediately placed him in handcuffs. The defendant he had “three shots of cognac.” No roadside sobriety tests administered.

The Court ruled as follows:

“In so concluding, we note that this is a close case; however, it is one that did not need to be this close. Although the finding of reasonable cause does not require roadside sobriety tests, had the officers performed those tests instead of immediately arresting defendant, there could have been a much stronger case for reasonable cause under MCL 257.625a(2).”
Public Act 242 amends the Michigan Vehicle Code as follows:

- “Standardized field sobriety test” means 1 of the standardized tests validated by the National Highway Traffic Safety Administration. A field sobriety test is considered a standardized field sobriety test under this section if it is administered in **substantial compliance** with the standards prescribed by the National Highway Traffic Safety Administration.

- A person who is qualified by knowledge, skill, experience, training, or education, in the administration of standardized field sobriety tests, including the horizontal gaze nystagmus (HGN) test, shall be allowed to testify subject to showing of a proper foundation of qualifications.

- This section does not preclude the admissibility of a non-standardized field sobriety test if it complies with the Michigan rules of evidence.
“Controlled substance” means a drug, substance, or immediate precursor included in schedules 1 through 5. Michigan Complied Law 333.7104(2).
Number of Drug Cases Analyzed

Toxicology Drug Reports Completed per Year

Michigan State Police
Forensic Science Division
## Drugs Analyzed by NMS Laboratory (2014)

<table>
<thead>
<tr>
<th>Drugs</th>
<th>% of Cases</th>
</tr>
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<tbody>
<tr>
<td>THC</td>
<td>56</td>
</tr>
<tr>
<td>Alprazolam</td>
<td>38</td>
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<tr>
<td>Hydrocodone</td>
<td>29</td>
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<tr>
<td>Morphine</td>
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<tr>
<td>Nordiazepam</td>
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<tr>
<td>Diazepam</td>
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<td>Codeine</td>
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<td>Amphetamine</td>
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<td>Clonazepam</td>
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<tr>
<td>Oxycodone</td>
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<tr>
<td>Methadone</td>
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<tr>
<td>Tramadol</td>
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<tr>
<td>Cocaine</td>
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<td>Fentanyl</td>
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*Worried about opioid use?*
### Drugs Analyzed by MSP Laboratory (2018)

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<tr>
<th>Drugs</th>
<th>% of Cases</th>
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<tbody>
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<td>THC</td>
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<tr>
<td>Alprazolam</td>
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<td>Fentanyl</td>
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<td>Amphetamine</td>
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<tr>
<td>Benzoylecgonine</td>
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<td>Morphine</td>
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<td>Gabapentin</td>
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<td>Cocaine</td>
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<td>Clonazepam</td>
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<tr>
<td>Methamphetamine</td>
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<tr>
<td>Hydrocodone</td>
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<tr>
<td>N-desmethyldiazepam</td>
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<td>Buprenorphine</td>
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<td>Diazepam</td>
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<tr>
<td>Methadone</td>
<td>7</td>
</tr>
<tr>
<td>Tramadol</td>
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</table>
Effective, January 4, 2019, Michigan has classified Gabapentin, or Neurontin, as a Schedule V controlled substance due to the drug having potentially harmful effects when combined with opioids, such as hydrocodone.

Gabapentin is an anti-epileptic drug, also called an anticonvulsant. It affects chemicals and nerves in the body that are involved in the cause of seizures and some types of pain. Gabapentin is used in adults to treat neuropathic pain (nerve pain) caused by herpes virus or shingles (herpes zoster).

Commonly reported side effects of gabapentin include: ataxia, dizziness, drowsiness, fatigue, fever, nystagmus, sedation, and viral infection. Other side effects include: blurred vision, diplopia, peripheral edema, tremor, amblyopia, irritability, and xerostomia.
Kratom

- Kratom is a natural extract from the leaves of the Mitragyna Speciosa tree that is native to Southeast Asia (Thailand and Malaysia).
- Kratom is heavily promoted as a legal, undetectable, safe drug that can be used to come off stronger drugs. It is not yet illegal in the United States.
- Because of its legality, the drug tends to be more popular among young people who cannot yet buy alcohol and who may be concerned about being arrested with weed or other drugs.
- The Food And Drug Administration noted recent incidents “underscore the serious and sometimes deadly risks” of Kratom, including a case in which a teenager hanged himself, and another in which a drug overdose victim tested positive for nine different substances.
- Some of the Kratom dangers include: paranoia, nausea, itching, and hallucinations.
A person, whether licensed or not, shall not operate a vehicle upon a highway within this state if the person has in his or her body any amount of a controlled substance listed in schedule 1 under section 7212 of the public health code, or a rule promulgated under that section, or of a controlled substance described in section 7214(a)(iv) of the public health code.
Operating with Presence of a Schedule 1, or Cocaine

- Requires evidence of specified substance in the blood
- This will require a blood draw
- Does not require evidence of “bad driving”
- Marihuana is a Schedule 1 Drug
- Cocaine and Benzoylecgonine, the main metabolite of cocaine is added by reference, MCL 257.625(8) and MCL 333.7214.
MCL 333.26427:
This act does not permit any person to do any of the following:
(4) Operate, navigate, or be in actual physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat while under the influence of marihuana.

“Under the MMMA, all other acts and parts of acts inconsistent with the MMMA do not apply to the medical use of marihuana. Consequently, MCL 257.625(8) does not apply to the medical use of marihuana.”
- Section 4.1. This act does not authorize:
  - (a) operating, navigating, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat while under the influence of marihuana;
  - (g) consuming marihuana while operating, navigating, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road vehicle, or motorboat, or smoking within the passenger area of a vehicle upon a public highway.

- Section 4.1.5. All other laws inconsistent with this act do not apply to conduct that is permitted by this act.
People v Feezel, No. 138031 (Mich. Sup. Ct., June 8, 2010)

- Defendant struck and killed a pedestrian, Kevin Bass, with his car while traveling on Packard Road in Ypsilanti Township in Washtenaw County.
- The People charged the Defendant with several offenses, including operating a motor vehicle with the presence of a schedule 1 controlled substance in his body, causing death.
- There were 6 nanograms of 11-carboxy-THC per milliliter in defendant's blood.
- The Court ruled “11-carboxy-THC is not a schedule 1 controlled substance under MCL 333.7212 and, therefore, a person cannot be prosecuted under MCL 257.625(8) for operating a motor vehicle with any amount of 11-carboxy-THC in his or her system.”
THC vs. TCOOH

- **THC**: Active (Schedule 1 drug)- Primary psychoactive, makes the user high, causes euphoric effect, present in blood
- **TCOOH**: Inactive metabolite (Not a schedule 1 drug)- Present in blood, detectable hours/days/weeks after last use; not reliable for purposes of charging under MCL 257.625(8)
- There has to be THC in the blood in order to charge under MCL 257.625(8).
Effect of Collection of Blood THC Concentrations

- The decreased median of 73.5% with alcohol and 75.1% without alcohol within the 1st 30 minutes.
- THC decreased median of 90.3% with alcohol and 91.3% without alcohol 1.4 hours post dose.
- If delayed blood collection, THC may be lower than per se cutoffs despite greatly exceeding them during driving.
- Concentrations during driving cannot be back-extrapolated due to unknown time after intake and inter-subject variability in rates of decrease.

How Fast THC Goes Through the Blood

- Scientific studies show that a person smoking marihuana often has 50-80 nanograms of THC in their blood after their last puff.
- 30 minutes later, that level can drop to 15-16 nanograms—an 80% drop in THC.
- 1 hour later after the last puff, the level likely drops to 5-6 nanograms.
- THC levels can then drop to 2-3 nanograms after 90 minutes.
Marihuana Effects

"Cannabis Effects on Driving Skills” Article:

"Evidence suggests recent smoking and/or blood THC concentrations 2-5 ng/mL are associated with substantial driving impairment, particularly in occasional smokers."

Author: Marilyn Huestis
Ingestion

- Smoked
- Orally
- Transdermal Absorption
Cannabis Tinctures
Cannabis Tinctures

- Cannabis tinctures, also known as green or golden dragon, is an alcohol-based cannabis extract—essentially infused alcohol (180 proof or higher).
- The tinctures are put into juices, ice cream, soups, gelatin, mashed potatoes and gravy, or salad dressing.
- Grind your flower or extract, and then mix the flower or extract in a mason jar with high-proof alcohol (preferably, Everclear).
“Wax/Oil/Capsules/Shatter”
(80-90% THC) Concentrates

“Green Crack” wax
“Ear Wax”
Butane Hash Oil (BHO)
Hash Oil Capsules
“Budder”
“Shatter”

Slide Courtesy of Marijuana Impact on Public Health & Safety in Co.
Kronike
Medicated chocolate covered ice cream bars
Keep out of reach of children

Kandy Care
Medical cannabis cotton candy

Nugtella
Hazelnut spread with Medical Marijuana

Gummy bears
THC Patches

New Cannabis Patch for Fibromyalgia and Nerve Pain
General Indicators with Marihuana Drivers

- Altered time and distance perception
- Euphoria
- Relaxed inhibitions
- Disoriented
- Lack of concentration
- Short attention span
- Body tremors
- Eyelid tremors
- Impaired memory
- Alterations in thought process
- Drowsiness
- Sedation
- Mood changes
- Paranoid
- Difficulty maintaining attention
- Slower reaction time
- Lack of Convergence
# Marihuana Indicators

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>HGN</td>
<td>None</td>
</tr>
<tr>
<td>VGN</td>
<td>None</td>
</tr>
<tr>
<td>Lack of Convergence</td>
<td>Present</td>
</tr>
<tr>
<td>Pupil Size</td>
<td>Dilated (6)</td>
</tr>
<tr>
<td>Reaction to Light</td>
<td>Normal</td>
</tr>
<tr>
<td>Pulse Rate</td>
<td>Up</td>
</tr>
<tr>
<td>Blood Pressure</td>
<td>Up</td>
</tr>
<tr>
<td>Temperature</td>
<td>Normal</td>
</tr>
<tr>
<td>Muscle Tone</td>
<td>Normal</td>
</tr>
</tbody>
</table>

(6) Possibly normal
<table>
<thead>
<tr>
<th>Indicator</th>
<th>CNS Depressants</th>
<th>CNS Stimulants</th>
<th>Hallucinogens</th>
<th>Dissociative Anesthetics</th>
<th>Narcotic Analgesics</th>
<th>Inhalants</th>
<th>Cannabis</th>
</tr>
</thead>
<tbody>
<tr>
<td>HGN</td>
<td>PRESENT</td>
<td>NONE</td>
<td>NONE</td>
<td>PRESENT</td>
<td>NONE</td>
<td>PRESENT</td>
<td>NONE</td>
</tr>
<tr>
<td>VGN (HIGH DOSE)</td>
<td>PRESENT</td>
<td>NONE</td>
<td>NONE</td>
<td>PRESENT</td>
<td>NONE</td>
<td>PRESENT</td>
<td>NONE</td>
</tr>
<tr>
<td>Lack of Convergence</td>
<td>PRESENT</td>
<td>NONE</td>
<td>NONE</td>
<td>PRESENT</td>
<td>NONE</td>
<td>PRESENT</td>
<td>PRESENT</td>
</tr>
<tr>
<td>Pupil Size</td>
<td>NORMAL (1)</td>
<td>DILATED</td>
<td>DILATED</td>
<td>NORMAL</td>
<td>CONSTRICTED</td>
<td>NORMAL (4)</td>
<td>DILATED (6)</td>
</tr>
<tr>
<td>Reaction to Light</td>
<td>SLOW</td>
<td>SLOW</td>
<td>NORMAL (3)</td>
<td>NORMAL</td>
<td>LITTLE OR NONE VISIBLE</td>
<td>SLOW</td>
<td>NORMAL</td>
</tr>
<tr>
<td>Pulse Rate</td>
<td>DOWN (2)</td>
<td>UP</td>
<td>UP</td>
<td>UP</td>
<td>DOWN</td>
<td>UP</td>
<td>UP</td>
</tr>
<tr>
<td>Blood Pressure</td>
<td>DOWN</td>
<td>UP</td>
<td>UP</td>
<td>UP</td>
<td>DOWN</td>
<td>UP/DOWN (5)</td>
<td>UP</td>
</tr>
<tr>
<td>Body Temperature</td>
<td>NORMAL</td>
<td>UP</td>
<td>UP</td>
<td>UP</td>
<td>DOWN</td>
<td>UP/ DOWN/ NORMAL</td>
<td>NORMAL</td>
</tr>
<tr>
<td>Muscle Tone</td>
<td>FLACCID</td>
<td>RIGID</td>
<td>RIGID</td>
<td>RIGID</td>
<td>FLACCID</td>
<td>NORMAL OR FLACCID</td>
<td>NORMAL</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) Soma, Quaaludes and possibly some anti-depressants usually dilate pupils.
(2) Quaaludes, ETOH and possibly some anti-depressants 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) Pupils possibly normal.
<table>
<thead>
<tr>
<th>MAJOR INDICATORS</th>
<th>CNS DEPRESSANTS</th>
<th>CNS STIMULANTS</th>
<th>HALLUCINOGENS</th>
<th>DISSOCIATIVE ANESTHETICS</th>
<th>NARCOTIC ANALGESICS</th>
<th>INHALANTS</th>
<th>CANNABIS</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Indicators</td>
<td>Disoriented</td>
<td>Anxiety</td>
<td>Body tremors</td>
<td>Blank stare</td>
<td>Constricted pupils</td>
<td>Bloodshot eyes</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Droopy eyes</td>
<td>Body tremors</td>
<td>Dazed appearance</td>
<td>Confused</td>
<td>Depressed reflexes</td>
<td>Confusion</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Drowsiness</td>
<td>Dry mouth</td>
<td>Difficulty with speech</td>
<td>Chemical odor</td>
<td>Droopy eyelids</td>
<td>Disoriented</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Gait ataxia</td>
<td>Euphoria</td>
<td>Disoriented</td>
<td>Cyclic behavior</td>
<td>Drowsiness</td>
<td>Flushed face</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Slow, sluggish reactions</td>
<td>Exaggerated reflexes</td>
<td>Flashbacks</td>
<td>Difficulty with speech</td>
<td>Dry mouth</td>
<td>Intense headaches</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Thick, slurred speech</td>
<td>Excited</td>
<td>Hallucinations</td>
<td>Disoriented</td>
<td>Euphoria</td>
<td>Lack of muscle control</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Uncordinated</td>
<td>Eyelid tremors</td>
<td>Increased alertness</td>
<td>Early ONset</td>
<td>Facial itching</td>
<td>Non-communicative</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Grinding teeth</td>
<td>insomnia</td>
<td>Hallucinations</td>
<td>Nausea</td>
<td>Odor of substance</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hallucinations</td>
<td>Irritability</td>
<td>Memory loss</td>
<td>Paranoia</td>
<td>Possible nausea</td>
<td></td>
</tr>
<tr>
<td>NOTE: With Methaqualone, (Quaaludes) pulse will be elevated and body tremors will be evident. Alcohol and Methaqualone elevate pulse. Soma and Methaqualone dilate pupils.</td>
<td></td>
<td>Increased alertness</td>
<td>Nausea</td>
<td>Perspiring</td>
<td>Perspiring</td>
<td>Residue of substance</td>
<td></td>
</tr>
<tr>
<td>NOTE: With LSD, pilocerection may be observed (goose bumps, hair standing on end).</td>
<td></td>
<td>Insomnia</td>
<td>Paranoia</td>
<td>Poisoning</td>
<td>Possibly violent</td>
<td>Slow, thick, slurred speech</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Irritability</td>
<td>“On the nod”</td>
<td>Sensory distortions</td>
<td>Sensory distortions</td>
<td>Sweating/impairment</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Redness to nasal area</td>
<td>Puncture marks</td>
<td>Slow, slurred speech</td>
<td>Slow, slurred speech</td>
<td>Tolerant users exhibit relatively little psychomotor impairment</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Restlessness</td>
<td>Slow, low, raspy speech</td>
<td>Warm to touch</td>
<td>Warm to touch</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Runny nose</td>
<td>NOTE: Anesthetic gases cause below normal blood pressure, volatile solvents and aerosols cause above normal blood pressure.</td>
<td>Tilted</td>
<td>UIntiminated</td>
<td>Uncordinated</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Talkative</td>
<td></td>
<td></td>
<td>Body tremors</td>
<td>Body tremors</td>
<td></td>
</tr>
<tr>
<td>Duration of Effects</td>
<td>Ultra-short:</td>
<td>Cocaine:</td>
<td>Duration varies widely from one hallucinogen to another</td>
<td>PCP Onset:</td>
<td>Heroin:</td>
<td>6-8 hours for most volatile solvents</td>
<td></td>
</tr>
<tr>
<td></td>
<td>A few minutes</td>
<td>5-90 minutes</td>
<td>1-5 minutes</td>
<td>Peak Effects:</td>
<td>4-6 hours</td>
<td>Anesthetic gases and aerosols – very short duration</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Short:</td>
<td>Amphetamines:</td>
<td>15-30 minutes</td>
<td>15-30 minutes</td>
<td>Methadone: Up to 24 hours</td>
<td>2-3 hours – exhibit end feel effects</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Up to 5 hours</td>
<td>4-8 hours</td>
<td>Exhibits effects up to 4-6 hours</td>
<td>4-6 hours</td>
<td>Others: Vary</td>
<td>(Impairment may last up to 24 hours, without awareness effects.)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Intermediate:</td>
<td>Meth: 12 plus hours</td>
<td>DXM: Onset 15-30 min. Effects 3-6 hours</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>6-8 hours</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Long</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>8-14 hours</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Usual Methods of Administration</td>
<td>Injected (occasionally)</td>
<td>Insufflation</td>
<td>Oral Insufflation</td>
<td>Injected</td>
<td>Injected</td>
<td>Insufflation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Oral Insufflation</td>
<td>Oral</td>
<td>Insufflation</td>
<td>Insufflation (PCP)</td>
<td>Oral</td>
<td>Insufflation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Oral</td>
<td>Smoked</td>
<td>Smoked</td>
<td>Oral Smoked (PCP)</td>
<td>Oral</td>
<td>Smoked</td>
<td></td>
</tr>
<tr>
<td>Overdose Signs</td>
<td>Clammy skin</td>
<td>Agitation</td>
<td>Long intense “trip”</td>
<td>Cold clammy skin</td>
<td>Cardiac arrhythmia</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Coma</td>
<td>Hallucinations</td>
<td></td>
<td>Coma</td>
<td>Possible psychosis</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Dilated Pupils</td>
<td>Increased body temperature</td>
<td>Long intense “trip”</td>
<td>Convulsions</td>
<td>Respiration ceases</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Rapid, weak pulse</td>
<td></td>
<td></td>
<td>Slow, shallow breathing</td>
<td>Severe nausea / vomiting</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Shallow breathing</td>
<td></td>
<td></td>
<td></td>
<td>Risk of death</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Revised: 07/2015

Drug Recognition Expert Course
Indicators Consistent with Drug Categories

Page 2 of 2
Eyes Red Dilated with Droopy Eyelids Lack of convergence Eyelid Flutters

No HGN Clues

Slow Deliberate Speech

Admitted to Smoking marihuana

Blood contained THC Above Normal Blood Pressure

Leg Tremors

Walk and Turn Clues

Marihuana and pipe found

Car Crashed in Ditch

Finger to Nose Clues
Phillip

- He pulled out in front of an oncoming vehicle on straight roadway
- When interviewed, he was incorrect on his direction of travel
- He admitted to use of marihuana several hours prior to driving
- He had his pipe and marihuana still with him at the time of the traffic stop
Laboratory No. : TX17-14854
Delivered By : First Class Mail
Agency : Grand Traverse County Sheriff
Department
851 Woodmere Ave.
Traverse City, MI 49686
Incident Number : 128-19708-17

Record No. : 2
Date Received : November 15, 2017
Time Received : 9:00 a.m.
File Class : 5400-2
Date Completed : December 13, 2017

Subject:
Phillip

Evidence Received:
Container #1
Item #1
Item #2
1 - Sealed Michigan State Police Specimen kit containing:
1 - 10 mL grey top tube with approx. 10 mL blood
1 - 10 mL grey top tube with approx. 9 mL blood

Results of Analysis:
Item #1:
Detected (quantified):
THC 11 ng/mL
THC-COOH > 100 ng/mL

This lab report completes the testing to be performed on the submitted specimens.
Phillip

**Facts of Crash**
Straight roadway
+
Clear opportunity to see
+
Confusion
=
Oblivious / inattentive driving

**Recency of Use**
Bodily THC level
+
Marijuana pipe and marijuana
=
Recent use

**Under the Influence**

Recent Use + Confusion + Oblivious / Inattentive driving
Phillip

- MMMA cardholder
- No SFSTs
- He had been in an accident (explanation for confusion)
- “Who hasn’t gotten in an accident?”
David

- Three centerline crosses in 1 mile
- Brights are left on (two cars)
- Slow speech
- Bloodshot eyes
- Confusion / changing story on time of use
- Balance issues on One Leg Stand
- MMMA cardholder (20 years of age)
- Alleged object in roadway
- He has a prior knee injury
- “Under the influence” of marihuana?
Results of Analysis:

Item #1:

Detected (quantified):

THC 1 ng/mL
THC-COOH 15 ng/mL

1 - Shred Michigan State Police Specimen kit (Tri-Tech) containing:
1 - 50 mL grey top tube with approx. 9 mL blood
1 - 10 mL grey top tube with approx. 9 mL blood

The sample was screened by immunoassay for amphetamines, barbiturates, benzodiazepines, cannabinoids, cocaine metabolites, meprobamate, methadone, opiates, tramadol and zolpidem.
Public Act 243 - Effective - 9/22/16

- Public Act 243 amends the Michigan Vehicle Code to provide for a roadside drug testing pilot program which includes authority for Drug Recognition Expert (DRE) police officers to require drivers suspected of operating while intoxicated (OWI) to submit to a preliminary oral fluid analysis.
Test Instrument’s Capabilities

• The device is recording results based on threshold limits of nanograms per milliliter set by the manufacturer for six substances:
  – Amphetamines (50 nanograms)
  – Benzodiazepines (20 nanograms)
  – Marihuana/Cannabis (THC) (25 nanograms)
  – Cocaine (30 nanograms)
  – Methamphetamine (50 nanograms)
  – Opiates (40 nanograms)
The Alere DDS2 oral fluid test instrument is being used to measure for the presence of drugs in driver’s saliva.

The instrument is:
- Compact and portable
- Easy to use
- Results within five minutes
- Easy to read positive or negative results
- Can store up to 10,000 tests and comes with a printer
Public Act 350 of 2016, effective, 3/21/2017, created the Impaired Driving Safety Commission Act to establish a Commission charged with researching and recommending a threshold of THC bodily content that would constitute evidence for per se impaired driving.

The Commission met from March 2018 to March 2019 to fulfill its role.

The Commissioners received presentations from subject matter experts in a number of areas on this topic.

On March 21, 2019, the report stated, in pertinent part, the following: “Based on the total body of knowledge presently available, the Commission finds there is no scientifically supported threshold of Δ9-THC bodily content that would be indicative of impaired driving due to the fact that there is a poor correlation between driving impairment and the blood (plasma) levels of Δ9-THC at the time of blood collection.”
Police Report
Police Report

- Arrest report
- Defendant’s statements
- Witness statements
- Defendant’s driving record
- Vehicle registration
- SFST sheet
- Implied consent
- Breath test print-outs
- Blood test print-outs
- Toxicology reports
- Evidence collection sheets
- Supplemental reports (even if you didn’t write them)
Format

Typical Format
– Vehicle in Motion
– Personal Contact
– Pre-Arrest Screening
– Arrest Decision
– Post Arrest

Put it in Chronological, Logical Order
– NOT . . . See alc. influence report for details.
OWI Detection Phases

1. Vehicle In Motion

2. Personal Contact

3. Pre-Arrest Screening
Vehicle in Motion – Should I stop the driver?

- What first attracts the police officer's attention?
- There are approximately 24 different driving cues recognized by the National Highway Traffic Safety Administration which can be possible indicators of impairment.
- These Cues were developed from a list of more than 100 driving cues found to predict BAC's of 0.08 percent or greater.
Personal Contact – Should the driver exit?

• The first task is that the interview and observation of the driver begins as soon as the driver vehicle and the patrol vehicle have come to complete stops.
• It continues through your approach to the driver vehicle and involves all conversation between you and the driver prior to the driver's exit from the vehicle.
• Regardless of the evidence that may have come to light during Detection Phase One, your initial face to face contact with the driver usually provides the first definite indications that the driver is impaired.
Pre-arrest Screening - Is there probable cause to arrest the suspect for OWI?

- The first task in Phase Three is to administer three scientifically validated Standardized Field Sobriety Tests.
- Your agency uses preliminary breath tests (PBTs), then your second task will be to administer a PBT to confirm the chemical basis of the subject's impairment.
- Based on these tests and on all other evidence from Phase One and Two, you must decide whether there is sufficient probable cause to arrest the subject for OWI.
- The entire detection process culminates in the arrest/no arrest decision.
SFSTs/Non-SFSTs

- Horizontal Gaze Nystagmus
- Walk and Turn
- One-leg Stand
- Lack of Convergence
- Modified Romberg
- Any Others?
The Arrest Decision for OWI

• The OWI detection process concludes with the arrest decision.

• This decision is based on all of the evidence you have obtained during all three detection phases:
  – observation of the vehicle in motion and during the stopping sequence;
  – face to face observation of the subject and the subject’s exit from the vehicle;
  – and, pre-arrest screening.
Documentation

- **Pill Bottles**
  - Right drug in containers
  - Dose prescribed
  - Amount in bottle/date of prescription
  - Prescribed to defendant
  - Warning label
  - Seize as evidence/photo

- **Statements of Use**
  - Time taken
  - Amount
Physical evidence in vehicle

Look beyond the obvious
Case Law
“The use of a K-9 dog after the completion of an otherwise lawful traffic stop exceeded the time reasonably required to handle the matter and therefore violated the Fourth Amendment’s prohibition against unreasonable searches and seizures.”

“Absent reasonable suspicion, police extension of a traffic stop to conduct a dog sniff violates the Constitution’s shield against unreasonable seizures.”
People v Kavanaugh, No. 330359 (Mich. App., July 6, 2017)

- The Trooper returned to the cruiser and told defendant that he was going to give him a warning rather than a ticket for the traffic violations. He then asked defendant for consent to search the car.
- When defendant declined to consent, the Trooper informed him that he was going to radio a request for a dog to do a contraband sniff of his vehicle and that defendant and his companion would have to remain until the dog and its handler arrived and the process completed. After about 15 minutes, the dog and his officer arrived. The dog alerted at the car’s trunk. The officers opened the trunk and found the marihuana.
- The Court of Appeals ruled the “Trooper did not have a reasonable suspicion of any criminal activity sufficient to justify his extension of the traffic stop to allow for a dog sniff.”
Officer Matthew Minard pulled over Debra Cruise-Gulyas for speeding.

He wrote her a ticket for a lesser violation, known as a non-moving violation. As she drove away, apparently ungrateful for the reduction, she made an all-too-familiar gesture at Minard with her hand and without four of her fingers showing. That did not make Minard happy.

He pulled her over again and changed the ticket to a moving violation—a speeding offense and what counts as a more serious violation of Michigan law.

“Because Cruise-Gulyas did not break any law that would justify the second stop and at most was exercising her free speech rights, Minard violated Cruise-Gulyas’ right to be free from an unreasonable seizure by stopping her a second time.”

“Fits of rudeness or lack of gratitude may violate the Golden Rule. But that doesn’t make them illegal or for that matter punishable or for that matter grounds for a seizure.”
Do Not Use The Word “HUNCH”

Reasonable Suspicion

- For reasonable suspicion standard, officer must possess objective grounds for suspecting person detained has committed, is committing, or is about to commit a crime.
- Reasonable suspicion requires more than a hunch, but less than probable cause.

Reasonable Suspicion exists if specific objective facts and circumstances warrant rational inferences that a person is under the influence of alcohol or a banned substance (what?)....
Can an officer order occupants out of car?

- **Drivers, yes**

- **Passengers, yes**

- **Pat-down of driver or passenger require reasonable suspicion the person is armed.**

- Including passengers' belongings found in the car that are capable of concealing the object of the search. \textit{Wyoming v. Houghton}, 526 US 295 (1999)
Exclusionary Rule Exceptions-Automobile Searches

- May search passenger compartment if reasonable to believe arrestee might access the vehicle or that the vehicle contains evidence relevant to the offense for which the person was arrested. *Arizona v. Gant*, 536 U.S. 332 (2009)
  - Example - after OWI arrest – OK to search for alcohol containers
  - Example - after DWLS arrest – not OK
People v Kazmierczak, No. 113452
(Michigan Supreme Court, February 10, 2000)

- The Defendant was stopped for speeding. The Officer smelled “A very strong odor of marihuana emanating from the vehicle that was overpowering.”
- The Michigan Supreme Court ruled:
  “The smell of marihuana alone by a person qualified to know the odor may establish probable cause to search a motor vehicle, pursuant to the motor vehicle exception to the warrant requirement.”

- The Court held “Registered medical marihuana patients cannot smoke the drug in their own car while parked outside a private business that is open to the general public.”
- "The lot remains a public place and the fact that a person in a vehicle occupies a place that can be characterized as private in some limited sense does not alter the fact that the person is at the same time located in a public place.”
- “As with the bathroom stall, whether the members of the general public are able to see the person smoking medical marihuana does not alter the public character of the place.”
People v Anthony, No. 337793 (Mich. App., January 22, 2019)

- Detroit Police Officer testified the windows of the police car were down. The defendant’s F-150 had tinted windows, and at least one of the windows was partially down. As the police car approached the area where defendant’s car was parked, the officer, while still inside the police car, immediately smelled a strong odor of burned marihuana. The officer determined that he had probable cause to investigate possible offenses involving marihuana.

- Defendant argued that the Michigan Medical Marihuana Act (MMMA) changed what constitutes a marihuana offense, such that Kazmierczak, which was based on earlier law defining marihuana offenses, consequently is no longer fully applicable. The Court of Appeals disagreed.

- The Court stated "This Court has held that a person using marihuana in a parked car in a parking lot open to the public is in a “public place” within the meaning of the MMMA.

- The Court ruled "If the MMMA does not apply to a parked vehicle in a parking lot open to the public, then it likewise could not apply to a parked vehicle on a public street. Thus, by using marihuana in his truck on a public street, the protections of the MMMA did not apply to defendant and Kazmierczak applied with full force to supply probable cause for the officers to search his vehicle."
People v Wood, No. 343380 (Mich App 10/23/18)

- Michigan State Police (MSP) trooper pulls over motorist for speeding and observes nitrous-oxide canisters and prescription-pill bottles in the backseat in plain view. Defendant says the last time he huffed was four days ago. Huffing (inhaling a chemical substance for the purpose of getting high), is a 93-day misdemeanor. MCL 752.272, 752.273.
- Trooper searches the car and finds codeine.
- The Michigan Supreme Court ruled as follows:

  “The warrantless search of the defendant’s vehicle was properly executed pursuant to the automobile exception. Based on the defendant’s admission of criminal activity and the presence of nitrous oxide canisters in the Trooper’s plain view, the Trooper had probable cause to believe that the defendant had committed a crime and that evidence of that crime was located within the vehicle. See People v Kazmierczak, 461 Mich 411, 418-419 (2000).”
Defendant was a passenger in a vehicle that was pulled over, and then searched by, city of Monroe police officers. Defendant moved to suppress any evidence obtained from the search of the vehicle.

According to testimony at the suppression hearing, at least twice per month, the Secretary of State sends information to the Law Enforcement Information Network (LEIN) regarding whether vehicles are insured, as they are required to be by state law. MCL 500.3102.

Testimony also established that city of Monroe police officers routinely pull vehicles over if the LEIN indicates the vehicle is not insured.

Upon searching the vehicle, the officers found small pieces of “an off-white chunky substance” scattered throughout the vehicle, which tested positive for cocaine.

The Court held “The at most 16-day lapse in up-to-date information made available through the LEIN was not so late or unreliable that it could not provide the officers with reasonable suspicion that the vehicle was uninsured.
People v Hyde, No. 282782 (Mich. App., September 1, 2009)

- The Court held that taking the blood sample under the implied consent law was improper due to the defendant’s diabetes.
- Therefore, the Court concluded that the defendant’s blood was unconstitutionally seized in violation of the 4th Amendment, and the test results should be suppressed.
Defendant did not advise the arresting officer that he was a diabetic, although defendant was asked whether he had any medical conditions and whether he was taking any prescribed medications.

Therefore, the officer had no reason to advise defendant that the implied consent statute did not apply to him.
Deputy Booker explained that a search warrant was a court order and that compliance was required. He told the defendant that if he did not comply, he would be charged "with resisting and opposing." Still, the defendant persisted.

The defendant's refusal was offered in a civil tone. He did not curse or grow abusive. Neither did he offer any threats or physical resistance. Likewise, Deputy Booker simply stated his position. There was no attempt by Deputy Booker or the magistrate or the lab technician to force compliance.

A subject who refuses to submit to a chemical test given pursuant to a search warrant is subject to being charged with resisting or obstructing an officer (even if no active aggression was exhibited).
How do I prepare to be a witness?
The CSI Effect

It is the effect that CSI and other similar shows have on raising crime victims’ and jury members’ real-world expectations of forensic science, especially crime scene investigations.
Kiss-Kiss, Bye-Bye

Nick reviews the security tapes and using enhancement discovers that the victim was handing an airline boarding pass to his driver.
CSI team enlarges a digital photo taken by a bystander to reveal the image of the victim and her attacker reflected in the eye of another bystander.
There were 10 eyewitnesses, he has motive and my client plead guilty. He's guilty.

Where's the DNA?
Trial Truths From Judge and Jury’s Perspective

Trials are: BORING!
Jury Trial

- People remember about 20% of what told
- Add visual – retention up to 50%
- Add involvement – retention up to 80%
Review Your Materials

Read **ALL** of your reports – details get blurred over time and it is easy to confuse one case with another.

Review photos, tapes, maps, and any physical evidence

Review manuals and other documents associated with the case
Traits of Professionalism

Prepared
Professional Appearance
Calm and Confident
High Degree of Integrity
Knowledgeable
Speaks to Jury
Control Your Temper
Does not Argue
Uses Plain Language
Physical Presentation

- Appearance
  don’t look like you are under-cover
dress professionally

- Confidence
  speak up, don’t mumble – you know what you are talking about

- Make eye contact with the jury
  remember who you are trying to educate
  look for the nodding of the head
Verbal Presentation

- Use plain language
  - Avoid: police jargon, military time, abbreviations, acronyms

- Don’t argue with the defense attorney
  - Don’t: raise your voice, “be cute”

- Testify with integrity
  - Do: Admit and explain any mistakes

- Always testify truthfully
Direct Examination

• Who are you?

• What do you know?

• What did you see, hear, do?

• What does it all mean?
Direct Examination

A. Qualifications to testify
B. The traffic stop
C. Driver contact
D. Evidence of impairment
E. Arrest
F. Blood, breath or urine tests
G. Details of any refusal
Questions About The Offense

• Take your time – the prosecutor will take you through everything step by step)
  - What did you see?
  - What did you do next?
  - Etc...

• Chronological order

• Paint vivid picture

• Your chance to connect with, and educate jurors
What If I Can’t Remember?

- It's okay to forget – you're human
- Tell the prosecutor you can't remember
- If you know "where" the answer is (i.e., a certain report) you can tell the prosecutor
- The prosecutor can "refresh your recollection"
- DON’T GUESS
- DON’T MAKE ANYTHING UP
- If you simply "don't know" – say so
What Do I Do When An Attorney Objects?

- Objections are expected
- Hear an objection ... stop speaking
- Wait for judge to rule
- If objection is *sustained* – wait for next question
- Don’t be flustered *(the prosecutor may have another way to get the information out before the jury)*
- If objection is *overruled* – okay to ask to hear question again
Always Remember the Purpose!

- Persuade the jurors that the defendant is guilty.
- Educate the jurors about the facts so that they are smart enough to reject the defense.
Bottom Line

1. The burden of proof is on the People.
2. If the jury doesn’t believe you – the case is over.
Secrets of Cross Exam

- Most attorneys not very good at it
- Some are good
- Few are excellent
- Their job is to poke at your testimony
Dealing With Defense Attorneys

-Avoid arguments
-Set the pace – don’t be rushed
-Stay calm – it’s really not personal
-Only answer what is asked
-Be careful of compound questions
-Don’t offer information

-Be careful about agreeing too quickly (or at all)
-Don’t fill silence
-Don’t answer if it’s not a question
-If you have to estimate, make sure you are clear it’s an estimate
-Admit mistakes
-If you don’t remember – say so
“Yes” or “No” Questions

• If the question calls for a “yes” or “no” answer – just answer “yes” or “no”

• HOWEVER – be careful of “yes” or “no” TRAPS
  If question requires more than a yes or no, try:
  “Although ....”
  “That depends ...”
  “Well...”
Testimony Practice Point

Talking about the case with others

• The defense attorney may ask you if you have talked about the case with anyone. If the prosecutor has done his / her job - you have. You have spoken to the prosecutor. Acknowledge that.

• HOWEVER, you should not discuss your testimony with anyone else while the trial is in progress.
What Not to Say

• “I see where you’re going with this....”
• “I don’t see where you’re going with this...”
• “I know the judge ruled that I could not talk about the defendant’s prior drunk driving convictions, but I just want to say....”
What Not to Say (cont.)

- “I don’t know, Mr. Defense Attorney, why don’t you tell me?”
- “Why are you asking that?”
- “Is that really relevant?”
- “You, sir, are a complete ...%**&* (or some other expletive)!"
Conclusion

You know more about your testimony than anyone else!
Be prepared and be confident!
Michigan Automated Prescription System

- It is a prescription drug monitoring system program that collects data on Schedule 2-5 controlled substances.
- It reported over 20.9 million prescriptions for controlled substances in 2012.
- Hydrocodone remains the highest prescribed drug since 2003, accounting for 32% of all prescriptions in 2012.
- Data Collected include:
  - Patient Name
  - Substance name
  - Narcotic Drug Code (NDC) of Substance
  - Physician DEA registration code
  - Dispensing pharmacy DEA code
  - Date of dispensation
MI Officer Smartphone App

Traffic safety resource warehouse for Michigan law enforcement and criminal justice personnel

Go to your smartphone app store and search: MI Officer
Go to your smartphone app store and search: MI Officer

Features:
- Michigan Vehicle Code
- Uniform Traffic Code for Cities, Townships and Villages
- Commercial Vehicle Enforcement
- Traffic Crash Investigations
- OWI Enforcement
- Michigan Penal Code
- Publications by the Michigan Secretary of State

Email topic suggestions to: Dianne Perukel @ perukelld@michigan.gov
Questions?