

DRUGGED DRIVING IN MINNESOTA

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U.S. Statistics

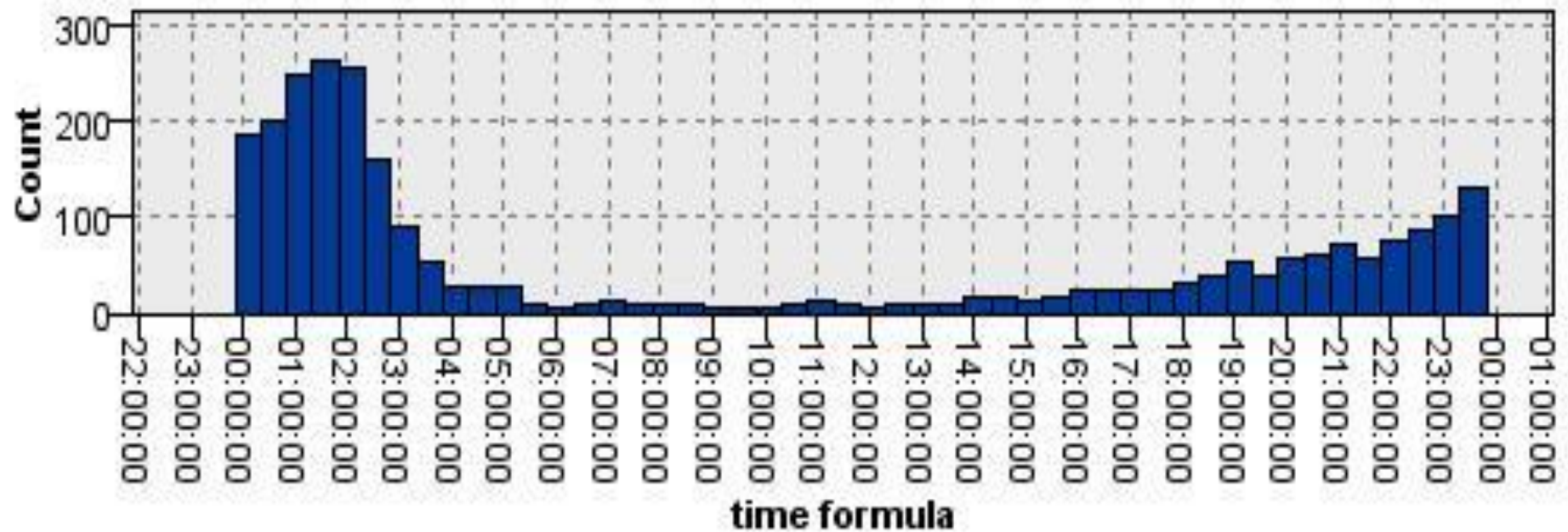
- 21% of 16-20 year olds reported driving under the influence in the last 12 months
- 15.1 million abuse prescription drugs (up from 7.8 million in last decade)
- 3% of 12-17 year olds reported current abuse of prescription drugs (2nd to marijuana and ahead of cocaine, meth, ecstasy, and heroin)

MN Statistics

- Minnesota ranks 8th for incidents of driving under the influence of illicit drugs at 5.7%
- 1 in 6 high school seniors reported driving after using alcohol or drugs (Minnesota Student Survey)

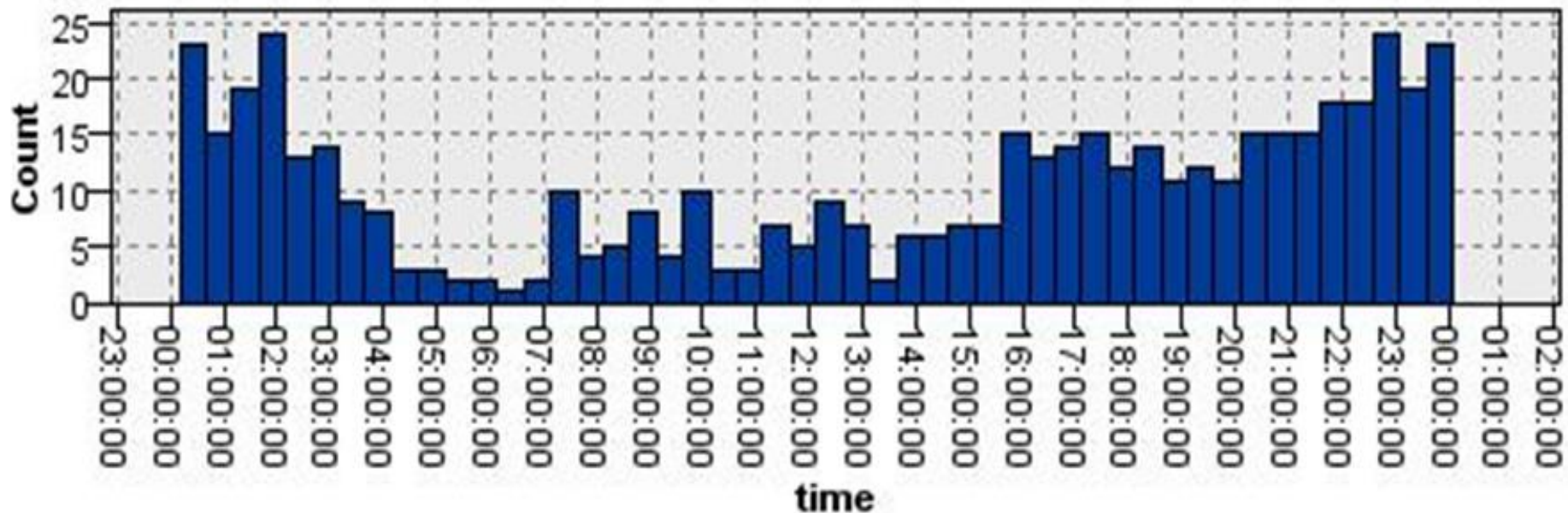
DWI Arrests by Time of Day

Alcohol

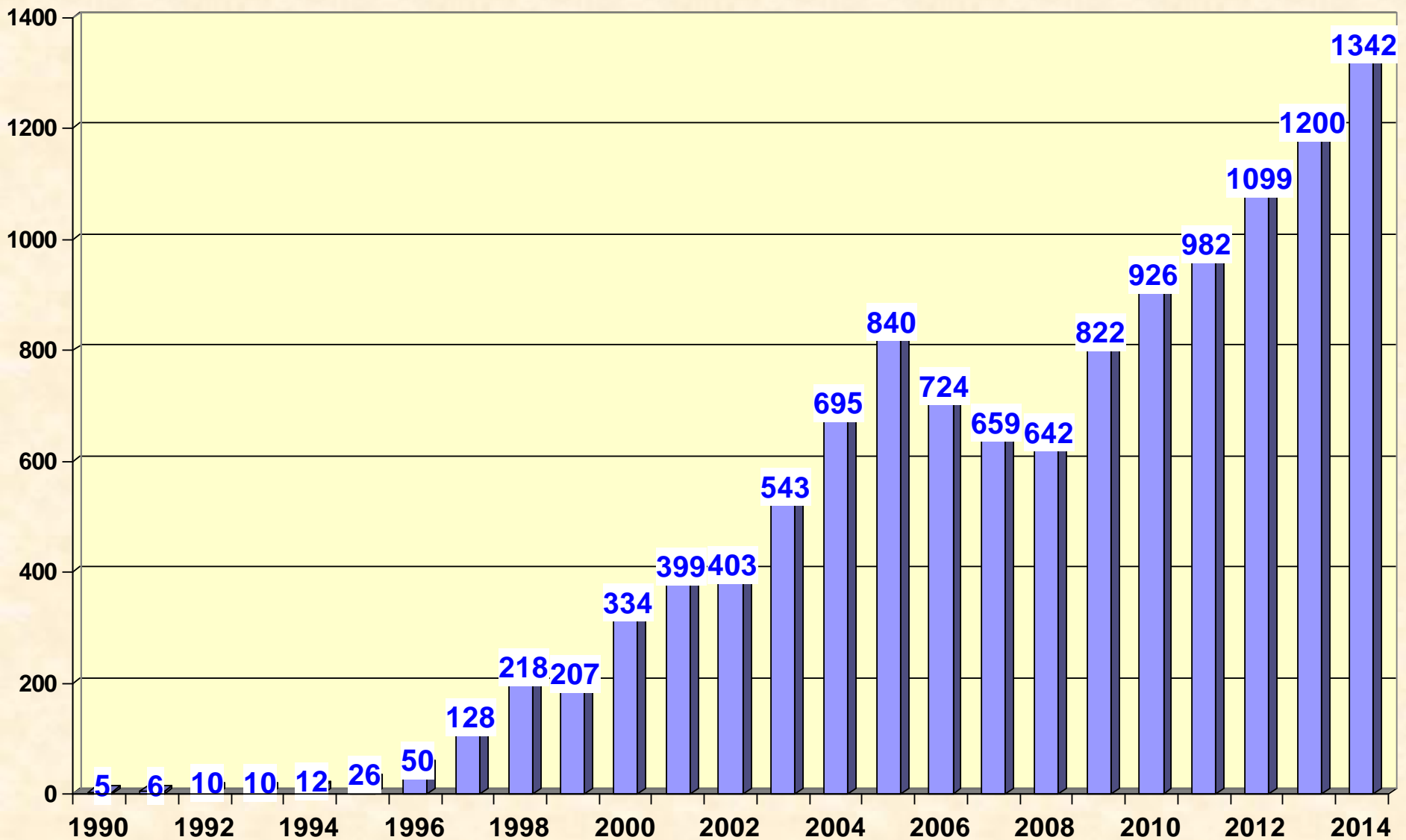


DWI Arrests by Time of Day

Schedule I and II Controlled Substances



DWI-CONTROLLED SUBSTANCE ON DRIVER'S RECORD



What is a DRUG?

Any substance that, when taken into the human body, can impair the ability of the person to operate a motor vehicle safely.



DWI: MSS 169A.20

Subdivision 1: drive, operate, or physical control while

- 1) influence of alcohol**
- 2) influence of controlled substance**
- 3) knowingly under the influence of a hazardous substance**
- 4) combination of (1) and/or (2) and/or (3)**
- 5) alcohol concentration .08 or more at time of incident or w/in 2 hours**
- 6) alcohol concentration over .04 while in commercial vehicle**
- 7) body contains any amount of controlled substance or its metabolite listed in Schedule I or II (other than Marijuana)**



SOBRIETY TEST

Look at the photo above -
if it looks right to you ...
You're Drunk

Central Nervous System Depressants



Alcohol
Barbiturates
GHB

Anti-anxiety Tranquilizers
Anti-Depressants
Paxil
Many Others



Central Nervous System Depressants

- HGN and VGN present
- Eyelids droopy
- Eyes bloodshot and watery
- Drowsiness
- Thick, slurred speech
- Uncoordinated
- Fumbling
- Slow, sluggish reactions



Central Nervous System Stimulants



Cocaine
Ritalin



Amphetamines

Khat

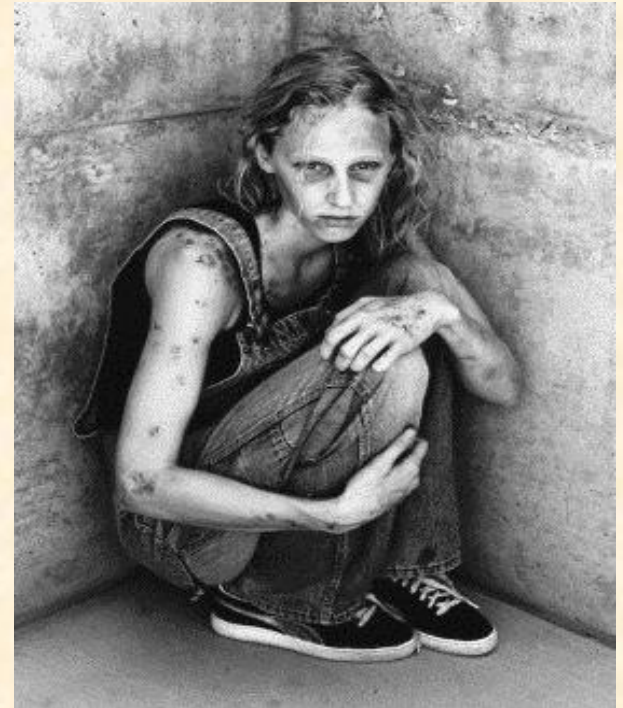
Methamphetamine

Adderall



Central Nervous System Stimulants

- Divided attention impairment
- Starts test too soon
- Accelerated internal clock
- Completes test too quickly
- Rapid and jerky movements
- Talkativeness
- Body tremors
- Exaggerated reflexes



Central Nervous System Stimulants

- Restlessness
- Anxiety
- Euphoria
- Excitation
- Bruxism
- Loss of appetite
- Pupils dilated



Hallucinogens



Peyote

Psilocybin

LSD

MDMA (Ecstasy)

Bufotenine

'Plant Food'/'Bath Salts'

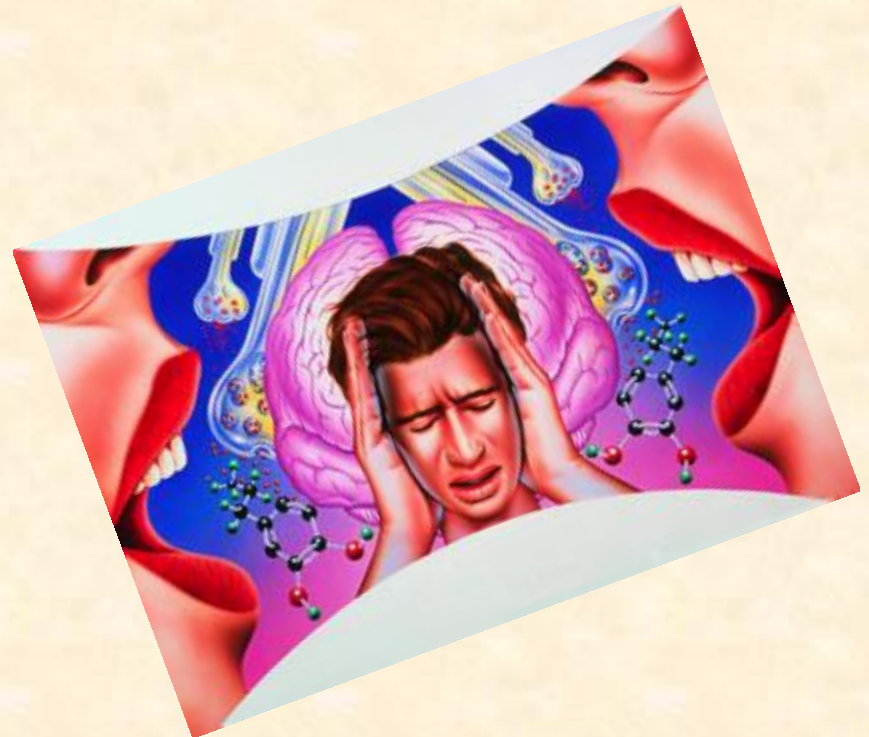
Salvia Divinorum

NBOMe



Hallucinogens

- Uncoordinated
- Severe divided attention impairment
- Poor perception of time and distance
- Poor balance
- Distorted internal clock
- Disoriented
- Nausea



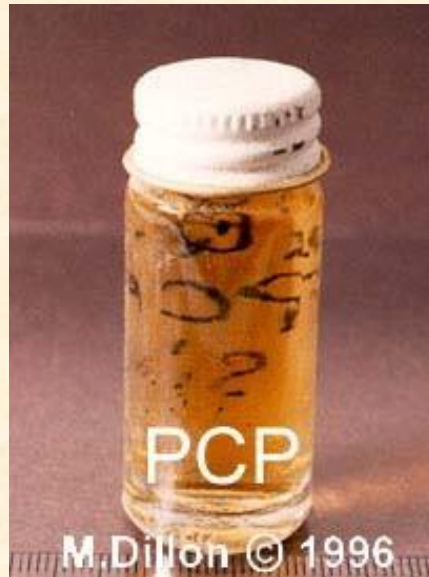
Hallucinogens

- Dazed appearance
- Body tremors
- Perspiring
- Paranoia
- Difficulty with speech
- Piloerection
- Statements suggesting hallucinations



Dissociative Anesthetics

- PCP (Phencyclidine) and its analogs
- Ketamine
- Dextromethorphan
- Ketaject
- Vetalar
- Xyrem



Dissociative Anesthetics

- HGN and VGN present
- Blank stare
- Loss of memory
- Perspiring heavily
- Warm to touch
- Cyclic behavior
- Incomplete, slurred verbal responses



Dissociative Anesthetics

- Cyclic behavior
- Agitated
- Rigid muscle tone/'Moon Walking'
- Disoriented
- Nonresponsive
- Chemical odor
- Slowed internal clock



Narcotic Analgesics

Heroin
Oxycontin
Morphine
Codeine
Vicodin
Demerol
Methadone
Darvon
Buprenorphine
Suboxone



Narcotic Analgesics



“Track marks”

“On the nod”

Slowed reflexes

Facial itching

Dry mouth

Euphoria

Flaccid muscle tone

Low, slow, raspy speech

Pupils visibly and obviously constricted

Narcotic Analgesics

Pupil size constricted

Eyelids will be droopy

Divided attention impairment

Poor coordination and balance

Slowed internal clock



Inhalants



Gasoline
Glues
Paint (Toluene)
Hair Spray
Anesthetic Gases



Inhalants

- HGN and VGN present
- Odor of the inhaled substance
- Dizziness, numbness
- Traces of substance around the face and nose
- Bloodshot, watery eyes
- Distorted perception of time and distance
- Light headedness



Inhalants

- Flushed face, possible sweating
- Intense headaches
- Slow, thick, slurred speech
- Nausea
- Non communicative
- Floating sensation



Cannabis

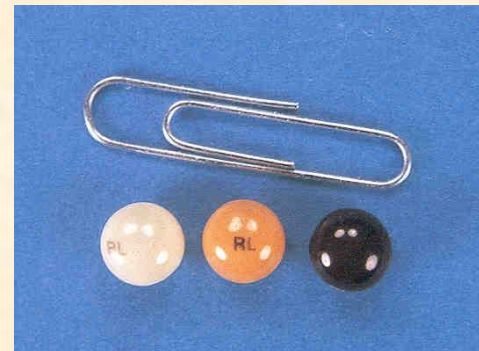
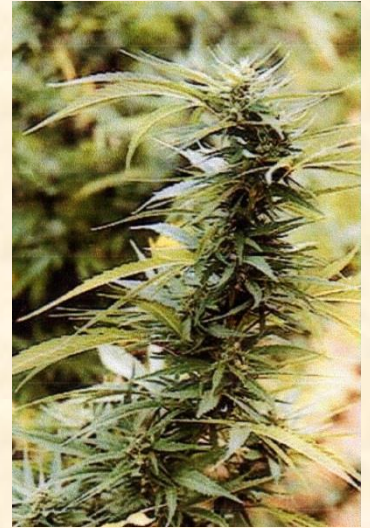
Marijuana

Hashish

Hashish Oil

Marinol

Synthetic Cannabinoids



Cannabis

Odor of marijuana

Impaired perception of time and distance

Marked reddening of whites of eyes

Problems with divided attention tasks

Body tremors

Disorientation

Impairs attention

Relaxed inhibitions



WARRANT
or
NO WARRANT?

McNeely

- Not an implied consent decision
- Involved nonconsensual blood test
- Defense argued *McNeely* creates a “right to refuse” testing – constitutional right regarding consent to search – and that our law makes it a crime to refuse to consent to search
- Other states are seeing defense attorneys argue that implied consent is unconstitutional now

McNeely

Where does this leave us?

**ALWAYS DEFER TO YOUR AGENCY POLICY
AND/OR LEGAL ADVICE FROM YOUR
CITY/COUNTY ATTORNEY**

MN Decisions

- Brooks: Three criminal DWI cases decided by MN Supreme Court.
 - Upheld the convictions where tests were administered as valid consent through implied consent process

“when, based on the totality of the circumstances, appellant consented to search, police do not need a warrant to search the appellant’s blood or urine”

Refusal Crime

- Enacted in 1988 for repeat offenders only
- Amended in 1993 for all DWI offenders
 - Refusal rate in 1988 was 24.3%
 - Refusal rate in 1991 was 22.4%
 - Refusal rate in 1997 was 11%
 - Refusal rate in 2011 was 12%
 - National average in 2001 was 24%

MN Decisions

- Bernard: Decided by MN Supreme Court and at the U.S. Supreme Court
 - At issue: Refusal crime is constitutional for breath testing

MN Decisions

Two cases from North Dakota are combined
with Bernard

- Birchfield: refusal crime held constitutional as reasonable under the 4th amendment
- Beylund: License revocation case – argument that the test was coerced because the advisory said “refusal to take a test is a crime”

MN Decisions

- Trahan: Decided by MN Court of Appeals and at MN Supreme Court.
 - At issue: Refusal crime is constitutional for blood testing
 - “criminalizing refusal to submit to a warrantless blood test is unconstitutional”
- No mention breath or urine testing or the license revocation sanction (Implied Consent process)

MN Decisions

- Thompson: Decided by MN Court of Appeals and is likely heading to the MN Supreme Court
 - At issue: Refusal crime is constitutional for urine testing
- “criminalizing refusal to submit to a warrantless urine test is unconstitutional”
- The ruling did not mention the license revocation sanction (Implied Consent process)

TRAHAN and THOMPSON

These cases makes drugged driving cases and alcohol cases where no DMT is available considerably more difficult

TRAHAN and THOMPSON

Where does this leave us?

**There are many SOPs based on the opinions of
your agency and city/county attorney**

**ALWAYS DEFER TO YOUR AGENCY POLICY
AND/OR LEGAL ADVICE FROM YOUR
CITY/COUNTY ATTORNEY**

e-Charging Tip #1

- DVS will not take any action on a D/L if the lab report is not attached to the e-Charging file
- They will not revoke based only on the Peace Officer's Certificate
- Please make sure that you (or whoever in your agency handles those reports) attach the lab report to the e-Charging event

e-Charging Tip #2

If the driver is conscious and a warrant is obtained:

- The entire Implied Consent Law is out of play
- e-Charging should NOT be used

e-Charging Tip #3

If the driver is unconscious (or incapable of refusing) and a sample is obtained:

- The Implied Consent should be used
- e-Charging should be used
- Whether a warrant is obtained or not

Implied Consent and CVO

- No requirement to read ICA if PC of CVO
- Indefinite Suspension of D/L
 - Once DVS receives copy of formal complaint
- Suspension becomes Revocation or Cancellation upon conviction of CVO
- Submit *Criminal Vehicular Operation Peace Officer Certification* (now in e-Charging)

**CRIMINAL VEHICULAR OPERATION/HOMICIDE
PEACE OFFICER CERTIFICATION**

FIRST NAME OF DRIVER	MIDDLE NAME	LAST NAME
ADDRESS		CITY
DRIVER LICENSE NUMBER:		DATE OF BIRTH:

Date and time of incident: Date: _____ Time: _____ Hours Location of incident: _____

Pursuant to Minn. Stat. sec. 629.344, I certify to the Commissioner of Public Safety, State of Minnesota, that:

1. I am a licensed peace officer in the State of Minnesota.
2. There is probable cause to believe that, on _____ (DATE), the person listed above caused injury or the death of another as a result of operating a motor vehicle (check any that apply):
 - ☐ In a negligent manner while under the influence of alcohol, a controlled substance or a combination of those elements. (Minn. Stat. sec. 609.2112, subd. 1, clause 2; sec. 609.2113, subd. 1, clause 2; sec. 609.2113, subd. 2, clause 2; sec. 609.2113, subd. 3, clause 2; sec. 609.2114, subd. 1, clause 2; or sec. 609.2114, subd. 2, clause 2)
 - ☐ While having an alcohol concentration of .08 or more. (Minn. Stat. sec. 609.2112, subd. 1, clause 3; sec. 609.2113, subd. 1, clause 3; sec. 609.2113, subd. 2, clause 3; sec. 609.2113, subd. 3, clause 3; sec. 609.2114, subd. 1, clause 3; sec. 609.2114, subd. 2, clause 3)
 - ☐ While having an alcohol concentration of .08 or more, as measured within two hours of the time of driving. (Minn. Stat. sec. 609.2112 subd. 1, clause 4; sec. 609.2113, subd. 1, clause 4; sec. 609.2113, subd. 2, clause 4; sec. 609.2113, subd. 3, clause 4; sec. 609.2114, subd. 1, clause 4; or sec. 609.2114, subd. 2, clause 4)
 - ☐ In a negligent manner while knowingly under the influence of a hazardous substance. (Minn. Stat. sec. 609.2112, subd. 1, clause 5; sec. 609.2113, subd. 1, clause 5; sec. 609.2113, subd. 2, clause 5; sec. 609.2113, subd. 3, clause 5; sec. 609.2114, subd. 1, clause 5; or sec. 609.2114, subd. 2, clause 5)
 - ☐ In a negligent manner while any amount of controlled substance listed in Schedule I or II, or its metabolite, other than marijuana or tetrahydrocannabinols, is present in the person's body. (Minn. Stat. sec. 609.2112, subd. 1, clause 6; sec. 609.2113, subd. 1, clause 6; sec. 609.2113, subd. 2, clause 6; sec. 609.2113, subd. 3, clause 6; sec. 609.2114, subd. 1, clause 6; or sec. 609.2114, subd. 2, clause 6)
3. In support of this determination, I am attaching a copy of the executed search warrant (or in absence of a search warrant, my arrest report and supporting documents).
4. I therefore submit this information to the Driver Evaluation Unit for suspension of driving privileges pursuant to Minn. Stat. sec. 171.187.

	Date
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Training in MN

Training Courses

Training requirements only for grant funded enforcement

- Standardized Field Sobriety Testing (SFST)
- DWI-SFST Update
- Drugs That Impair Driving (DTID)
- Advanced Roadside Impaired Driving Enforcement (ARIDE)
- Occupant Protection Usage and Enforcement (OPUE)
- Drug Evaluation and Classification (DECP) – aka DRE School

Training Courses

Each of the three required courses now has its own 'refresher' required after 5 years from initial classroom training

SFST → → → → DWI-SFST Update

DTID/ARIDE classroom → → → → ARIDE online

OPUE → → → → OPUE

Will be online only platform

Training Courses

Required prerequisites for Drug Evaluation and Classification (DECP) – aka DRE School:

Standardized Field Sobriety Testing (SFST)

and

Drugs That Impair Driving (DTID) or classroom Advanced Roadside Impaired Driving Enforcement (ARIDE)

Picture This Scenario



A police officer stops a driver operating a vehicle unable to maintain a single lane of travel.

The officer finds a clearly impaired driver who is confused, disoriented.

The driver demonstrates impairment during roadside sobriety tests and is arrested for DWI.

A breath test fails to detect the presence of alcohol. What evidence is needed to convict the driver?





Police officers frequently encounter this type of scenario and the aftermath on the our roads caused by drug impaired drivers.

Many times the impaired drivers are arrested, but not convicted.

Hampered by this type of situation, law enforcement officers sought out other solutions to identify and convict drugged impaired drivers.

What is a DRE ?

DRUG RECOGNITION EVALUATOR

Police officers who are highly trained in detecting and recognizing impairment caused by substances other than alcohol.



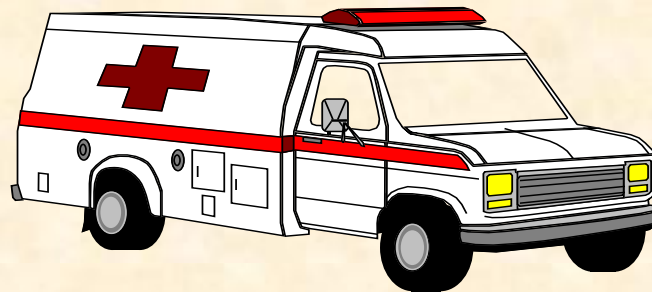
***Do I need to have a
DRE involved in my
arrest?***

What Does the DRE Do?

- Provides expertise and assistance in impaired driving investigations
- Normally has a "Post-Arrest" involvement
- Requested when impairment is not consistent with the arrestee's AC

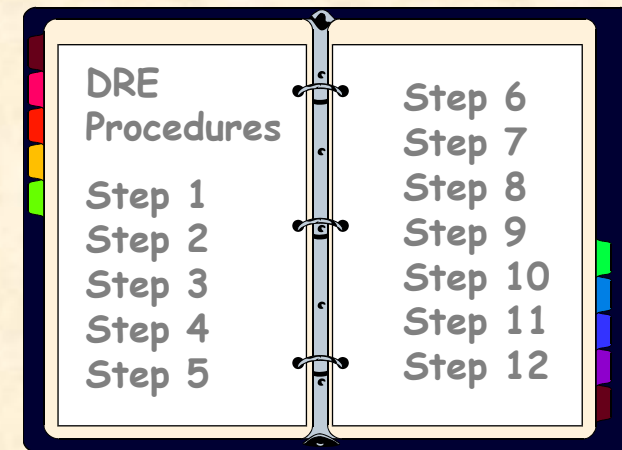
Three Determinations of a DRE

- Is the subject is impaired?
- Is the impairment drug or medically related?
- If drug related, the DRE determines which category of drug(s) is likely causing the impairment



The Drug Influence Evaluation Procedures

- 12- Step standardized and systematic process
- DREs are trained to follow an evaluation checklist
- Proceeds from AC through assessment of signs of impairment to toxicological analysis
- Similar to standard medical diagnosis procedures



Step 1: Alcohol Concentration

DRE or Arresting
Officer determines if
alcohol is involved



Step 2: Interview of Arresting Officer

- DRE determines the reason for the arrest
- Driving observed?
- SFST results?
- Statements made?
- Other relevant matters



Step 3: Preliminary Evaluation

- “Fork-in-the-Road” for the DRE
- DRE determines if there is sufficient reason to suspect drug impairment
- Determines if impairment may be medically related

Step 4: Eye Examinations

DRE tests for:

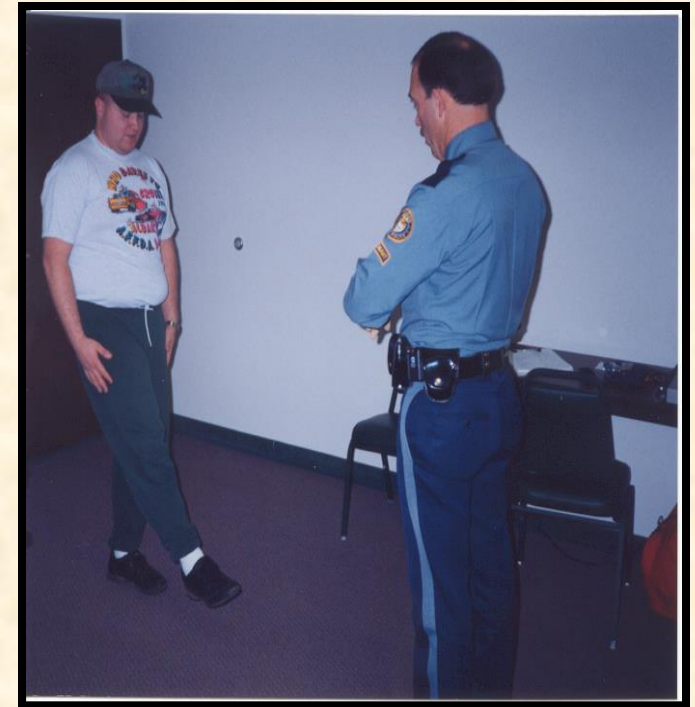
- Horizontal Gaze Nystagmus (HGN)
- Vertical Nystagmus (VGN)
- Lack of Convergence



Step 5: Divided Attention Tests

DRE administers the following divided attention tests:

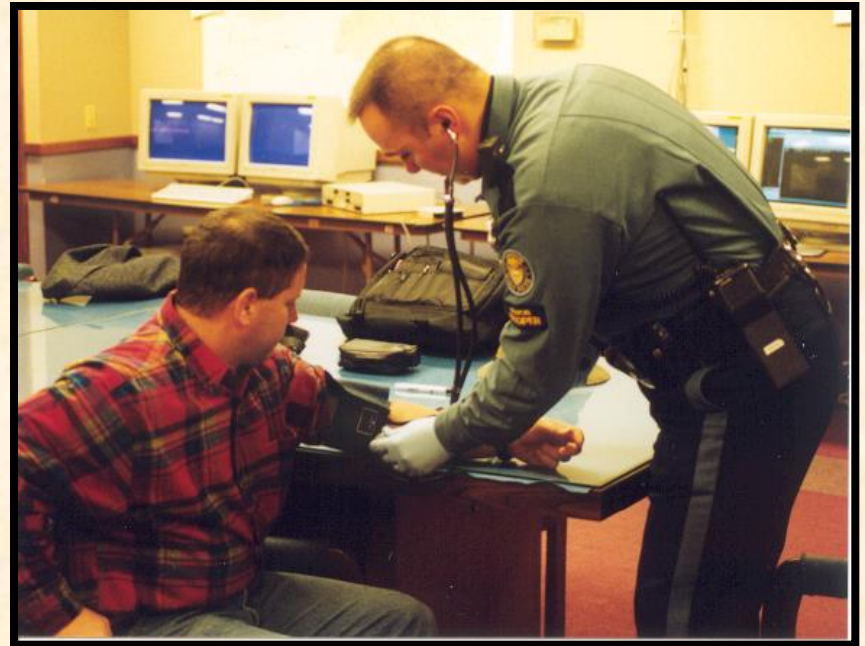
- Modified Romberg Balance
- Walk and Turn
- One-Leg Stand
- Finger-To-Nose



Step 6: Vital Signs Examinations

DRE conducts three vital signs examinations:

- Pulse rate (taken 3 times)
- Blood pressure
- Body temperature



Step 7: Dark Room Examinations

DRE examines suspect's pupils

- Pupillometer used to estimate the suspect's pupil sizes in three different light levels.
- Includes examination of nasal and oral cavities.



Step 8: Muscle Tone

DRE examines arrestee's arms for muscle tone; flaccid, rigid, or normal



Step 9: Examination for Injection Sites

DRE examines for
injection sites

Most frequently used
areas include:

- Arms
- Neck
- Ankles



Step 10: Statements and Interview

- DRE conducts a structured interview
- Miranda warnings given if not previously done
- Suspect questioned about drug use based upon the results of the evaluation
- DRE records admissions

Step 11: Opinion of the DRE

- DRE forms an opinion as to the drug influence and the drug category(s)
- DRE makes an "informed opinion" based upon totality of evaluation and evidence
- DRE Symptomology Matrix used to form final opinion



Step 12: Toxicology

- Implied Consent Advisory invoked
- A urine or blood sample is requested for analysis

