



# REPORT TO THE LEGISLATURE

SENATE BILL No. 94

IMPAIRED DRIVING

TASK FORCE

California Highway Patrol

January 2021

**REPORT TO THE LEGISLATURE  
SENATE BILL No. 94**

**IMPAIRED DRIVING TASK FORCE**

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**January 2021**

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## ACKNOWLEDGMENTS

The California Highway Patrol (CHP) would like to acknowledge and thank the following individuals for their commitment to the Impaired Driving Task Force (IDTF) over the last three years. The IDTF membership is comprised of various fields of expertise, interests, and viewpoints. These individuals have worked diligently to develop legislative recommendations for the purposes of preventing, reducing, and mitigating the impacts of impaired driving, with the goal of making California a safer place to live, work, and travel.

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# EXECUTIVE SUMMARY

Senate Bill (SB) 94, Committee on Budget and Fiscal Review, Cannabis: Medicinal and Adult Use added California Vehicle Code (CVC) Section 2429.7, requiring the California Highway Patrol (CHP) Commissioner to appoint an Impaired Driving Task Force (IDTF), and serve as the chairperson of the IDTF, with specified membership, for the purpose of developing recommendations for best practices, protocols, and proposed legislation; and other policies addressing issues related to impaired driving, including prescription drugs, cannabis (also interchangeably referred to as marijuana), and other controlled substances. The IDTF was also charged with examining the use of technology, including field testing technologies, and validated field sobriety tests. The recommendations and findings included in this document represent the work of the IDTF and are submitted to the California State Legislature for consideration.

The IDTF met a total of ten times, with the various subcommittees meeting a total of nineteen times. Although each subcommittee met separately and generated a series of recommendations, there was substantial cross-over between subcommittee recommendations. As such, CHP staff merged like recommendations and presented the proposed text to the full IDTF membership. The text was then discussed, modified, and approved.

Note: In the body of this report, the recommendations are accompanied by background and other relevant information.

The following represents the complete list of legislative recommendations approved by the IDTF membership:

## Data Recommendations:

- 1. The state should track all driving under the influence (DUI) and driving under the influence of drugs (DUID) toxicology outcomes from all laboratories, including the number of samples submitted, the number of samples tested, and all sample results.*
- 2. The state should track all DUI and DUID arrest outcomes, including case filing charges, diversion outcomes, plea agreements, trial outcomes, and the final case disposition.*

3. *The state should track all DUI and DUID involved crashes.*
4. *The state should analyze all collected DUI and DUID data for the purposes of developing better methods to screen for and prevent DUI and DUID. The data used in the analysis should be published in an annual statewide report and guide the future direction of DUI policy decisions.*

#### Research Recommendations:

1. *The state should continue to fund impaired driving research projects for the purposes of learning new information related to how best to detect and test DUI and DUID drivers.*
2. *New DUI and DUID research studies should consider key issues including the time elapsed since the substance use; the method of administration; dosage; and most importantly, how test results relate to impaired driving including the best methods to identify impaired drivers.*
3. *Behavioral, physiological, and chemical testing research should address issues of validity and reliability, performance under various environmental conditions, and follow best practices for test development as established by relevant academic and/or professional entities.*

The state should undertake a research project analyzing drug prevalence and trends with respect to impaired driving. This project would request selected laboratories, with specified equipment, to examine all, or a randomized selection of, blood samples taken from DUI incidents for Tier I drugs, using a standardized procedure, for a specified time period. These results will identify trends and provide information to policy makers. The data used in the analysis should be published in an annual statewide report and guide the future direction of DUI policy decisions.

#### Toxicology Recommendations:

1. *The state should provide additional funding to state and local government crime laboratories conducting forensic toxicology to*

- purchase more efficient and sensitive testing equipment and to provide funding for personnel to conduct forensic toxicology testing.*
- 2. The state should establish well defined evidence collection procedures for DUID, similar to the procedures found in California Code of Regulations (CCR) Title 17, relating to alcohol.*
  - 3. Crime laboratories conducting forensic toxicology testing should test blood samples for alcohol and all Tier I compounds, in at least one recommended matrix, at the prescribed threshold concentrations, for both screening and confirmation testing.*
  - 4. If blood is going to be collected as part of a DUI or DUID investigation, it should be collected as soon as possible after the arrest, and should include an extended drug panel, with confirmatory and quantitative high-performance liquid chromatography–mass spectrometry or gas chromatography–mass spectrometry used to confirm positive results.*
  - 5. Crime laboratories conducting forensic toxicology testing should continue to evaluate National Safety Council recommendations related to forensic toxicology testing and when new standards are recommended, laboratories should strive to implement those recommendations.*
  - 6. Drugs affect people differently depending on the type of drug consumed, a person's tolerance, the method of ingestion, and other factors. As such, a per se limit for drugs, other than ethanol, should not be enacted at this time. However, the state should continue to advance research in this area in the event science finds it can establish drug per se limits.*

Cannabis Consumer Education Recommendations:

- 1. The state should provide responsible sales and consumption practices training to all cannabis retailers, cannabis consumption lounges, event organizers, license holders, and home delivery services, similar to responsible alcohol beverage service/sales training.*

2. *The state should provide guidelines for advertisers displaying cannabis related products which includes the legal consumption age for cannabis, and information related to the risks of impaired driving.*
3. *The state should require cannabis retailers, cannabis consumption lounges, cannabis event organizers, cannabis license holders, and cannabis delivery services to provide educational information to consumers, which could include pamphlets, posters, digital messaging, and/or other appropriate mediums related to the responsible use of cannabis and other drugs. Messaging should include:*
  - a. *Warnings regarding the dangers of impaired driving, the risks of underage cannabis use, and possible risks associated with polysubstance use.*
  - b. *Cannabis consumption sites should provide information regarding locally available alternate transportation to all consumers.*
4. *The state should provide age appropriate education for youth and adults on the effects of the use of cannabis, and impact of impaired driving.*
5. *The state should expand training opportunities related to impaired driving for the legal and judiciary system, including:*
  - a. *Within two years of being appointed and annually thereafter, all Criminal Justice Officers (judges, defense attorneys, and prosecutors) should receive training which covers addiction, drug abuse, behavior modification, factors contributing to impairment, and bias in arrest/prosecution.*
6. *The state should provide training to persons working in the medical and pharmacy fields regarding the dangers of impaired driving by alcohol, cannabis, prescription drugs, and impairing over the counter (OTC) drugs.*
7. *The California Department of Motor Vehicles (DMV) should require traffic schools to add information related to the dangers of cannabis and drug impairment to their curriculum and include a victim impact panel component with their courses.*

## Law Enforcement Recommendations:

1. *The Commission on Peace Officer Standards and Training (POST) should require Standardized Field Sobriety Test (SFST) training (16 hours) be taught in all law enforcement academies in California.*
2. *All law enforcement personnel assigned to traffic enforcement responsibilities should receive Advanced Roadside Impaired Driving Enforcement (ARIDE) training within one year of being assigned, and bi-annual continuing education related to impaired driving.*
3. *The CHP and the California Office of Traffic Safety (OTS) should make all efforts to increase the number of Drug Recognition Evaluator (DRE) trained officers statewide by four percent over the next five years.*
4. *An officer certified as a DRE should receive incentive pay during the time the officer remains certified.*
5. *Law enforcement should use the best available roadside presumptive screening device and confirmatory tests in the most expedient manner for possible drug and alcohol impaired driving investigations.*
6. *Law enforcement should encourage the use of mobile video/audio recording devices and body worn cameras to record/capture impaired driving incidents and investigations, whenever practical.*
7. *Oral fluid and breath analytical devices are being developed. These devices should be studied by law enforcement, crime laboratories, and academics to gauge their ability to assist officers with detecting impaired drivers. Additionally, further studies should be conducted to determine if oral fluid is a suitable medium for collection of a chemical test sample pursuant to CVC Section 23612.*

## California Highway Patrol Recommendations:

In addition to the IDTF recommendations, the CHP has proposed the following recommendations for consideration:

1. *The state should require coroners and medical examiners to perform drug and alcohol testing for all fatally injured drivers, passengers, and*

*pedestrians involved in traffic crashes. The results should continue to be reported to the CHP.*

- 2. Law enforcement agencies with traffic enforcement responsibilities should develop and implement law enforcement phlebotomy programs for the purposes of securing timely blood samples and preserving evidence of impairment.*
- 3. Codify the use of oral fluid drug screening devices making them analogs to preliminary alcohol screening devices used for roadside screening, refer to CVC Section 23612(h) and 23612(i) for additional information.*
- 4. The state should establish an ongoing Impaired Driving Working Group, headed by the California OTS, which should include the CHP, California Department of Justice (DOJ), California DMV, and others as determined by the California OTS, for the purposes of improving processes, identifying areas of need, and highlighting funding priorities for the California OTS and the CHP's respective grant programs.*

# REPORT TO THE LEGISLATURE ON THE IMPAIRED DRIVING TASK FORCE

## Introduction

On October 3, 2017, Impaired Driving Task Force (IDTF) convened for the first of ten meetings. Pursuant to California Vehicle Code (CVC) Section 2429.7, the IDTF was charged with developing, "...recommendations for best practices, protocols, proposed legislation, and other policies that will address the issue of impaired driving, including driving under the influence of cannabis and controlled substances. The task force shall also examine the use of technology, including field testing technologies and validated field sobriety tests, to identify drivers under the influence of prescription drugs, cannabis, and controlled substances. The task force shall include, but is not limited to, the commissioner, who shall serve as chairperson, and at least one member from..." specified experts and stakeholder groups, including:

- The California Office of Traffic Safety (OTS).
- The National Highway Traffic Safety Administration (NHTSA).
- Local law enforcement.
- District attorneys.
- Public defenders.
- California Association of Crime Laboratory Directors.
- California Attorneys for Criminal Justice.
- The California Cannabis Research Program, known as the Center for Medicinal Cannabis Research, authorized pursuant to Section 11362.9 of the Health and Safety Code.
- An organization that represents medicinal cannabis patients.
- Licensed physicians with expertise in substance abuse disorder treatment.
- Researchers with expertise in identifying impairment caused by prescription medications and controlled substances.
- Nongovernmental organizations committed to social justice issues.
- A nongovernmental organization that focuses on improving roadway safety.

The main body of the IDTF heard presentations from experts regarding contemporary impaired driving issues. Given the scope of the issues discussed, the IDTF formed three subcommittees for the purpose of exploring specific issues

within California's Driving Under the Influence (DUI) process. The following are the subcommittees that were created:

- Best Practices and Protocols
- Education and Prevention
- Technology, Research and Data

Each subcommittee generated a series of recommendations. Although each subcommittee met separately and generated a series of recommendations, there was substantial cross-over between the subcommittee recommendations. As such, CHP staff merged like recommendations which were presented, discussed, modified, and approved by the IDTF.

The following report provides background related to the recent history of cannabis in California, drug impaired driving investigations, California specific enforcement and education efforts, national findings and recommendations, notable IDTF presentations, subcommittee recommendations with background, and the approved IDTF recommendations.

## **Cannabis in California**

In 1996, California voters approved Proposition (Prop) 215, the Compassionate Use Act (CUA), which legalized the use, possession, and cultivation of cannabis by patients with a physician's recommendation, for treatment of cancer, anorexia, acquired immunodeficiency syndrome, chronic pain, spasticity, glaucoma, arthritis, migraine, or "any other illness for which marijuana provides relief." In January 2003, Senate Bill (SB) 420, Medical Marijuana, established an identification card system for medical cannabis patients and permitted the creation of non-profit collectives for the purposes of providing cannabis to patients. In 2015, Assembly Bill (AB) 266, Medical Marijuana, enacted the Medical Marijuana Regulation and Safety Act MMRSA, which created a licensing and regulatory structure for administering a medical cannabis system. Additionally, AB 266 established the Bureau of Medical Marijuana Regulation and the Medical Marijuana Regulation and Safety Act (MMRSA). In November 2016, California voters passed Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), which permitted adults 21 years of age and over to possess and grow specified amounts of marijuana for recreational use. The passage of the AUMA did not repeal the previous medical cannabis protections enacted by the passage of the Prop. 215 CUA or the MMRSA.

Additionally, the AUMA allowed for the sale and taxation of recreational marijuana, beginning in 2017.

Enacted in 2017, SB94, the Medicinal and Adult-Use Cannabis regulation and Safety Act, repealed and replaced the MMRSA and incorporated the provisions of the AUMA, creating a comprehensive system designed to implement and tax the sale and use of adult-use (or recreational) and medicinal cannabis in California. This new regulatory system assigned new responsibilities to existing agencies, renamed BMMR to the Bureau of Cannabis Control (BCC), and mandated BCC, California Department of Public Health, and California Department of Food and Agriculture to draft administrative regulations for the purposes of providing a regulatory framework for a legal medicinal cannabis and adult-use cannabis.<sup>1</sup>

In addition to the cannabis control agencies, other state and local government agencies were affected by the legalization of cannabis. Specific to the purposes of IDTF, state and local law enforcement have been challenged to respond to possible increases in cannabis and other drug impaired driving.

### **Drug Impaired Driving Investigations**

Drug impaired driving has long been a challenge for law enforcement. In the early 1970s, officers with the Los Angeles Police Department (LAPD) began observing drivers who appeared impaired, but when tested, had a low or zero blood alcohol concentration. These officers began to suspect the impairment they were observing was caused by drugs.

The LAPD collaborated with medical doctors, research psychologists, and other professionals to develop a simple, standardized procedure for recognizing impairment caused by drugs. Their efforts culminated in the development of a multistep protocol which led to the creation of the Drug Evaluation and Classification Program (DECP).

This new protocol, which eventually became known as the Drug Recognition Evaluator (DRE) protocol, categorized drugs according to certain shared symptomatology. Today, these drug categories include central nervous system (CNS) depressants, CNS stimulants, hallucinogens, phencyclidine and its analogs, narcotic analgesics, inhalants, and cannabis. Drugs from each of

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<sup>1</sup> At the time this report was drafted, all three cannabis regulatory agencies were working toward merging their duties and functions into one agency. However, the merger has not been completed.

these categories can affect the central nervous system and impair a person's normal faculties, including their ability to safely operate a motor vehicle.

The LAPD DRE program attracted the attention from NHTSA in the early 1980s. During the following years, NHTSA, research groups, and others examined the DRE protocol. The studies demonstrated that a properly trained DRE can successfully identify drug impairment and accurately determine the category of drugs causing such impairment.<sup>2</sup>

In 1987, NHTSA began conducting pilot programs in Arizona, Colorado, New York, and Virginia. Utah, California, and Indiana were added to the pilot program in 1988. Beginning in 1989, NHTSA, with assistance from the International Association of Chiefs of Police (IACP), expanded the DECP across the country.

In 1991, the CHP was designated as the DECP coordinator for California and began training CHP officers and local law enforcement statewide with the assistance of grant funding from the California OTS.

Today, all 50 states, the District of Columbia, Canada, and others participate in the DECP. With support from the DECP coordinators, the IACP, in conjunction with NHTSA, facilitates the program nationally as well as internationally.

## **California Enforcement and Education Efforts**

### *California Highway Patrol*

Since its inception, California's DECP has expanded to encompass Standardized Field Sobriety Tests (SFST), Advanced Roadside Impaired Driving Enforcement (ARIDE), Drug Recognition Evaluator (DRE), associated instructor courses, and the Drug Impairment Training for Educational Professionals (DITEP). The CHP teaches and facilitates hundreds of DECP courses each year with assistance from allied law enforcement agencies throughout California.

The SFST is a comprehensive course designed to increase the ability of officers to detect impairment in drivers and conduct a thorough investigation. The course focuses on impaired driving detection, investigation, and administration of the three-test SFST battery (including horizontal gaze nystagmus, one leg stand, and the walk-and-turn tests), which has been shown by NHTSA to have an excellent probability of detecting impairment.

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<sup>2</sup> <https://www.theiacp.org/drug-recognition-experts-dres>

The ARIDE course was created to address the gap in training between the SFST and DRE training. The ARIDE course bridges the gap between these two courses through a review of SFST administration, providing general information related to drug-impairment, and promoting the use of DRE trained officers. Currently, 97 percent of CHP officers and sergeants have received ARIDE training.

The DRE course is the most in depth and advanced course in the SFST, ARIDE, and DRE training series. The DRE course consists of a 72-hour classroom course, 30 hours of field certifications, and a final knowledge examination. Once certified, DRE officers must complete at least four evaluations every two years and complete one 8-hour recertification course.

The DITEP program was developed by IACP and NHTSA after the 2003 National Survey on Drug Use and Health estimated 19.5 million Americans, age 12 or older, had used an illegal drug or misused a legal prescription during the previous month. The DITEP program provides school administrators and nurses with a systematic approach to recognizing and evaluating individuals in the academic environment who may be abusing or be impaired by drugs, both legal and illegal, in order to provide early recognition and intervention.

In addition to the DECP, the CHP, in partnership with OTS, provides several public education programs designed to warn the public about the dangers of impaired driving, including:

- Every 15 Minutes
- Sober Graduation
- Start Smart
- Impact Teen Driving
- Public education booths focused on impaired driving

#### California Office of Traffic Safety

California Office of Traffic Safety to provide language related to impaired driving prevention efforts.

#### California Department of Motor Vehicles

California Department of Motor Vehicles to provide language related to impaired driving prevention efforts.

### Friday Night Live

Friday Night Live to provide language related to impaired driving prevention efforts

### Recording Artists Against Drunk Driving

Recording Artists Against Drug Driving to provide language related to impaired driving prevention efforts

### Other Stakeholders Groups

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## **State and National Findings and Recommendations**

Cannabis use continues to increase nationally. At the time this report was drafted, nearly every state, district, and territory have either legalized the medicinal and/or recreational use of cannabis; or decriminalized the use of cannabis.

As cannabis continues to be legalized at the state level, there are some indications cannabis use is becoming more prevalent, especially among drivers.

The NHTSA conducted National Roadside Surveys (NRS) in 1973, 1986, 1996, 2007 and 2013. These surveys questioned volunteer drivers at the time of driving regarding their drug and alcohol use, and request breath and blood samples for testing.

The 2013-2014 NRS found that 22.3 percent of daytime drivers and 22.5 percent of nighttime drivers tested positive for drugs (both legal and illegal). It is important to note, a positive result does not necessarily mean the driver was impaired at the time of testing, only that the drug was present in driver's body. Delta-9-tetrahydrocannabinol (THC) was the most frequent drug found, with 8.7 percent of daytime drivers and 12.7 percent of nighttime drivers testing positive. This represented an increase from the 2007 NRS which found 11.0 percent of daytime drivers and 13.4 percent of nighttime drivers test positive for drugs. From 2007 to 2014, drivers testing positive for one drug increased from 16.3 percent to 20.2 percent; THC positive drivers increased from 8.7 percent to 12.6 percent; and one illegal drug increased from 12.0 percent to 15.0 percent.<sup>3</sup>

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<sup>3</sup> [https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/812118-roadside\\_survey\\_2014.pdf](https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/812118-roadside_survey_2014.pdf)

The National Institute on Drug Abuse noted in 2016 more than 12.2 million Americans drove after using marijuana, cocaine, heroin, hallucinogens, inhalants, or methamphetamines. Among people killed in motor vehicle crashes, 43.6 percent of drivers tested positive for at least one illegal drug. Furthermore, more than half tested positive for at least two or more illegal drugs. Approximately 22.2 million Americans use marijuana at least once per month.<sup>4</sup>

The Substance Abuse and Mental Health Services Administration's, Key Substance Use and Mental Health Indicators in the United States: Results from the 2018 National Survey on Drug Use and Health reported that 53.2 million Americans, aged 12 and older, used or misused: marijuana; prescribed pain reliever, tranquilizer, sedative, or stimulant; hallucinogens; cocaine; inhalants; methamphetamine; or heroin. Marijuana use accounts for 43.5 million users, all other drugs 9.7 million, and the use of marijuana increased significantly from 2017 to 2018 from 15.0 percent to 15.9 percent. The study also found adults aged 26 and older, who use marijuana once per day increased from 1.9 percent in 2015 to 2.8 percent in 2018 and monthly use increased from 6.5 percent in 2015 to 8.6 percent in 2018.<sup>5</sup>

With the increase in legalization/decriminalization, NHTSA, in conjunction with Colorado, released the Colorado DUID Picture<sup>6</sup> in March of 2018. Colorado fatalities related to cannabis use has seen an increase of 31 percent since the legalization of cannabis. The report included two recommendations:

- The Colorado General Assembly enacted House Bill 13-1114, Concerning Penalties for Person Who Drive While Under the Influence of Alcohol or Drugs, which allowed any DUI prosecutor to obtain a sample a driver's blood and prosecute if it contained five nanograms or more of THC, per milliliter in whole blood, as shown by analysis of the defendant's blood.
- Additionally, the report recommended the Colorado General Assembly require ARIDE training as a mandatory training element in future Colorado POST; and encouraged local law enforcement agencies to have all peace officers trained in ARIDE, to increase and enhance the ability of law enforcement officers in detecting impaired driving.

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<sup>4</sup> <https://www.drugabuse.gov/drugs-abuse>

<sup>5</sup> <https://www.samhsa.gov/data/quick-statistics>

<sup>6</sup> <https://www.nhtsa.gov/es/document/colorado-duid-picture-presentation>

The Washington Traffic Safety Commission released a report entitled, Marijuana Use, Alcohol Use, and Driving in Washington State, Emerging Issues with Poly-Drug Use on Washington Roadways, April 2018, found the number of drivers involved in fatal crashes testing positive for more than one drug (poly-drug) was more than double the number of alcohol-only drivers, and was five times higher than the number of THC-only drivers. Additionally, approximately one out of every five drivers may be impaired by marijuana, an increase from one out of every ten drivers in 2012. In fatal crashes, 44 percent of drivers tested positive for two or more substances, with an alcohol and THC combination being the highest for combined drugs. The Revised Code of Washington, Section 46.52065 requires a blood sample be taken from all drivers and all pedestrians who are killed in any traffic [crash], where a fatality occurred, within four hours, for toxicology testing of alcohol and drugs. Within one year of legalization, Washington has seen an increase of drivers testing positive for THC<sup>7</sup> from 14.6 percent to 21.8 percent.

The Governors Highway Safety Association (GHSA), Drug-Impaired Driving, Marijuana and Opioids Raise Critical Issue for States, 2018, reported from 2006 to 2016 drivers testing positive for drugs increased from 27.8 percent to 43.6 percent while drivers testing positive for alcohol decreased from 41 percent to 37.9 percent.

In the report, the GHSA recommended implementing public education campaigns for the public, physicians, pharmacists, prosecutors, and judges. Additionally, the GHSA encouraged investing in forensic laboratories to provide adequate testing for DUIDs cases, to test all fatally injured drivers, and to test all surviving drivers involved in fatal crashes for drugs and alcohol. The GHSA also recommended research to develop a message based specifically on how long drivers should wait before driving after using cannabis. The GHSA also requested NHTSA develop and publish a list of recommended, approved oral fluid devices for states to use, and national recommendations for standard laboratory testing procedures.<sup>8</sup>

The March 2019 Report from the Impaired Driving Safety Commission in Michigan found from 2013 to 2017 drug involved crashes increased 44 percent and fatalities increased 56 percent. Crashes involving drivers testing positive for THC increased 120 percent. Recommendations from this report included expansion of DRE and SFST programs, while making ARIDE mandatory for all licensed

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<sup>7</sup> [http://wtsc.wa.gov/wp-content/uploads/dlm\\_uploads/2018/05/Marijuana-and-Alcohol-Involvement-in-Fatal-Crashes-in-WA\\_FINAL.pdf](http://wtsc.wa.gov/wp-content/uploads/dlm_uploads/2018/05/Marijuana-and-Alcohol-Involvement-in-Fatal-Crashes-in-WA_FINAL.pdf)

<sup>8</sup> <https://www.ghsa.org/issues/drug-impaired-driving>

officers. Additionally, the report recommended expanded training for prosecutors to prepare them for DUID prosecutions, expanded public education regarding the dangers of impaired driving, and the recommendation for a Drugged-Driving Commission to review new research and the developing legislation in other states related to DUID.<sup>9</sup>

The NHTSA Region Nine DUID Draft Blueprint (Version 40) was presented to the IDTF at the January 2020 meeting. The report offered a host of recommendations that could be undertaken by states to reduce impaired driving incidents. The Blueprint recommends increasing public education awareness campaigns related to impaired driving; increasing the numbers of officers trained in SFST, ARIDE, and DRE; increasing the percentage of DRE evacuations entered into the National DRE Tracking System; providing additional education and training for prosecutors; implementing electronic search warrant systems to ensure timely collection of blood in DUID cases; increasing the number of DUI checkpoints held; implementing oral fluid drug screening device programs; standardizing forensic toxicology testing standards; improving impaired driving data collection and systems, and increasing communication between law enforcement, crime laboratories, and prosecutors.<sup>10</sup>

### **Impaired Driving Task Force Presentations**

The IDTF members were presented with a variety of topics related to impaired driving in order to better understand impaired driving. Each of these presentations touched on a key aspect of impaired driving and provided necessary information and background to the subcommittees for the purposes of drafting recommendations.

The CHP provided the IDTF with several presentations, including a detailed overview of SFST, ARIDE, and DRE standards and training, including an in-depth look at the DRE 12-step protocol (refer to Annex A for additional information). Additionally, the CHP demonstrated the use of the Dräger and Abbot (formerly Alere) oral fluid drug screening devices.<sup>11</sup>

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<sup>9</sup> [https://www.michigan.gov/documents/msp/Impaired\\_Driving\\_Report\\_650288\\_7.pdf](https://www.michigan.gov/documents/msp/Impaired_Driving_Report_650288_7.pdf)

<sup>10</sup> <https://www.chp.ca.gov/ImpairedDrivingSite/Pages/Final-Public-Notice.aspx>

<sup>11</sup> <https://www.chp.ca.gov/ImpairedDrivingSite/Pages/Final-Public-Notice.aspx>

Director Harmon provided an in-depth look into how Orange County's Crime Laboratory operations, including sample screening, testing, equipment, training, trends, and studies are conducted by laboratory personnel.<sup>12</sup>

Friday Night Live (FNL) staff provided an overview of their program, including efforts to mobilize youth to provide public education and information campaigns related to impaired driving and other issues facing today's youth. The FNL participates in Every 15 Minutes, classroom curriculum, mock trials, and other programs.<sup>13</sup>

Mr. Datig provided an overview of DUI laws and provided information related to specific legal definitions. This included the legal definition of a drug provided by the CVC which includes any substance or combination of substances, other than alcohol, which could so affect the nervous system, brain, or muscles of a person as to impair, to an appreciable degree, their ability to drive a vehicle in the manner that an ordinarily prudent and cautious person, in full possession of their faculties, using reasonable care, would drive a similar vehicle under like conditions.<sup>14</sup>

Dr. Rodda provided an overview of oral fluid testing in Victoria, Australia. Currently, all drivers involved in a motor vehicle crash are required to be tested for DUI/DUID. Dr. Rodda explained in 1996 the Parliamentary Road Safety Committee examined the issue of DUID and made 41 recommendations to the Australian Parliament. They included using roadside and standard laboratory techniques; selecting a device to detect impairment; and using laboratory testing to confirm roadside testing. This led to the creation of a specialty vehicle known as a "Drug Bus" and standardize protocols for roadside drug screening and sample collection for chemical testing. Currently, Australia uses the WIPE II oral fluid device to screen for drugs at the roadside.<sup>15</sup>

Dr. Thomas Marcotte provided an overview of ongoing and planned cannabis impaired driving research. In essence, the studies involve participants who are dosed with THC and then perform driving tasks on a driving simulator. Additionally, the study participants perform selected field sobriety tests for DRE trained officers; perform cognitive/motor performance-based testing

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<sup>12</sup> <https://www.chp.ca.gov/ImpairedDrivingSite/Pages/Final-Public-Notice.aspx>

<sup>13</sup> <https://www.chp.ca.gov/ImpairedDrivingSite/Pages/Final-Public-Notice.aspx>

<sup>14</sup> <https://www.chp.ca.gov/ImpairedDrivingSite/Pages/Final-Public-Notice.aspx>

<sup>15</sup> <https://www.chp.ca.gov/ImpairedDrivingSite/Pages/Final-Public-Notice.aspx>

administered on a tablet; and submit to a variety of blood, saliva, and breath testing.<sup>16</sup>

Dr. Bayliss Camp and Dr. Mark Fox, California Department of Motor Vehicles, Research and Development Branch, presented an overview of a planned impaired driving study that would involve real-world driving at the CHP Academy (made possible by AB 127, Lackey, Driving Under the Influence, research enacted in 2019). The study would involve dosing participants with THC, having officers and driving instructors observe driving behaviors and administer DRE evaluations, and conducting oral fluid and blood testing.<sup>17</sup>

Director Burke provided an in-depth look at how THC is processed in the body. The presentation included a detailed overview of THC absorption, distribution, metabolization, and elimination.<sup>18</sup>

Ms. Katie Kincaid, Director of Public Affairs, and Mr. Peter Gigante, Director of Policy and Research, from Eaze presented their findings on a recent public survey conducted by Eaze related to cannabis use and impaired driving. Eaze is a public platform that consumers can use to access home delivery of cannabis products. The survey included a random sampling of consumers who were over the age of 18, held a valid California driver license, drove regularly, and had used cannabis within the last 30 days.<sup>19</sup>

Mr. Gieringer presented information related to the My Canary application (app) for cellular telephones. Mr. Gieringer explained the app measured a subject's performance on a variety of tests, including: memory, tracking, reaction time, time estimation, and balance. Although the app is no longer available for purchase, Mr. Gieringer encouraged the development and use of similar apps in order for individuals to gauge their impairment before driving.<sup>20</sup>

Dr. Nicholas Lovrich, retired professor, presented an overview of the DRUID app. The DRUID app is a noninvasive and non-chemical test that can be performed in approximately two minutes on a cellular telephone. It requires the individual to complete tasks that test their reaction time, decision making, tracking, hand/eye coordination, time estimation, and balance. The app is currently being evaluated by several major universities throughout the United States.<sup>21</sup>

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<sup>16</sup> <https://www.chp.ca.gov/ImpairedDrivingSite/Pages/Final-Public-Notice.aspx>

<sup>17</sup> <https://www.chp.ca.gov/ImpairedDrivingSite/Pages/Final-Public-Notice.aspx>

<sup>18</sup> <https://www.chp.ca.gov/ImpairedDrivingSite/Pages/Final-Public-Notice.aspx>

<sup>19</sup> <https://www.chp.ca.gov/ImpairedDrivingSite/Pages/Final-Public-Notice.aspx>

<sup>20</sup> <https://www.chp.ca.gov/ImpairedDrivingSite/Pages/Final-Public-Notice.aspx>

<sup>21</sup> <https://www.chp.ca.gov/ImpairedDrivingSite/Pages/Final-Public-Notice.aspx>

Director Murphy presented a draft version of an upcoming blueprint for states addressing best practices, benchmarking, and target setting. Mr. Murphy detailed numerous findings and recommendations, including: legislation; enforcement; toxicology; prosecution; public awareness and education; and the need to improve impaired driving data collection.

## **Subcommittee Recommendations**

### Best Practices

The Best Practices Subcommittee held seven meetings and was chaired by Dr. Albanese and co-chair Mr. Yraceburn. Members included: Ms. Martin, Director Murphy, Mr. Hayes, Mr. Lamm, Ms. Komp, Mr. Gardner, Ms. Kapur, Ms. Zanipatin, Mr. McCullough, Ms. Sher, Dr. Rodda, Mr. James, Ms. Osuna, Dr. Drum, Director Craft, Mr. Holcombe, and Mr. Gates. The subcommittee met and discussed items of interest, and proposed the following recommendations:

- 1. Requiring warning inserts in cannabis exit containers; and signs and posters at point-of-sale and cannabis consumption sites describing cannabis specific driving risks, the risks of underage cannabis use, and the risks of mixing cannabis with alcohol and other psychoactive substances.*
- 2. All traffic law enforcement officers (including police and sheriff department deputies) must receive ARIDE training within one year of being assigned to traffic enforcement and biannual continuing education on impaired driving. Experienced officers not yet trained must receive ARIDE training within one year upon enactment of this requirement.*
- 3. Increase the statewide percentage of DRE trained and certified traffic enforcement officers by four percent of the total number of traffic enforcement officers each year over the next five years. The CHP and OTS will be accountable for reporting accurate numbers of total officers and sergeants trained each year and be responsible for the implementation of this recommendation. An officer certified as a DRE shall receive incentive pay during the time the officer remains certified.*
- 4. Law enforcement must use the best available roadside presumptive screening device and confirmatory tests in the most expedient manner for possible drug and alcohol impaired driving investigations. There should be a standardized, comprehensive testing procedure throughout the state to report accurate data concerning impaired driving. This recommendation shall be implemented within one year.*

5. *Evidence of the driver's impairment is needed in addition to cannabis presence/level to conclude that a driver is impaired (at least in part) from cannabis. Audio/visual body cameras are the preferred devices, but at a minimum, full audio recording should all be part of all SFST.*
6. *Driving schools and the DMV approved traffic school shall add a cannabis education module, which includes a victim impact panel component, to all programs within one year.*
7. *Within two years of being appointed and annually thereafter, all Criminal Justice Officers must receive training which covers addiction, drug abuse, behavior modification, factors contributing to impairment, and bias in arrest/prosecution.*
8. *Within one year of adoption, collect data from those convicted of a cannabis related DUI to develop better methods of screening for, and prevention of, "any drug" DUI violation. Data should be statewide, and guide future revisions in DUI policy.*
9. *Blood should be collected within one to two hours of DUI suspicion, and must include an extended drug panel, with confirmatory and quantitative high-performance liquid chromatography/mass spectrometry or gas chromatography-mass spectrometry for positive results.*
10. *Retail and event organizer license holders shall provide training, similar to responsible beverage server requirements, to persons serving cannabis. Additionally, cannabis consumption sites shall provide information regarding locally available alternate transportation to all consumers.*

### Education and Prevention

The Education and Prevention subcommittee held six meetings and was chaired by Ms. Travis and cochair Ms. Lorz. Members included: Ms. Ashford, Ms. Meluso, Mr. Tovar, Mr. Kooler, Ms. Ajax, Ms. Goodwin, and Ms. Bowie. The subcommittee met and discussed items of interest, and proposed the following recommendations:

1. *Promote responsible sales and consumption practices to all cannabis retailers, dispensaries, and home delivery services, through responsible retailer training similar to alcohol sales.*
2. *Provide educational information for consumers such as pamphlets, posters, and other information related to the responsible usage of*

*cannabis and other drugs, including but not limited to: cannabis dispensers, retailers, pharmacy, any other place deemed appropriate.*

- 3. Provide age appropriate education for youth and adults on the effects of the use of cannabis and the impact of impaired driving.*
- 4. Expand educational opportunities related to impaired driving for the legal and judiciary system.*
- 5. Provide medical and pharmacy personnel training and education related to impaired driving.*
- 6. Create guidelines for advertisers of cannabis and cannabis related products to include clear and concise messages, including the legal age and risk of DUID.*

#### Technology, Research and Data

The Technology, Research and Data subcommittee held eight meetings and was chaired by Ms. Burke and cochair Mr. Marcotte. Members included: Mr. Gieringer, Director Harmon, Chief Cooley, Mr. McMillian, Mr. Fitzgerald, and Mr. MacGregor. The subcommittee discussed gaps in data collection, the need for more research impaired driving research, laboratory standardization, and oral fluid screening devices. The subcommittee hosted presentations from the California DMV and the DUI Management Information System report; the CHP and the statewide Integrated Traffic Records System, and the Fatality Analysis Reporting System; the California DOJ and Arrest Data; the California DOJ and Crime Laboratory Standardization Efforts; the California District Attorneys Association and the Courts and New Technology; and Alabama Department of Forensic Sciences and Oral Fluid Testing. The following recommendations were made:

- 1. The state should establish baseline DUID data prior to legalization of cannabis by the AUMA, based on Sections 23152 and 23153 of the CVC (including subsection) data.*
- 2. Currently, there are no standardized reporting forms for collecting driving under the influence of drugs data. As such, the subcommittee recommends developing a standardized approach to collecting law enforcement (arrest), prosecution (case disposition), and laboratory results (scope of analysis).*

3. *Further invest in research to assess existing methods and to identify new measures to detect drug impaired driving.*
4. *Toxicology laboratories throughout California should follow a standardized procedure to develop and validate methods for analyzing drugs in bodily fluid.*
5. *A research project analyzing drug trends should be undertaken by the state of California. The project would request selected laboratories with specified equipment, examine all, or a randomized selection of, blood results taken from DUID incidents, using a standardized procedure, for a specified time period. These results would be used to identify trends and provide information to policy makers.*

### **Impaired Driving Task Force Recommendations**

After the subcommittees completed their recommendations, CHP support staff merged like recommendations which were then presented to the IDTF for review, discussion, and edits. The following recommendations were approved by the IDTF.

#### Data Recommendations:

Statement: Current DUI and DUID data is insufficient for clearly informing public policy regarding the prevalence and longitudinal changes in impaired driving related violations and crashes. There is a lack of standardized reporting forms for collecting DUI and DUID data and no one centralized collection point where all DUI and DUID data is collected.

Recommendation(s): Legislation is required to establish standardized reporting of DUID arrest and disposition data, in part based on CVC Sections 23152 and 23153 and subsection data. Standardized reporting must include law enforcement (arrest), prosecution/court information (case disposition), and toxicology results (scope of analysis). Additionally, a single state agency should be designated to collect and analyze all DUI and DUID data and report the information annually. Suggested designee agencies could include the California DMV, which collects and publishes an annual DUI Management Information Systems Report; the California DOJ, which collects arrest statistics and compiles the annual Crime in California report; or the CHP, which collects motor vehicle crash information, including impaired driving crash information.

1. *The state should track all DUI and DUID toxicology outcomes from all laboratories, including the number of samples submitted, the number of samples tested, and all sample results.*
2. *The state should track all DUI and DUID arrest outcomes, including case filing charges, diversion outcomes, plea agreements, trial outcomes, and the final case disposition.*
3. *The state should track all DUI and DUID involved crashes.*
4. *The state should analyze all collected DUI and DUID data for the purposes of developing better methods to screen for and prevent DUI and DUID. The data used in the analysis should be published in an annual statewide report and guide the future direction of DUI policy decisions.*

#### Research Recommendations:

Statement: There is an extensive history of utilizing SFST and DRE evaluations, and breath and blood tests, to evaluate drivers suspected of being impaired, particularly with respect to alcohol-related impairments. However, there are other substances that can impair driving which are much less researched.

Recommendation(s): The state should support significant research efforts to expand both the validation of existing, and development of new, approaches for identifying impaired driving by various substances, including illegal and legal substances which includes cannabis, cannabis products, prescription, and over the counter medications.

5. *The state should continue to fund impaired driving research projects for the purpose of learning new information related to how best to detect and test DUI and DUID drivers.*
6. *New DUI and DUID research studies should consider key issues including the time elapsed since the substance use, route of administration, dosage, and most importantly, how test results relate to impaired driving which includes the best methods to identify impaired drivers.*

7. Behavioral, physiological, and chemical testing research should address issues of validity and reliability, performance under various environmental conditions, and follow best practices for test development as established by relevant academic and/or professional entities.
8. The state should undertake a research project analyzing drug prevalence and trends with respect to impaired driving. The project would request selected laboratories, with specified equipment, to examine all, or a randomized selection of, blood samples taken from DUI incidents for Tier I drugs, using a standardized procedure, for a specified time period. These results will identify trends and provide information to policy makers. The state should publish this report and use it to guide the future direction of DUI policy decisions.

#### Toxicology Recommendations:

Statement: Current forensic toxicology practices do not provide standardized statewide data making it difficult to understand the prevalence of drug-impaired driving issues in California, including the prevalence of drivers who are fatally injured in crashes.

Recommendation(s): Forensic toxicology laboratories should be accredited by a nationally-recognized accrediting body and follow standards currently recommended by the National Safety Council's Alcohol, Drugs, and Impairment Division.

9. The state should provide additional funding to state and local government crime laboratories conducting forensic toxicology to purchase more efficient and sensitive testing equipment, and to provide funding for personnel to conduct forensic toxicology testing.
10. The state should establish well defined evidence collection procedures for DUI, similar to the procedures found in CCR Title 17, related to alcohol.
11. Crime laboratories conducting forensic toxicology testing should test blood samples for alcohol and all Tier I compounds,<sup>22</sup> in at least one

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<sup>22</sup> As defined by Society of Forensic Toxicologists

*recommended matrix, at the prescribed threshold concentrations, for both screening and confirmation testing.*

- 12. If blood is to be collected as part of a DUI or DUID investigation, it should be collected as soon as possible after the arrest, and should include an extended drug panel, with confirmatory and quantitative high-performance liquid chromatography–mass spectrometry or gas chromatography–mass spectrometry used to confirm positive results.*
- 13. Crime laboratories conducting forensic toxicology testing should continue to evaluate National Safety Council recommendations related to forensic toxicology testing, and when new standards are recommended laboratories should strive to implement those recommendations.*
- 14. Drugs affect people differently depending on the type of drug consumed, a person’s tolerance, the method of ingestion, and other factors. As such, a per se limit for drugs, other than ethanol, should not be enacted at this time. However, the state should continue to advance research in this area in the event science finds it can establish drug per se limits.*

#### Cannabis Consumer Education Recommendations:

Statement: There is an important need to educate all demographics regarding some of the potential risks of cannabis and cannabis products. Additionally, the retail industry for mass marketing of cannabis products is new. The advertising and marketing of cannabis products, especially with California’s on-demand life style for home delivery services, is growing rapidly with little or no consumer education related to the products being sold.

Recommendation(s): California is made up of a large, diverse population of cultures, ethnicities, age groups, and social normality; with that a wide range of educational backgrounds will need to be considered. The state should require the appropriate sales and advertising warning information, including information related to the dangers of impaired driving.

- 15. The state should provide responsible sales and consumption practices training to all cannabis retailers, cannabis consumption lounges,*

*cannabis event organizers, cannabis license holders, and cannabis home delivery services, similar to responsible alcohol beverage service/sales training.*

*16. The state should provide guidelines for advertisers displaying cannabis related products which should include the legal consumption age for cannabis and information related to the risks of driving impaired.*

*17. The state should require cannabis retailers, cannabis consumption lounges, cannabis event organizers, cannabis license holders, and cannabis delivery services to provide educational information to consumers, which could include pamphlets, posters, digital messaging, and/or other appropriate mediums related to the responsible use of cannabis and other drugs. Messaging should include:*

- a. Warnings regarding the dangers of impaired driving, the risks of underage cannabis use, and possible risks associated with polysubstance use.*
- b. Cannabis consumption sites should provide information regarding locally available alternate transportation to all consumers.*

*18. The state should provide age appropriate education for youth and adults on the effects of the use of cannabis and impact of impaired driving.*

*19. The state should expand training opportunities related to impaired driving for the legal and judiciary system, including:*

- a. Within two years of being appointed and annually thereafter, all Criminal Justice Officers (judges, defense attorneys, and prosecutors) should receive training which covers addiction, drug abuse, behavior modification, factors contributing to impairment, and bias in arrest/prosecution.*

*20. The state should provide training to persons working in the medical and pharmacy fields regarding the dangers of impaired driving by alcohol, cannabis, prescription drugs and impairing OTC drugs.*

*21. The California DMV should require traffic schools to add information related to the dangers of cannabis and drug impairment to their curriculum and include a victim impact panel component with their courses.*

Law Enforcement Recommendations:

Statement: There is a strong need for all law enforcement agencies to continue training officers to detect and remove impaired drivers before they are involved in a crash. Detection and removal of impaired drivers from the roadway is paramount to reducing fatal and injury impaired driving crashes.

Recommendation(s): Both NHTSA and POST support the SFST, ARIDE, and DRE programs, which build upon the previous certifications and advance an officer's skills related to identifying impaired drivers. Additionally, officers should use the most advanced and sensitive roadside screening devices in order to increase their ability to detect impaired drivers.

*22. The Commission on POST should require SFST training (16 hours) be taught in all law enforcement academies in California.*

*23. All law enforcement personnel assigned to traffic enforcement responsibilities should receive ARIDE training within one year of being assigned and bi-annual continuing education related to impaired driving.*

*24. The CHP and the California OTS should make all efforts to increase the number of DRE trained officers statewide by four percent over the next five years.*

*25. An officer certified as a DRE should receive incentive pay during the time the officer remains certified.*

*26. Law enforcement should use the best available roadside presumptive screening devices and confirmatory tests in the most expedient manner for possible drug and alcohol impaired driving investigations.*

*27. Law enforcement should encourage the use of mobile video/audio recording devices and body worn cameras to record/capture impaired driving incidents and investigations, whenever practical.*

28. Oral fluid and breath analytical devices are being developed. These devices should be studied by law enforcement, crime laboratories, and academics to gauge their ability to assist officers with detecting impaired drivers. Additionally, further studies should be conducted to determine if oral fluid is a suitable medium for collection of a chemical test sample pursuant to CVC Section 23612.

## **California Highway Patrol Recommendations**

In addition to the IDTF recommendations, the CHP has proposed the following recommendations for consideration. These recommendations should provide additional insights into California's impaired driving problem and enhance the ability of officers to remove impaired drivers from the roadway before they are involved in a crash.

29. The state should require coroners and medical examiners to perform drug and alcohol testing for all fatally injured drivers, passengers, and pedestrians involved in traffic crashes. The results should continue to be reported to the CHP.

30. Law enforcement agencies with traffic enforcement responsibilities should develop and implement law enforcement phlebotomy programs for the purposes of securing timely blood samples and preserving evidence of impairment.

31. The state should codify the use of oral fluid drug screening devices making them similar to preliminary alcohol screening devices used for roadside alcohol screening, refer to CVC Section 23612(h) and 23612(i) for additional information.

32. The state should establish an ongoing Impaired Driving Working Group, hosted by the OTS, which should include the CHP, DOJ, DMV, and others as determined by OTS, for the purposes of improving processes related to impaired driving, identifying areas of need, and highlighting funding priorities for the California OTS and the CHP's respective grant programs.

## **Conclusion**

California has one of the largest and most diverse populations in the United States, and California's roadways are used every day for travel, business, commerce, and leisure. In order to safeguard the public while they travel, the CHP continues to use a combination of education, enforcement, and public partnerships, such as the IDTF, to explore new and innovative solutions to mitigate the impact of contemporary traffic safety issues, including impaired driving. Through cooperation between state agencies, traffic safety stakeholders, industries, advocates, and others, it is the hope of the IDTF membership these recommendations can be used to mitigate and reduce the negative impacts of impaired driving.

# ANNEX A – Drug Recognition Evaluator 12-Step Protocol <sup>23</sup>

1. Breath Alcohol Test-The arresting officer reviews the subject's breath alcohol concentration (BrAC) test results and determines if the subject's apparent impairment is consistent with the subject's BrAC. If so, the officer will not normally call a DRE. If the impairment is not explained by the BrAC, the officer requests a Drug Recognition Evaluation (DRE) evaluation.

2. Interview of the Arresting Officer-The DRE begins the investigation by reviewing the BrAC test results and discussing the circumstances of the arrest with the arresting officer. The DRE asks about the subject's behavior, appearance, and driving. The DRE also asks if the subject made any statements regarding drug use and if the arresting officer(s) found any other relevant evidence consistent with drug use.

3. Preliminary Examination and First Pulse-The DRE conducts a preliminary examination to ascertain whether the subject may be suffering from an injury or other condition unrelated to drugs. Accordingly, the DRE asks the subject a series of standard questions relating to the subject's health, recent ingestion of food, and consumption of alcohol and/or drugs including prescribed medications. The DRE observes the subject's attitude, coordination, speech, breath, and face. The DRE also determines if the subject's pupils are of equal size, and if the subject's eyes can follow a moving stimulus and track equally. The DRE also looks for horizontal gaze nystagmus (HGN) and takes the subject's pulse for the first of three times. The DRE takes each subject's pulse three times to account for nervousness, check for consistency, and determine if the subject is getting worse or better. If the DRE believes that the subject may be suffering from a significant medical condition, the DRE will seek medical assistance immediately. If the DRE believes that the subject's condition is drug-related, the evaluation continues.

4. Eye Examination -The DRE examines the subject for HGN, vertical gaze Nystagmus (VGN), and for a lack of ocular convergence. A subject lacks convergence if their eyes are unable to converge toward the bridge of their

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<sup>23</sup> <https://www.theiacp.org/12-step-process>

nose when a stimulus is moved inward towards the nose. Depressants, inhalants, and dissociative anesthetics, the so-called "DID drugs," may cause HGN. In addition, the DID drugs may cause vertical gaze nystagmus when taken in higher doses for that individual. The DID drugs, as well as cannabis (marijuana), may also cause a lack of convergence.

#### 5. Divided Attention Psychophysical Tests

The DRE administers four psychophysical tests: the Romberg Balance, the Walk and Turn, the One Leg Stand, and the Finger to Nose tests. The DRE can accurately determine if a subject's psychomotor and/or divided attention skills are impaired by administering these tests.

#### 6. Vital Signs and Second Pulse

The DRE takes the subject's blood pressure, temperature, and pulse. Some drug categories may elevate the vital signs. Others may lower them. Vital signs provide valuable evidence of the presence and influence of a variety of drugs.

#### 7. Dark Room Examinations

The DRE estimates the subject's pupil sizes under three different lighting conditions with a measuring device called a pupilometer. The device will assist the DRE in determining whether the subject's pupils are dilated, constricted, or normal. Some drugs increase pupil size (dilate), while others may decrease (constrict) pupil size. The DRE also checks the eyes for reaction to light. Certain drugs may slow eye reaction to light. Finally, the DRE examines the subject's nasal and oral cavities for signs of drug ingestion.

#### 8. Examination for Muscle Tone

The DRE examines the subject's skeletal muscle tone. Certain categories of drugs may cause the muscles to become rigid. Other categories may cause the muscles to become very loose and flaccid.

#### 9. Check for Injection Sites and Third Pulse

The DRE examines the subject for injection sites, which may indicate recent use of certain types of drugs. The DRE also takes the subject's pulse for the third and final time.

## 10. Subject's Statements and Other Observations

The DRE typically reads Miranda, if not done so previously, and asks the subject a series of questions regarding the subject's drug use.

## 11. Analysis and Opinions of the Evaluator

Based on the totality of the evaluation, the DRE forms an opinion as to whether the subject is impaired. If the DRE determines that the subject is impaired, the DRE will indicate what category or categories of drugs may have contributed to the subject's impairment. The DRE bases these conclusions on their training, experience, and the DRE Drug Symptomatology Matrix. While DREs use the drug matrix, they also rely heavily on their general training and experience.

## 12. Toxicological Examination

After completing the evaluation, the DRE normally requests a urine, blood, and/or saliva sample from the subject for a toxicology lab analysis. Nothing in or about the DRE protocol is new. The DRE protocol is a compilation of tests that physicians have used for decades to identify and assess alcohol- and/or drug-induced impairment.