

- ▣ Drugged Driving
- ▣ Massachusetts Trial Court
- ▣ New England Association of Drug Court Professionals
- ▣ November 17, 2016, Marlboro, Massachusetts
- ▣ Judge Mary A. Celeste (ret.)
- ▣ *The following presentation may not be copied in whole or in part without the written permission of the author*
- ▣ [Overview](#)
- ▣ The Drug Problem
- ▣ Types of Drugs
- ▣ What is Drugged Driving
- ▣ Drugged Driving Laws
- ▣ Marijuana & Opiate Driving
- ▣ Developing Issues
- ▣ The Drug Problem
  - Increased Prescriptions Use and Abuse
  - Aging Population
  - Illegal & Synthetic/Designer Drugs
  - Medical/Recreational Marijuana
  - Opioid Epidemic

- ▣ Increased Prescriptions Use and Abuse
  - Composing Only 5% of the World Population, Americans Take 50% of All Pharmaceutical Drugs
  - U.S. is responsible for approximately 95% of all the Oxycodone used in the world today.
- ▣ Pain “killers”
- ▣ Some 1.9 million Americans are now addicted to or dependent on painkillers.
- ▣ From 1999 to 2014, about 165,000 people died of overdoses.
- ▣ Drug Use in New England
- ▣ **None** of the New England states are among the nation’s highest for non-medical consumption of prescription painkillers
- ▣ **Vermont, Massachusetts and New Hampshire are leading consumers of alcohol, marijuana and cocaine**, with Maine and Connecticut also being leaders in two of those three.



## 2015

### New England Opiate Crisis

- ▣ Heroin, fentanyl and other drugs have killed more than 2,000 people in New England 2015
- ▣ Opioid Prescriptions
- ▣ Opioid prescriptions have grown by 140% U.S. since the mid-1990s
- ▣ In 2015 Massachusetts 4.6 million prescriptions for opioids
- ▣ Population for Massachusetts 2015 6.79 million
- ▣ Statistics show that 4 of 5 heroin addicts were first addicted to prescription drugs
  - ▣ 2016 Year of the Opioid
- ▣ CDC warns doctors about the dangers of prescribing opioid painkillers
- ▣ FDA is reassessing its policies on opioid medications
- ▣ Senate has passed legislation that would expand drug abuse treatment and prevention
- ▣ Feds Give States \$53M to Fight Opioid Epidemic
- ▣ The President's FY 2017 Budget \$1 billion in new mandatory funding over two years to **expand access to treatment** for prescription drug abuse and heroin use
- ▣ DEA is pushing physicians for more responsible prescribing.
- ▣ The Departments of Veterans Affairs and Defense already have opioid policies for their patients.

▣ Comprehensive Addiction and Recovery Act (CARA), 2016

- ▣ Will significantly strengthen drug courts and veterans treatment courts by expanding access to the overdose reversal drug naloxone.
- ▣ Will also provide new funding to expand access to evidence-based treatment, including MAT
- ▣ Will improve opioid safety measures at the Department of Veterans Affairs medical centers

▣ Aging Population

Elderly abuse Rx drugs 3xs as frequently as the general population.

Elderly consume 25% of all Rx medications taken in U.S.

▣ Types of Drugs

1. Marijuana/Hallucinogenics
2. Stimulants
3. Depressants
4. Antidepressants
5. Narcotics
6. Sleep Aids
7. Synthetic/Designer Drugs

- ▣ Cannabis
- ▣ Cannabis is a genus of flowering plants that includes three putative varieties, cannabis sativa, cannabis indica, and cannabis ruderalis. These three taxa are indigenous to Central Asia, and South Asia (female).
- ▣ Marijuana-the resinous substance is known as Hashish.
- ▣ Active ingredient THC (delta-9-tetrahydrocannabinol).
- ▣ Not Your Mother's Marijuana

The THC potency 1970's **less than 1%**

Today **levels have climbed to 8.8%**

▣ Current Use

**UP 74.2% since 2006**

**SAMHSA**

▣ **U.S. Gallup Poll**

**1 in 8 US Adults Smoke Marijuana**

- ▣ July 13-17, 2016
- ▣ Random sample of 1,023 adults
- ▣ One in eight doubles the percentage who reported smoking marijuana 2013

- ▣ Vermont
- ▣ More than 1 in 5 adults have used marijuana in the past year

▣ **2 highest rate in the country.**

▣ 2016 MJ Law Passage

- ▣ California, **Maine**, **Massachusetts** and Nevada have approved recreational MJ
- ▣ Florida and Montana expand MMJ
- ▣ North Dakota and Arkansas new MMJ
- ▣ Arizona voters rejected measure
- ▣ Question 1 Maine
- ▣ Makes it legal for adults 21 and older to possess 2.5 ounces of marijuana.
- ▣ The state will then develop rules to regulate retail sales of marijuana
- ▣ Taxed at 10%
- ▣ The law takes effect 30 days after Gov. Paul LePage certifies the election results.
- ▣ Allow residents to possibly possess less than 10 ounces in their homes and up to one ounce in public
- ▣ Massachusetts Q 4
- ▣ As of December 15, it will be legal in the state for adults 21 and older to use marijuana, possess up to 10 ounces of it,
- ▣ Grow up to 12 pot plants at home.
- ▣ MJ retail stores to open in the state as early as January 1, 2018.
- ▣ The state will now create a Cannabis Control Commission
- ▣ Sales subject to a 3.75% tax (on top of the usual 6.25 sales tax).
- ▣ Communities will also have the option to tack on an additional  
2 % in taxes, which they can keep and spend locally.



- ▣ It will remain illegal to use marijuana in public or to drive while intoxicated.
  - ▣ Additional MJ Recreational Laws Projections
- ▣ States that have decriminalized possession and have full blown medical marijuana:
  - ▣ **Conn; Del; Ill; Md.; Mi.;**
  - ▣ Mont; N.Y.; **R.I.; Vt.**
  - ▣ Rhode Island MMJ  
October, 2016
  - ▣ Rhode Island regulators have issued emergency rules that create a new class of private medical marijuana cultivators to help meet a potential supply shortfall
  - ▣ Narcotics

The term **narcotic** originally referred medically to any compound with any sleep-inducing properties. Such as:

- Oxycodone
- Hydrocodone
- Morphine
- Heroin
- Stimulants

Stimulants are psychoactive drugs which induce temporary improvements in either mental or physical function or both.

Examples of these kinds of effects may include enhanced alertness, wakefulness, and locomotion, among others.

Include:

Amphetamines/Methamphetamines

Cocaine

Caffeine

Nicotine

- Caffeine/Nicotine
- Caffeine is a stimulant
- Nicotine acts as both a stimulant and a sedative
- Nicotine is one of the most heavily used addictive drugs in the U.S.
- Nicotine reduces the blood flow to the eyes, making the irises slower to react to changing light levels.
- True or False

70% of people who smoke tobacco

also use marijuana?

True

▣ Depressants

A depressant is a drug that lowers or depresses arousal levels and reduces excitability.

▣ ANTIDEPRESSANTS

▣ Antidepressants

*Abilify, Cymbalta, Elavil, Paxil, Zoloft*

- Use up 400% in two decades.
- 11% of people over 23 are using.
- Third most common drug for 18-44 year olds.

- ▣ What is the most frequently detected prescription drug in DUI cases?
  1. Methadone
  2. Oxycodone
  3. Alprazolam (Xanax)

Xanax

- ▣ Sleep Aids

Nearly 3 in 10 American women use some kind of sleep aid at least a few nights a week

The National Sleep Foundation.

- ▣ Ambien FDA requires lower dosage for women and requesting driving studies.

- ▣ Designer/Synthetic Drugs

- Salvia
- Bath Salts
- K-2/Spice/Black Momba
- Smiles
- John W. Huffman
- Clemson (JWH)

## ▣ The Issues With Synthetic Drugs

- ▣ Unregulated
- ▣ Underground manufacturing
- ▣ Potential health risks. Their unknown potency levels and effects
- ▣ Easy accessibility
- ▣ The ease of chemists staying one step ahead of legal controls. Creating and enforcing pertinent laws.
- ▣ Drugged Driving Laws
- ▣ What Is a “Drug”?

A drug, broadly speaking, is any substance that, when absorbed into the body of a living organism, alters normal bodily function.

☐ Control Substances I-V

- ☉ **Schedule I** — drugs with a high abuse risk. These drugs have **NO safe, accepted medical use** in the United States. Some examples are heroin, marijuana, **LSD, PCP, and crack cocaine**.
- ☉ **Schedule II** — drugs with a high abuse risk, but also have safe and accepted medical uses in the United States. These drugs can cause severe psychological or physical dependence. Schedule II drugs include certain narcotic, stimulant, and depressant drugs. Some examples are **morphine, cocaine, oxycodone** (Percodan®), methylphenidate (Ritalin®), and dextroamphetamine (Dexedrine®).
- ☉ **Schedule III, IV, or V** — drugs with an abuse risk less than Schedule II. These drugs also have safe and accepted medical uses in the United States. Schedule III, IV, or V drugs include those containing smaller amounts of certain narcotic and non-narcotic drugs, anti-anxiety drugs, tranquilizers, sedatives, stimulants, and non-narcotic analgesics. Some examples are acetaminophen with codeine (**Tylenol® No.3**), paregoric, diazepam (**Valium®**), alprazolam (Xanax®), propoxyphene (Darvon®), and pentazocine (Talwin®).

☐ What Is Drugged Driving?

Drugged driving is driving under the influence of any drug or substance that acts on the brain and could impair one's motor skills, reaction time, and judgment.

☐ 2013-2014 NHTSA

National Roadside Survey

- **20% of drivers tested positive for at least one drug in 2014, up from 16.3% in 2007**
- **12.6 % of drivers had evidence of marijuana use in their systems, up from 8.6% in 2007**
- **More than 15% of drivers tested positive for at least one illegal drug, up from 12 % in 2007**

☐ True or False?

Marijuana is the most common illicit drug  
in drugged driving cases

Quiz

True

- Marijuana (26.9%)
- Stimulants

Cocaine (11.6%)

Amphetamines (5.6%)

Most Frequently Detected Drugs

(\*Survey of 13 US Labs-Top 20 drugs detected)

DUI/DWI/OUI/DUID

Depending upon the state, a drugged driving offense may be referred to as:

- DUI (driving under the influence)
- DWI (driving while impaired/intoxicated)

OUI (operating under the influence)

DUID (driving under the influence of drugs or substances)

DUI/DWI/OUI/DUID

Driving under the influence of drugs is a serious criminal offense in all fifty states

Each state has its own specific laws

Types of substances considered drugs

How drug impairment is determined

Penalties for driving while impaired

Drugged Driving Laws

- Most drugged driving laws are contained within the alcohol driving statutes
- 16 states have separate DUI and DUID statutes
- Washington carved out a separate law that addresses driving under the influence of marijuana solely.



☐ Drugged Driving Laws

“Any Drug” Laws

*Per Se* Laws

Zero Tolerance Laws

*Non-Per Se* Laws

☐ 28 “Any Drug” States

“Under the influence of alcohol, any drug or any substance”

☐ Difference Between *Per Se* and Zero Tolerance Laws

- *Per se* laws prohibit drivers from operating a motor vehicle if they have greater than a **set level** of a drug **or drug metabolite** present in their system
- Zero Tolerance laws, in their strictest form, forbid drivers from operating a motor vehicle if they have **any detectable level** of an illicit drug or drug metabolite present in their bodily fluids
- A dozen states have passed zero tolerance laws

▣ Example

*Per se* Drugged Driving Law Nevada

- ▣ “It is unlawful for any person to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access with an amount of a prohibited substance in his or her blood or urine that is equal to or greater than [amounts noted below].”
- ▣ Amphetamine (500 ng/ml urine, 100 ng/ml blood); Cocaine / Cocaine metabolite (150 ng/ml urine, 50 ng/ml blood); **Heroin (2,000 / 50); Heroin metabolite – Morphine (2,000 / 50); Heroin metabolite 6monoacetyl morphine (10 / 10)**; Lysergic acid diethylamide (25 / 10); **Marijuana (10 / 2); Marijuana metabolite (15 / 5)**; Methamphetamine (500 / 100); Phencyclidine (25 / 10). N.R.S. 484C.110(3). Per

▣ Countries

*Per Se* System for DUID

Denmark

England

The Netherlands

New Zealand

Norway

Whales

2014 *Per Se* Drugged Driving  
England and Wales

Controlled Drug Limit (microgrammes per litre of blood)

- ▣ Benzoylcegonine 50
- ▣ Clonazepam 50
- ▣ Cocaine 10
- ▣ **Delta-9-Tetrahydrocannabinol 2**
- ▣ Diazepam (valium) 550
- ▣ Flunitrazepam 300
- ▣ Ketamine (tranquilizer) 20
- ▣ Lorazepam (ativan) 100
- ▣

Marijuana Driving Laws

- ▣ Observations & Testing
- ▣ Zero Tolerance Laws
- ▣ *Per Se* Laws

▣ Observance & Testing

- ▣ Impairment must be proven
- ▣ Behavior based
- ▣ Evidence collected by police
- ▣ Specialists in drugs DRE may be necessary
- ▣ Biological specimen (blood, urine) or refusal
  - ▣ Zero Tolerance THC
- ▣ **9 states** have zero tolerance for THC or a metabolite.
- ▣ **3 states** have zero tolerance for THC but no restriction on metabolites.
- ▣ Issues With *Per Se* Laws
- ▣ Lack of Uniformity
- ▣ NHTSA Report
- ▣ NIDA Report
- ▣ National District Attorneys' Association
- ▣ AAA Studies
- ▣ Lack of Scientific Consensus
- ▣ RMHIDTA Report
- ▣ Too Many Variables
- ▣ Professors
- ▣ Chief Toxicologist NIH
- ▣ Relationship of THC to SFST
  - HGN, OLS, W&T
- ▣ 1993 NHTSA Manual
- ▣ 2004 Psychopharmacology
- ▣ 2009 Study
- ▣ 2012 Study
- ▣ 2014 Study
- ▣ 2015 Study
- ▣ 2016 AAA Studies
- ▣ 2016 Logan Study
- ▣ Paul Larkin Research Paper
- ▣ Drugged Driving Laws
  - New England
- ▣ Connecticut DUID
- ▣ “No person shall operate a motor vehicle while under the influence of intoxicating liquor or **any drug** or both.” C.G.S.A. § 14-227a(a)
- ▣ A patient may not ingest marijuana “in a motor bus or a school bus or in any other moving vehicle.” C.G.S.A. § 21a- 408a(b)(2)
- ▣ Maine OUI
- ▣ “A person commits OUI] if that person: . . . operates a motor vehicle: . . . [w]hile under the influence of **intoxicants**.” 29-A M.R.S.A. § 2411(1-A).
- ▣ This is defined as being under the influence of “alcohol, a drug other than alcohol, a combination of drugs or a combination of alcohol and drugs.” 29-A M.R.S.A. § 2401(13).
- ▣ “**Drugs**” is defined as “scheduled drugs as defined under Title 17-A, section 1101” and “**any natural or artificial chemical substance that, when taken into the human body,**

**can impair the ability of the person to safely operate a motor vehicle.” 29-A  
M.R.S.A. § 2401(4)**

- ▣ Massachusetts OUI
- ▣ It is illegal to operate a motor vehicle “while under the influence of intoxicating liquor, or of **marijuana, narcotic drugs, depressants or stimulant substances, all as defined in** [M.G.L.A. 94C § 1] . . . .” M.G.L.A. 90 § 24(1)(a)(1).
- ▣ New Hampshire DUID
- ▣ “No person shall drive or attempt to drive a vehicle upon any way . . . [w]hile such person is under the influence of . . . **any controlled drug, prescription drug, over-the-counter drug, or any other chemical substance, natural or synthetic, which impairs a person’s ability to drive.**” N.H. Rev. Stat. § 265-A:2(I)(a).
- ▣ Rhode Island DUID
- ▣ “Whoever drives or otherwise operates any vehicle in the state while under the influence of any **intoxicating . . . drugs, . . . or any controlled substance as defined [by law]**, . . . shall be guilty of a misdemeanor . . . .” R.I. Gen.Laws § 31-27-2(a).
- ▣ Vermont DUID
- ▣ “A person shall not operate, attempt to operate, or be in actual physical control of any vehicle on a highway: . . . when the person is under the influence of **any other drug** [besides alcohol] . . . .” 23 V.S.A. § 1201(a)(3).
- ▣ “The fact that a person charged with a violation of this section is or has been **entitled to use** a drug under the laws of this State shall **not constitute a defense** against any charge of violating this section.” 23 V.S.A. § 1201(e).

- ▣ How Does MJ Affect Driving?
- ▣ Behavioral Domains Relevant to Driving
  1. Alertness and arousal
  2. Attention and processing speed
  3. Reaction time and psychomotor functions
  4. Sensory-perceptual functions
  5. Executive functions
- ▣ Meta Analysis 60 MJ Studies

Laboratory

Driving Simulator

On-Road Experiments

Behavioral and cognitive skills related to driving performance were impaired with increasing THC blood levels



▣ NADS

National Advanced Driving Simulator

- ▣ THC debilitating short-term cognitive effects
  - Slows reaction times and the learning process;
  - Hampers concentration and short-term memory;
  - Distorts perceptions of time and space, including distance;
  - Diminishes the eye-hand-foot coordination necessary for driving.
  - Together or separately, those effects could predictably deteriorate a person's ability to drive safely or to engage in other safety-related behaviors.
- ▣ Opiates & Driving
- ▣ Opiates include **morphine, codeine, pethidine, oxycodone, opium, methadone and buprenorphine** and they are all classified as depressants.
- ▣ Like all other drugs and alcohol, opiates **affect people differently** depending upon usage, doses, metabolism, weight, tolerance, health, etc.

- ▣ Effects Opiates & Driving
- ▣ Slow reaction time
- ▣ Taking longer to respond to events or situations, and possibly choosing an inappropriate response
- ▣ Reduced coordination
- ▣ Reduced ability to think clearly
- ▣ **Blurred vision**
- ▣ **Drowsiness or starting to 'nod off' and**
- ▣ **Nausea and vomiting**
- ▣ Opiates, Alcohol & Cannabis
- ▣ Opiates interact with alcohol to **increase the depressive effects** on respiration and mood
- ▣ Cannabis can **potentiate the analgesic** effect of opiates
- ▣ 2015 Driving & Drug Combinations  
Fatalities (FARS & CDOT)
- ▣ Marijuana Only -33%
- ▣ Marijuana & Alcohol -30%
- ▣ Marijuana, Drugs & Alcohol -13%
- ▣ Marijuana & Other Drugs NO Alcohol -24%
- ▣ Colorado Driving
- ▣ There was an 87% increase in drivers testing positive for marijuana who were involved in fatal crashes from 2013 to 2015.
- ▣ Washington Driving
- ▣ Marijuana-Related Fatal Car Accidents Surge After Legalization
- ▣ 10% of Washington drivers involved in **fatal** car crashes between 2010 and 2014 tested positive for recent MJ use
- ▣ There was a 400% increase of MJ-related DUIs between 2012 and 2014.

▣ 2015 NHTSA Crash Risk Study  
Too Many Variables

The significant increased risk of crash involvement associated with THC is difficult to pinpoint because of too many demographic variables..., gender, age...

- ▣ Developing Issues
  - Drugged Driving
- ▣ Cost of testing
- ▣ Data collection
- ▣ No uniform driving laws
- ▣ Blood testing (McNeeley/Birchfield)
- ▣ Increased need for Drug Recognition Experts
- ▣ Increased need Toxicologist
- ▣ Impacting Probation and DWI/Drug Courts (eligibility)

▣ Drug Use and DWI/Drug Courts

- ▣ Eligibility for DWI/Drug Courts will vary depending on the jurisdiction. Acceptance is usually at the discretion of the court.
- ▣ Will the use of legally permissible marijuana or prescription medications prevent eligibility into a DWI/Drug Court?
- ▣ OK to use MAT in DWI/Drug Court