

Roundtable on the Role of Drug Testing Technology in the Drugged Driving Criminal Justice Process

The Challenge, a Vision and a Path Forward

On October 26, 2012 a group of experts on drug testing and criminal justice convened at the invitation of the National Highway Traffic Safety Administration (NHTSA) and the Office of National Drug Control Policy (ONDCP) to discuss strategies for reducing the problem of drugged driving. This summary documents their deliberation and their agreement regarding a path forward.

The Problem of Drugged Driving

While accurate estimates of the risk of driving under the influence of various illegal and legal drugs have yet to be developed, safety experts agree that drug use is widespread among drivers and that in certain situations at least, significant driver impairment under the effect of these drugs is highly probable. The 2007 National Roadside Survey of Alcohol and Drug Use by Drivers indicates that about 16 percent of weekend nighttime drivers tested positive for one or more potentially-impairing drugs.

The Challenge

NHTSA Administrator David Strickland and ONDCP Director Gil Kerlikowske convened a group of national experts in the fields of drug testing and criminal justice (participant list attached) to discuss ideas that had emerged from studies and dialog concerning impediments to achieving reductions in drugged driving and potential solutions to these barriers.

Over the past several years, much of the discussion among safety experts about ways to reduce drugged driving has centered on comparisons with the alcohol-impaired driving problem. Recognizing that progress in dealing with the alcohol problem can be largely attributed to strong laws and law enforcement, these experts have pointed to the relative complication of drug impairment and lamented the range of obstacles that prevent a direct analogy of the drunk driving criminal justice process for drugged driving.

This is the dilemma facing those seeking solutions to the drugged driving problem. Experience has shown that the most effective strategy for dealing with driver impairment is through strong laws and effective law enforcement. Yet various complications limit the effectiveness of these tools for reducing drugged driving. We have a well-developed criminal justice process for alcohol-impaired driving, one that results in about 1.2 million arrests per year and is sufficiently strong to serve as an

effective general public safety deterrent. But despite the availability of important resources, including more than 6,000 highly trained Drug Recognition Experts nationwide and new training tools such as the Advanced Roadside Impaired Driving Enforcement program, a lack of drugged driving statutes and delays in obtaining confirmatory test results continue to make the drugged driving criminal justice process relatively slow and uncertain.

Key among these obstacles to reducing drugged driving is the lack of confirmatory or evidentiary drug testing capability at the local level. Without such technology, law enforcement officers and prosecutors lack a critical piece of evidence that could be used to keep a high-risk driver off the streets.

A Vision and Path Forward

The Roundtable was convened to discuss whether - and when - evidentiary drug testing technology could be available at the community level, and to consider whether near-term steps might be taken to facilitate the development and integration of this technology. Discussion began by considering prerequisites for progress.

All participants quickly agreed that one vital prerequisite to streamlining the drugged driving criminal justice process is enactment of state drugged driving per se laws. These laws make it per se illegal for drivers to operate a motor vehicle with a detectable amount of certain impairing drugs (i.e., beyond a prescribed minimal threshold). These laws allow the justice system to address the problem of drugged driving without the need for establishing defensible impairment thresholds for each type of drug. All participants agreed that the determination of such thresholds for even the common impairing drugs would require decades of research. Seventeen states now have some type of drugged driving per se law.

Having established the practical necessity of drugged driving per se laws, Roundtable participants turned to the issue of drug testing. Technology experts considered the challenge of developing devices that could perform a function analogous to that of current evidentiary-level breath alcohol test devices. Such a device could potentially be situated alongside – or even integrated within – the types of evidentiary breath test devices that are now in use, and could be used by police to obtain immediate evidence as to the presence of drugs in the suspect. Technology experts cautioned that predictions regarding the availability of such devices would depend on a number of factors, including the required drug specificities, the necessary degree of accuracy and the target price range. However, in lieu of exact specifications and making several broad assumptions, the experts suggested that the time frame for developing and marketing such technology – once initiated - might be approximately 5 years or even less.

With this vision of the eventual availability of affordable evidentiary-level drug testing technology at the local level, and the benefits these devices could provide in a state with

a drugged driving per se law, the group turned to the shorter term and considered ways to begin making progress in this direction. One strategy was discussed in detail – the possibility of using currently available drug screening technology to initiate an Administrative License Revocation (ALR) process for suspected drugged drivers.

ALR has proven to be very effective in reducing alcohol-impaired driving and more than 40 states now have such provisions. Criminal justice experts were asked to comment on the feasibility of such an administrative action being taken based on a law enforcement officer's observations of the driver together with a positive finding from a currently available drug screening device. These experts explained that since the standard of evidence required for such a civil action is less than that for a criminal action, such an action might be feasible. However they pointed out that statutory changes would likely be required in order to use this approach for drugged drivers.

The criminal justice experts added that the result of such an administrative action – the revoked license – could be effective at several levels. First, the license revocation could benefit the community by keeping a drug-positive driver off the street for a period of time as well as providing a general deterrent to others against committing the offense. Second, such an action would be swift and certain, providing additional incentive to law enforcement officers for pursuing a drugged driving charge. Asked whether an ALR action for drugged driving might be pursued by a jurisdiction on a pilot basis, the criminal justice experts suggested that similar traffic safety pilots involving ignition interlock programs had previously been pursued at the discretion of interested jurisdictions and their state governments, and that one or more communities might be interested in testing the benefits of such an innovative program.

Next Steps

Pleased with the progress of these discussions, Roundtable hosts NHTSA and ONDCP agreed to pursue these ideas in several ways. First, to build on the vision of evidentiary-level drug testing technology at the local level, the agencies committed to continuing the dialog with both criminal justice and technology experts in order to provide a more detailed needs analysis that would describe technical and cost requirements for such devices for further consideration by technology providers.

Second, the hosts agreed to pursue the idea of working with one or more local jurisdictions to pilot test an administrative license revocation process based on an officer's observations of the driver together with findings from an available drug screening device.

Participants agreed to remain engaged in the dialog and to provide the type of expert information, insight and consultation that would be necessary to move these ideas from thought to practice.

Roundtable on the Role of Drug Test Technology in the Drugged Driving Criminal Justice Process

Participants

David Strickland
NHTSA Administrator

Ben Tucker
ONDCP Deputy Director, State, Local and Tribal Affairs

David Mineta
ONDCP Deputy Director, Demand Reduction

Dr. Terry Zobeck
ONDCP, Associate Director, Research & Data Analysis

Jeff Michael
NHTSA Associate Administrator

Jim Swart
DOT, Director Office of Drug & Alcohol Policy & Compliance

Mike Brown
NHTSA, Director, Impaired Driving & Occupant Protection

Judge Kent Lawrence
NHTSA Judicial Fellow

Joanne Thomka
Director, National Traffic Law Center Counsel

Stephen Talpins
Vice-President, Institute of Behavioral Health

Dr. Robert DuPont
President, Institute for Behavior and Health

Chief Troy Abney
Nevada Highway Patrol

Neil Fortner
Chairman, Drug and Alcohol Testing Industry Association

Phil DuBois
Chairman-Elect, Drug and Alcohol Testing Industry Association

Dr. Donna Smith
President, Substance Abuse Program Administrators Association

Dr. Yale Caplan
Consulting Toxicologist

Kendell Poole
Chair, Governors Highway Safety Association

Patrice Kelly
DOT Office of Drug and Alcohol Policy

Cynthia Caporizzo
ONDCP Senior Policy Advisor

Bill O'Leary
NHTSA Enforcement Services

Diane Wigle
NHTSA Impaired Driving Chief

Dr. Anthony Constantino
CEO, DrugScan

Barbara Harsha
Exec Director, Governors Highway Safety Assoc

Danielle Roeber
National Transportation Safety Board

Dr. Jana Price
National Transportation Safety Board

Ed Jurith
ONDCP Counsel

Sam Sinclair
NHTSA Impaired Driving Division