Executive Summary

Article Title: Impact of the Legalization and Decriminalization of Marijuana On the DWI System

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Study Purpose or Objective(s): This article intended to examine how the legalization and decriminalization of marijuana impacts a State's DWI system. The intent was to focus on the impacts that follow the enactment of recreational and or medical marijuana laws on various aspects of that DWI system. This included an examination of: law enforcement, prosecution, judiciary, probation, toxicology, communication, and highway safety functionality. The main strategic thrusts included but were not limited to:

- Identified changes to the DWI system following enactment of laws that legalize and/or decriminalize marijuana for medical and/or recreational purposes;
- Identified lessons learned by the participating states; and
- Identified metrics (qualitative and quantitative) that can be used to measure the effect of enacting recreational and/or medical marijuana laws and their impact on traffic safety and DWI system.

The initial research was broken down into two phases. Phase One was forming a panel of experts whose responsibility was to determine the impact of laws legalizing or decriminalizing marijuana. Phase Two of the research supported an effort to collect the data based upon the recommendations of the panel participating in Phase One.

- During Phase One, NHTSA and the GHSA convened a panel of subject matter experts who had first had experience being impacted by the enactment of recreational and/or medical marijuana laws within their state. Participants represented states that had passed marijuana legislation in favor of marijuana use. These individual stakeholder's fields actively engaged the DWI system which included law enforcement, prosecutors, judges, probation, toxicologists and highway safety officials.
- The participating SMEs considered the following questions:
    - What changed with the new laws? What worked or did not work?
    - Knowing what you know now, what would you have done differently?
    - What are you planning to do in the future?
- Day two focused on how the participants best measured and evaluated the effects that legalizing or decriminalizing marijuana had on their State and how the State would best address any previously identified issues.

Key Findings:

Law Enforcement
- Recreational marijuana laws are modeled after the liquor regulations in most states (Wa).

- Training should be supported by public education, emphasizing the risks of driving while impaired by marijuana and enforcement efforts to prevent it. Revenue from marijuana legalization provides an opportunity for increased training and staffing.
- During an arrest, officers need to focus on signs of impairment, not on the level of THC. The toxicology test can be used to corroborate their findings and observations.

Prosecution
- Orange County (Ca) enlisted 8 full time prosecutors to handle DWI cases. The increased number of prosecutors resulted in a 98% conviction rate.
- Quick turn-around warrants through the DAs office were performed through a one-page "McNeely" warrant for blood draws and toxicology. Because of this cases were sent to the courts more quickly (Ca). Emphasis was on reducing the amount of time between the initial investigating stop, arrest, acquiring the "McNeely" warrant and the blood draw.

Judiciary
- Good police work, careful, detailed observations, and notes corroborated with toxicology testing make for the best case in court (Az).
- There was a strong encouragement and support for DWI courts. Seven out of seventy-four cases where the defendant received treatment resulted in re-arrests while eighty-nine percent of those non-treated defendants re-offended (Mt).
- Installation of electronic warrant systems with each judge having an electronic tablet resulted in the issuing of warrants for blood on average of 13 minutes.

Toxicology
- Blood samples are the best evidence over breath and saliva matrices (Ca).
- Oral fluid does not detect certain drugs (Ca.)
- The State (Ca) hires contract phlebotomists under the public health code which provides for a one-hour turn around on sampling collection. Fee for the blood draw is allocated to the defendant.

Highway Safety Officials

- Survey results suggest that people are more likely to smoke marijuana and drive than they are to drink and drive. Young people are more apt to drink more alcohol and use more marijuana than older consumers (Co).
- States should conduct outreach education to include the dangers of driving while impaired on marijuana (Co). States should consider partnering with the industry to develop handouts for medical marijuana dispensaries, similar to prescription drug warnings, describing the effects and duration.
- Support should be given to having a representative of the marijuana industry participate on the States Impaired Driving Task Force. Their purpose can serve as a resource and for public education funding efforts (Co).
- Ongoing public education and outreach leads to behavior change of social norms (Wa).
- Legalized sales of marijuana can generate a great deal of State revenue, and if allowed by statute, funding can be used to support TSRPs, experienced prosecutors, DWI courts,

law enforcement training and equipment, toxicology laboratory staffing, equipment, and court testimony costs.

Study Takeaways:

- Carefully craft new laws. Coordinate and obtain input from those who are most knowledgeable about the topic.
- Avoid per se levels. The science does not support them.
- Training and education is critical.
- Focus on SFST, ARIDE, and DREs
- Law enforcement should focus on documenting evidence of impairment.
- Conduct public outreach and education early.
- Educate the public about the term "impairment" and driving while impaired.
- Involve the medical marijuana industry in discussions and planning.
- Strengthen relationships among members of the criminal justice system.
- Request a fair share of new funding streams.
- Obtain funding for training and education and other critical expenses.
- Create a "system" before marijuana is legalized in your State.
- Think about the potential impacts of marijuana legalization on other areas. In particular, consider the impacts on highway safety, health, law enforcement, the courts, toxicology laboratories, and other related areas.

Subcommittee Commentary

Prosecutorial Perspective:

- Regardless of any of our feelings on the legalization and/or decriminalization of marijuana for medical purposes or for recreational use, it is a trend that very well may impact our state. From a prosecution standpoint, THC cases need to be reviewed in a similar manner to alcohol cases. Specifically, since alcohol is a legal substance, it must be causing impairment while driving to be illegal. All THC cases would need to be reviewed in the same light. Although it may not be illegal to consume THC, it is illegal to drive while intoxicated. Due to there being no reliable "per se" level for THC, it is important to focus on the evidence available to support the loss of normal use of mental or physical faculties. The finding of THC in the blood is merely a corroborative fact to help the jury understand where the impairment is coming from rather than conclusive data about the level of impairment. In addition, since HGN is not caused by THC, that is one more test that is not available as evidence in trial. Additional testing on suspected THC impaired drivers would be helpful to develop stronger evidence for a jury.
- It is also important to note that, although a person may be permitted to use marijuana, we do not know based on their blood results if the THC in their system is from legally or illegally obtained marijuana. For example, a person may be permitted to purchase/use marijuana, but then use that marijuana to create THC wax which is much more potent. The only way to determine when they used, what kind they used, and how they ingested it is in the investigation.
- Additionally, if a person has a real medical condition and is using medical marijuana, there may be some medical causes that need to be eliminated as possible cause of signs of impairment as well as mitigation issues that need to be assessed (terminal cancer comes to mind). There is a concern for probable cause searches based on the smell of marijuana being affected by any law changes like this since the possession of marijuana would be legal.
- Lastly, the backlog of toxicology testing is a real challenge in getting cases to plea or trial – obviously, an uptick in THC testing would only create additional testing and wait times without appropriate funding.

Enforcement Perspective:

- The article brought up a good point about officers focusing on marijuana possess charges while ignoring the signs of driver impairment during a stop. Many jurisdictions, especially smaller ones, focus their resources on drug interdiction, concentrating on seizing money and property that can be sold or converted to law enforcement use. Officers often use the odor of marijuana as part of their probable cause to search a suspect's vehicle. Legalization could drastically effect that. Impaired driving enforcement is not a revenue stream for agencies. DWI arrests take an officer off the street for a substantial amount of time, require the writing of detailed reports, with officers later having to be available for court, impacting the budget with overtime expenses. Many officers shy away from impaired driving due to its labor intensive and sometimes-complex nature. Recreational marijuana use will impact drug interdiction, but this will not automatically result in a shift from possession arrests to drugged driving arrests. Sheriffs and Chiefs need to be convinced that drug impaired driving enforcement is a necessary and

important activity, and not just a drain on resources. If those at the top of the organization make impaired driving enforcement a priority, their officers will be more likely to make it a priority, too.

- There will need to be an agency to monitor, regulate and enforce marijuana product sales and production, much like the Texas Alcoholic Beverage Commission (TABC) does with alcohol. Unfortunately, TABC is understaffed and underfunded and does not work closely with state law enforcement as it did in the past. Many officers, especially in rural areas, do not know their TABC agent or rarely, if ever, see them.   Texas law requires that all Texas Peace Officers SHALL enforce TABC regulations. It will need to be the same with marijuana regulations. Texas is a big state, and without getting local law enforcement involved in monitoring dispensaries, manufacturing facilities, bars, etc., the use of illicit product and sales of product to minors could become prevalent. Requiring advanced training on marijuana regulations, enforcement strategies, inspections, and other related activity will add more control over where product is being sold and who is purchasing it. Just turning everything over to a "Texas Marijuana Commission" will not be enough to properly regulate what will inevitably become something comparable to the alcoholic beverage industry. Local law enforcement needs to be made aware of the laws when marijuana is made legal and what they can do to enforce them.

Toxicology Perspective:

- Because of an increase in number of cases received, number of tests required per case, and an overall lack of resources for publicly funded Toxicology labs throughout the nation, the data for drug impaired driving is limited and hard to interpret. This is especially true for THC, in both states with some level of legalization (recreational or medicinal) and states without.
- Levels in blood of THC and/or it's metabolites do not correspond well with impairment. This highlights the importance of police officers, attorneys, and toxicologists working together to understand the facts of a case and whether or not impairment could have existed.
- The panel by NHTSA was convened in 2015 with results published in 2017. The Texas DWI Task Force should evaluate the recommendations, identified needs, and conclusions of this panel to identify and prepare a path forward for if/when Texas moves towards legalization of marijuana.

Research and Evaluation Perspective:

- Our current research supports the notion that blood levels do *not* equal impaired (for marijuana), so the recommendation is always to interpret findings of such with caution. For example, in WA, the marijuana laws have mimicked the alcohol laws. Historically, a 0.08 blood level has been chosen after *some* research (but mostly after incentives were offered by the federal government for states to either implement or reduce a maximum blood level), but we also know that impairment happens before 0.08. As such, it isn't advised to follow in the footsteps of legal alcohol levels. Furthermore, because the half life of marijuana is longer than alcohol, we expect levels to be in the blood for a longer period; however, there is no reason to assume that a certain blood level equals impairment.

- One of the most important points that came from this article (from the perspective of prevention and intervention) is that the recidivism rate coming from participants in the DWI courts was lower compared to those who went through traditional courts. In the psychological and criminal justice literature, there has been an increased focus on these specialty courts and the positive outcomes. With the increasing legalization of marijuana, it would be prudent to examine what type of services could be offered within these courts that are specific to marijuana treatment and that are most likely to reduce recidivism.
- From an evaluation perspective, one of the most difficult things to obtain is the data that is appropriate to evaluate a program or system after it has been implemented. A main lesson to be learned from states that have already legalized marijuana is that without implementing an evaluation system at the same time as the laws, it is nearly impossible to fully examine the outcomes. This article highlighted that by demonstrating the poor data available within these example states.