

# 2017 Nevada Traffic Safety Summit

DUI/Marijuana:

The laws, The Limits, and The Reality

# THE STOP

- **Officer needs reasonable suspicion to conduct a stop**
  - NRS 171.123(1) Defines
    - Circumstances which reasonably indicate that the person has committed, is committing or about to commit a crime.
  - U.S. Supreme Court Case
    - Terry v. Ohio, 392 U.S. 1 (1968) Defines
      - Stop
        - A police officer may stop and conduct a brief investigation when the officer has a reasonable, articulable suspicion that criminal activity is taking place or is about to take place.
          - Probable cause for arrest is not necessary.
  - Most common grounds to stop and make contact with driver that result in DUI
    - No headlights at night
    - Running stop sign/sight
    - Speeding
    - Weaving in and out of lane
    - Sleeping behind the wheel
    - Car accidents

# The Field Sobriety Test (FST)

- **National Highway Traffic Safety Administration (NHTSA)**

- NHTSA conducted research and identified 3 test as the most reliable and practical test for law enforcement to use.
  - No data for coordinating performance with ANYTHING except alcohol.
  - Horizontal gaze nystagmus (HGN) -**77% Accuracy for BAC above 0.080**
    - HGN refers to an involuntary jerking as the eyes gaze toward the side. In addition to being involuntary, the person experiencing the nystagmus is unaware the jerking is happening.
    - The involuntary jerking becomes readily noticeable when the suspect is impaired. As the suspects blood alcohol increases, the eyes will begin to jerk sooner as they move to the side.
  - Walk and Turn -**68% accuracy for BAC above 0.080**
    - Part of the divided attention test
      - Research shows a person who is impaired struggles with requiring them to concentrate on two or more things at once.
      - Driving requires divided attention and the inability to perform divided attention tasks is what makes driving impaired so dangerous.

# The Field Sobriety Test (FST)

- 2 part test
  - Instruction Stage
  - Walking Stage
- One leg stand -**65% accuracy for BAC above 0.080**
  - Part of the divided attention test (See above)
  - 2 part test
    - Instruction Stage
    - Balance and counting Stage
- The test battery developed is being used in all 50 states and has been adopted by many foreign countries as the best tool for developing probable cause in impaired driving investigations. **(All 3 give 82% accuracy for BAC above 0.080, no testing done for accuracy on ANY other substances.)**

# The Field Sobriety Test (FST)

- Preliminary Breath Test (PBT)
  - NRS 484C.150
    - Officer must have reasonable grounds to give this test.
      - How to get reasonable grounds
        - Red and watery eyes
        - Slurred Speech
        - Odor of Intoxicants
        - Unsteady on Feet
        - Cannot pass FST
- The inability to pass these test
  - Gives the officer reasonable grounds to conduct an evidentiary test.
    - NRS 484C.160

# Evidentiary Testing

- Breath or Blood Test
  - Officer must give warning in Nevada before test is administered.
    - RPD's warning
      - I have reasonable grounds to believe you were driving or in actual physical control of a motor vehicle while under the influence of alcohol and/or marijuana and/or controlled substances. You may submit to evidentiary testing. Refusing to submit to evidentiary testing will result in a revocation of your driver's license/driving privilege by the Nevada Department of Motor Vehicles and I may apply for a search and seizure warrant from the court for evidentiary testing. If the search and seizure warrant is granted by the court reasonable force may be used to obtain an evidentiary test. You do not have the right to speak to an attorney prior to testing. Will you submit to evidentiary testing?

# Evidentiary Testing

- Impairment Limits Per Se Violations (set by the state legislature)
  - Intoxicating Liquor
    - 0.08 or more in his or her blood or breath.
  - Amphetamine, Methamphetamine
    - Blood – 100 ng/ml (Nanograms per milliter)
    - Urine – 500 ng/ml
  - Cocaine, Cocaine metabolite (benzoylecgonine)
    - Blood – 50ng/ml
    - Urine – 150 ng/ml
  - Heroin, Heroin metabolite
    - Blood – 50ng/ml
    - Urine – 2,000 ng/ml

# Evidentiary Testing

- Marijuana
  - Blood – 2ng/ml (**One of the lowest in the country**)
    - **NHTSA (Nevada Highway Traffic Safety Administration)**
      - THC Levels of 7-8ng/ml noted after single puff.
      - Peak is generally 9-23 minutes after use.
      - Generally below 5ng/ml within 3 hours of use.
      - “It is inadvisable to try and predict effect based on blood THC concentration alone.”
    - Urine – 10ng/ml (**May be removed by this legislative session**)
- Marijuana Metabolite (possible changes coming this legislative session)
  - Blood – 5ng/ml
  - Urine – 15ng/ml –**Only indicates prior usage. Can be detected for up to 5 weeks.**



# Effects on driving (NHTSA)

- Marijuana has been shown to impair driving performance for approximately 3 hours after ingestion.
  - Increased reaction times
  - Impaired time and distance estimation
  - Inability to maintain headway
  - Lateral travel
  - Subjective sleepiness
  - Motor incoordination
  - Impaired sustained vigilance
- Mixing alcohol & marijuana increases risk for greater than either on their own.

# Future of DUI and MJ

- FST
  - Validated test for alcohol
  - No validated test to show impairment for MJ
    - Federally its still illegal so NHTSA cannot certify test
      - Cannot get people impaired through MJ and test them like alcohol
- Nevada Legislature
  - Possibly changing the Marijuana Metabolite
    - NHTSA states that 11-nor-4 carboxy-THC (The metabolite tested for in Nevada) is not psychoactive.