



# Protecting New Yorkers From Drugged Driving (S8913/A9554)

## Bill Sponsors:

**Assembly  
Transportation Chair  
Bill Magnarelli**

**Senator John Mannion**

**Assembly Co-Sponsors: Pheffer  
Amato Stern, Griffin, Woerner,  
Wallace, Buttenschon,  
Englebright, Silliti, Thiele. Jean-  
Pierre, Burdick, Stirpe**

**Senate Co-Sponsors: Addabbo,  
Kaminsky, Tedisco, Thomas,  
Jordan**

## Presenters:

**Kristen Burke, MBA**

**Regional Toxicology Liaison  
NHTSA Region 9**

**Maureen McCormick**

**Suffolk County DA's Office  
Co-Chair DAASNY Vehicular  
Crimes Subcommittee**

**Hosted By:**





**Leandra Rosado**  
**11 years old**



**Chris Kahan**



**Neal Rajaba**



**Daran Ramadane**



**Peter Anthony**



# Drug Use Crisis

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- **On Wednesday May 11, 2022 the Centers for Disease Control announced that more than 107,600 Americans died from drug overdoses last year.**
- **It is the highest annual death toll on record.**



# Crossing the Line...



# The Problem:

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- ❑ **U.S. Transportation Secretary Pete Buttigieg declared the rising number of roadway deaths as a national crisis on March 2, 2022.**
- ❑ **The National Highway Traffic Safety Administration (NHTSA) reported in June of 2021 that nationally 56% of drivers involved in serious injury and fatal crashes tested positive for at least one drug.**

# The Problem Continued

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- ❑ **In New York 40% of fatal and injury crashes in 2020 were drug-related. (ITSMR Data)**
- ❑ **Drugged driving crashes, injuries and fatalities can be expected to increase post-legalization the same way drunk driving fatalities increased when prohibition was lifted.**

# **VTL § 1192. Operating a motor vehicle while under the influence of alcohol or drugs:**

- ❑ **1. Impaired by alcohol (Traffic Infraction)**
- ❑ **2. Driving while intoxicated; per se .08 BAC or higher (Misdemeanor)**
- ❑ **2a. Leandra's Law: No person shall operate a motor vehicle in violation of subdivision two, three, four or four-a of this section while a child who is fifteen years of age or less is a passenger (Felony)**
- ❑ **3. Driving while intoxicated. No person shall operate a motor vehicle while in an **intoxicated condition** (Misd.)**



# VTL §1192.4 & §1192.4a:

## Drug and Combined Effects

- ❑ 4. Driving while ability impaired by drugs. No person shall operate a motor vehicle while the person's ability to operate such a motor vehicle is impaired by the use of a drug as defined in this chapter.
- ❑ 4-a. Driving while ability impaired by the combined influence of drugs or of alcohol and any drug or drugs. No person shall operate a motor vehicle while the person's ability to operate such motor vehicle is impaired by the combined influence of drugs or of alcohol and any drug or drugs
- ❑ NY is an ACTUAL IMPAIRMENT state; no “per se” drugged driving charge

# Current Definition of Drug: VTL §114-a

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- The term “drug” when used in this chapter, means and includes any substance listed in section thirty-three hundred six of the public health law and cannabis and concentrated cannabis as defined in section 222.00 of the penal law.

# **Basic Drugged Driving Elements:**

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- ❑ OPERATION**
- ❑ MOTOR VEHICLE**
- ❑ PUBLIC HIGHWAY/PARKING LOT**
- ❑ IMPAIRED TO ANY EXTENT BY A  
PHL 3306 DRUG**

# **Drugged Driving Loopholes: Pre-existing Cannabis Legalization**

- ❑ **The “List” – PHL §3306**
  - **Drug has to be on the List**
  - **Which means you have to be able to name it**
  - **(Many impairing substances are not on the list; ie.  
K-2 Spice, Diflouroethane, N-Bomb, some “Mollys”)**
  - **Drivers can refuse chemical tests unless serious injury or death was caused in a crash**
  - **List can never keep up with emrging drugs, synthetics**

# When the Impairing Substance Isn't on “The List”



6:00 84°





Kristian Roggio

# People v. Litto



Defendant while alleged to be driving while intoxicated by “Dust-Off” (diflouroethane) drove into oncoming traffic on January 13, 2004 killing 18 year old Kristian Roggio. Diflouroethane is not on the drug “list”. Charged under 1192.3 (intoxicated condition). Rejected by the Court of Appeals



# People v. Litto

8 NY3d 692 (2007)

Holding:

**“The history and structure of Vehicle and Traffic Law 1192(3) demonstrate that the Legislature intended it to apply only to intoxication caused by alcohol.”**

# **People v. Litto**

8 NY3d 692 (2007)

**“Perhaps gaps exist in the law...  
However, a determination by this Court  
that intoxication in Vehicle and Traffic  
Law § 1192(3) includes the use of any  
substance would improperly override the  
legislative policy judgment.”**

**Meaning that only the legislature can fix this gap**

# **When you can't say what is impairing the driver**

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## **People v. Moss**

- **Saturday, May 12, 2007**
- **4:15 p.m.**
- **Victims:**
  - **Antonia Brancia**
  - **Sjef Vandenberg**





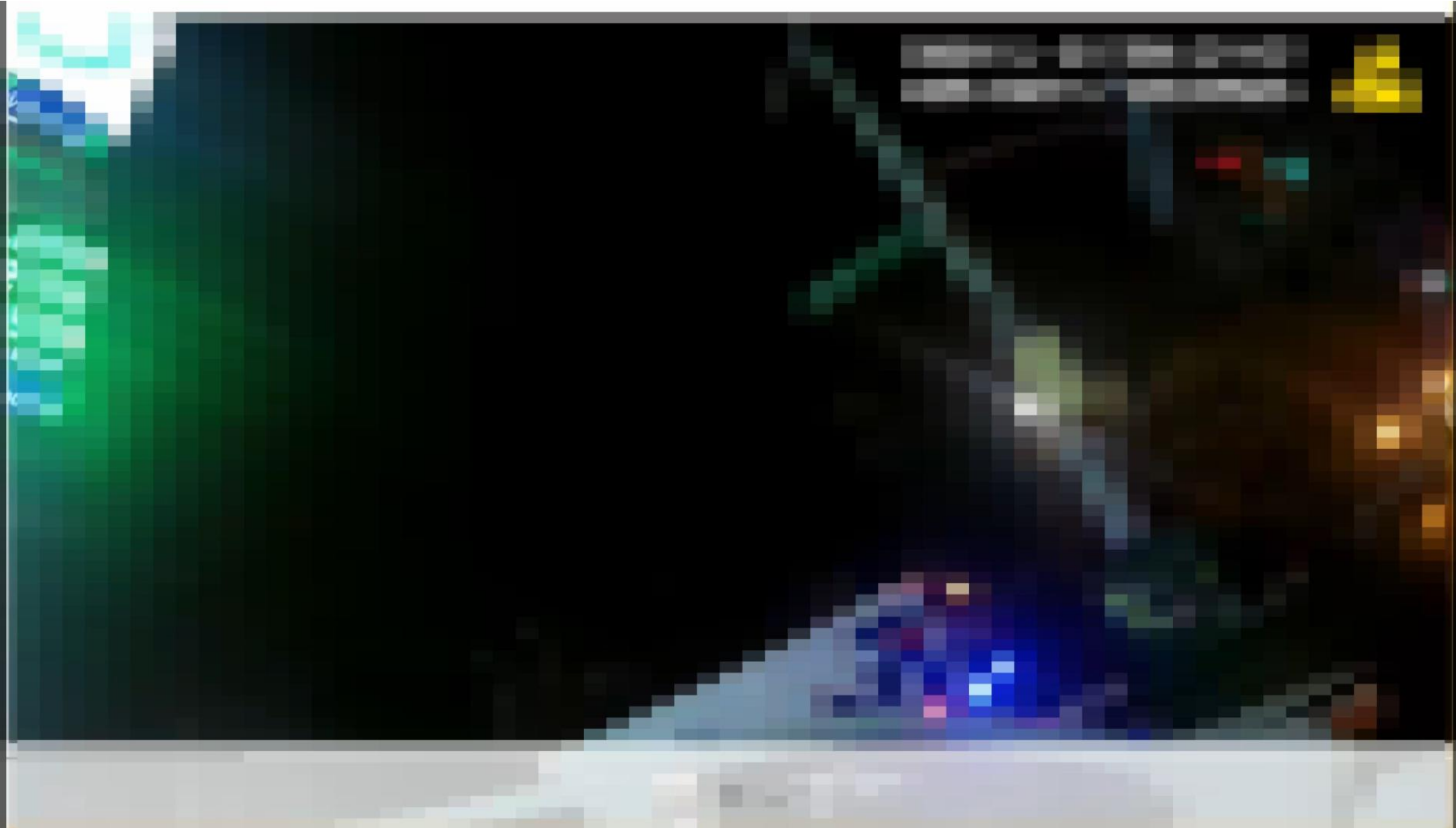




Impairment to any extent



# **NYPD Body Worn Camera Footage: No Charges Because the Drug Could not be Named**





**Underenforcement:**

**Loopholes?**

**Number of Trained Law Enforcement?**

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**Facts:**

**115,711 - Illicit Drug Possession Arrests in NY in 2011\***

**2,618 - VTL §1192(4) & (4-a) Arrests in NY in 2011\***

**\*Statistics according to DCJS**

# Improvement, but...

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## Facts:

**40,387 Drug Arrests in 2017\***

**4,809 Drugged Driving Arrests in  
2017\*\***

**\*Statistics Provided by DCJS**

**\*\*Statistics Provided by ITSMR**

# The Loopholes

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- 1. Impairing substance must be named by law enforcement and must be on the list**
- 2. The driver can refuse an identifying test and a court order cannot be obtained without death or serious injury**
- 3. Impairment and intoxication have distinct meanings but are being conflated**

# Loopholes Continued

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- 4. The law requiring submission to roadside screenings does not include oral fluid testing and court decisions invalidated the traffic infraction for refusing**
- 5. DRE evaluations can exonerate as well as provide evidence of actual impairment. They should be encouraged through license sanctions**
- 6. Drugged drivers should have licenses suspended pending prosecution like DWIs**

# The Solution: (S8913/A9554)

## 1. Expand the Definition of “Drug”

- **Definition of “drug”.** Amend definition of “drug” as follows:

§114-a. Drug. The term “drug” when used in this chapter, means and includes any substance listed in section thirty-three hundred six of the public health law and any substance or combination of substances that impair, to any extent, physical or mental abilities.

# NYACP Support Since 2012

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- ❑ **New York Chapter of the American College of Physicians**
- ❑ **12,000 members**
- ❑ **RESOLVED, that NYACP work to clarify the legal definition of driving while intoxicated/impaired**
- ❑ **Adopted the language of the proposed legislative correction**
- ❑ **PUBLIC HEALTH ISSUE**



# More Support for the Proposed Definition of Drug

- ❑ **DRUG IMPAIRED DRIVING ® A GUIDE FOR STATES, GHSA\_DruggedDriving2017\_FINAL.pdf**
- ❑ **This toxicology definition of drug in the context of impaired driving is part of the model laws for Prohibiting Driving Under the Influence (DUI) of Alcohol or Drugs [§1(a)] developed by the Institute for Behavior and Health (IBH) and the National Partnership on Alcohol Misuse and Crime (NPAMC).**

# **NY is Behind the Rest of the Country**

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- At least 44 other states do not require the impairing substance to be on an artificial list**
- Only 5 other states use a list as of 2018:  
Florida, Hawaii, Massachusetts, Oregon  
and Alaska**

**See: Driving Under the Influence of Drugs: When the Law Misses the Mark**

**Nicholas B. Tiscione\*, Ilene K. Alford, Russell Miller, Xiaoqin Shan,  
and Dustin Tate Yeatman**

# Hon. Sandra Feuerstein



Killed in Boca Raton, Florida

April 9, 2021

Driver alleged to be in possession of “T-Salts”

Driver’s behavior was extremely erratic

Case pending

# Why a List can never work:

## **2. Expands Court Orders for Blood Draws Under Specific Circumstances**

- Current law only allows courts to order evidential blood draws in “serious physical injury or death” cases once a judge finds probable cause. The legislation would also allow courts to order evidential blood draws if a person refuses the test and after a judge has found probable cause in crash cases and for drivers with prior impaired driving charges.**

# Refusals

- ❑ The bill extends the same sanctions (license revocation and civil fine) that exist for refusing to submit to a chemical test to a refusal to submit to an evaluation for drugs by a DRE.
- ❑ Evidence of a refusal to submit to a DRE evaluation would also be admissible at trial (in the same manner as evidence of refusal to submit to a chemical test).
- ❑ No time limit on a Refusal for admissibility



# 3. Defining Impairment and Intoxication

- **Dangerous drug impairment that affects cognitive functioning and results in dangerous driving may not look like obvious intoxication. Some drug impairment can result in a failure to recognize and react to surroundings while the driver's external change in appearance is subtle. Trained law enforcement officers can identify and articulate this less obvious but dangerous level of impairment. Recent court decisions have blurred these terms. These definitions codify long-standing judicial interpretation and retain the requirement to demonstrate evidence of actual driver impairment. The mere presence of a drug in a driver's system is not enough to charge a person with drugged driving.**

# Restoring and Codifying the Definitions

- **This bill codifies the definitions enunciated more than 40 years ago by the Court of Appeals in *People v. Cruz*, 48 N.Y.2d 419 (1979) and *People v. Ardila*, 85 N.Y.2d 846 (1995) and extends them to all impairing substances. Courts and practitioners had been familiar with the application of these terms until a recent Appellate Division decision conflated them in *People v. Caden N.*, 189 A.D.3d 84 (3rd Dept.2020). This legislation will re-establish “impaired” and “intoxicated” as separate standards. The two standards are necessary to recognize the distinct and scientifically supported danger of drug impaired driving.**

# 4. Add Oral Fluid Testing to the Field Sobriety Test Statute

- ❑ **Field sobriety tests.** This bill amends the field testing (Preliminary Breath Test - PBT) provision of the VTL [§1194(1)] to require that any person involved in an accident ...shall, at the request of a police officer, “submit to a breath test and/or oral/bodily fluid to be administered by the police officer, and/or to an evaluation by a drug recognition expert (DRE)”
- ❑ **The bill reinstates the traffic infraction for refusing a field sobriety test**

# Testing and Training



□ **Add to VTL §1194(1)(B)?**



OraLab collector absorbs saliva for immediate and confirmation testing. Specimen requires no special handling, preservative, diluents, pretreatment or buffer.

# **Draeger 5000 Portable Saliva Immunoassay Device**

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# ARIDE Training

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**A**DVANCED

**R**OADSIDE

**I**MPAIRED

**D**RIVING

**E**NFORCEMENT

Enhanced drug recognition training for patrol officers – actual impairment observations

## **5. Equates DRE exams to evidential breath and blood tests for refusal sanctions**

- ❑ DRUG RECOGNITION EVALUATION PROVIDES THE BEST EVIDENCE OF ACTUAL IMPAIRMENT**
- ❑ CAUSED BY DRUGS – LINKS OBSERVATIONS**
  - Rather than Illness or Injury**
  - Rather than Sleepiness or other factors**
- ❑ NOT JUST USE – There is no “PER SE” Drugged Driving charge.**

# DRE

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- ❑ **DRE evaluation screens out exonerating medical conditions.**
- ❑ **Existing law encourages testing by imposing license sanctions for refusing to take an evidential test. The bill applies the same license revocation for refusing a DRE exam.**



# But DREs can only identify impairment by drug category

- ❑ **Seven Categories**
- ❑ **CNS Depressants (+ Alcohol)**
- ❑ **CNS Stimulants**
- ❑ **Hallucinogens**
- ❑ **Dissociative Anesthetics**
- ❑ **Narcotic Analgesics**
- ❑ **Inhalants**
- ❑ **Cannabis**



## Drug Influence Evaluation – Symptomology Matrix



	CNS Depressants	CNS Stimulants	Hallucinogens	Dissociative Anesthetics	Narcotic Anesthetics	Inhalants	Cannabis
HGN	Present	None	None	Present	None	Present	None
Vertical Nystagmus	Present (High dose for that individual)	None	None	Present	None	Present (High dose for that individual)	None
Lack Of Convergence	Present	None	None	Present	None	Present	Present
Pupil Size	Normal (1)	Dilated	Dilated	Normal	Constricted	Normal (4)	Dilated (6)
Reaction To Light	Slow	Slow	Normal (3)	Normal	Little or none visible	Slow	Normal
Pulse Rate	Down (2)	Up	Up	Up	Down	Up	Up
Blood Pressure	Down	Up	Up	Up	Down	Up/Down (5)	Up
Body Temperature	Normal	Up	Up	Up	Down	Up/Down/ Normal	Normal
General Indicators	Disoriented Droopy Eyelids Drowsiness Drunk-like behavior Flaccid muscle tone Gait ataxia Slow, sluggish reactions Thick, slurred speech Uncoordinated <i>NOTE: With Methaqualone, pulse will be elevated and body tremors will be evident. Alcohol and Quaaludes elevate pulse. SOMA and Quaaludes dilate pupils.</i>	Anxiety Body tremors Dry mouth Euphoria Exaggerated reflexes Excited Eyelid Tremors Grinding teeth (Bruxism) Increased alertness Insomnia Irritability Redness to nasal area Restlessness Rigid muscle tone Runny nose Talkative	Body tremors Dazed appearance Difficulty w/ speech Disoriented Flashbacks Hallucinations Memory loss Nausea Paranoia Perspiring Poor perception of time & distance Rigid muscle tone Synesthesia Uncoordinated <i>NOTE: With LSD, piloerection may be observed (goose bumps, hair standing on end)</i>	Blank stare Confused Chemical odor (PCP) Cyclic behavior (PCP) Difficulty w/ speech Disoriented Early HGN Onset Hallucinations Incomplete verbal responses Increased pain threshold "Moon walking" (PCP) Perspiring (PCP) Possibly violent (PCP) Rigid muscle tone Sensory distortions Slow, slurred speech	Constricted pupils Depressed reflexes Drowsiness Confusion Droopy eyelids (Ptosis) Dry mouth Facial itching Flaccid muscle tone Nausea Fresh puncture "On the Nod" Puncture marks Slow, low, raspy speech Slowed breathing <i>NOTE: Tolerant users exhibit relatively little psychomotor impairment</i>	Bloodshot, watery eyes Drowsiness Disoriented Flushed face Intense headaches Lack of muscle control Non-communicative Normal or flaccid muscle tone Odor of substance Possible nausea Residue of substance Slow, thick, slurred speech <i>NOTE: Anesthetic gases cause below normal blood pressure; volatile solvents and aerosols cause above normal blood pressure</i>	Body tremors Disoriented Debris in mouth Eyelid tremors Impaired perception of time & distance Increased appetite Marijuana debris in Marked reddening of conjunctiva Normal muscle tone Odor of Marijuana Possible paranoia Relaxed inhibitions
Duration Of Effects	Barbiturates: 1-16 hours  Tranquilizers: 4-8 hours  Methaqualone: 4-8 hours	Cocaine: 5-90 minutes  Amphetamines: 4-8 hours  Methamphetamines: 12 hours	Duration varies widely from one Hallucinogen to another  LSD: 4-6HRS Psilocybin: 2-3hrs	PCP On-set: 1-5 minutes Peak effects: 15-30 minutes Exhibit effects up to 4-6 hrs DXM - Onset 15- 30 min. Effects 3-6 hours	Heroin: 4-6 hrs  Methadone: up to 24 hrs  Other: Vary	6 - 8 hours for most Volatile solvents  Anesthetic gases and aerosols - very short duration	2-3 hours – exhibits effects  (Impairment may last up to 24 hours without awareness of effects)
Usual Methods Of Administration	Oral Injected (occasionally)	Insufflation Smoked Injected Oral	Injected Transdermal Snort (Insufflation) Oral Smoked	Smoked (PCP) Oral Insufflation (PCP) Injected (PCP) Eye drops	Injected Oral Smoked Insufflation	Insufflation (Historically have been taken orally)	Smoked Oral
Overdose Signs	Cold, clammy skin Pupils dilated Rapid, weak pulse Coma Shallow breathing	Agitation Increased body temperature Hallucinations Convulsions	Long, intense "trip"	Long, intense "trip"	Slow, shallow breathing Clammy skin Coma Convulsions	Coma	Fatigue Paranoia

- 1) Soma, Quaaludes and some anti-depressants usually dilate pupils
- 2) Quaaludes, ETOH and possibly some anti-depressants may elevate
- 3) Certain psychedelic amphetamines may cause slowing
- 4) Normal, but may be dilated
- 5) Down with anesthetic gases, up with volatile solvents and aerosols
- 6) Pupil size possibly normal

# **The Current Catch-22 Followed by WHY the Law Must Change: People v. David Levine**

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- ❑ Decided April 29, 2021**
- ❑ Appellate Term, 9<sup>th</sup> and 10<sup>th</sup>**
- ❑ No Probable Cause for arrest and request for blood where the PO observed impairment but could not name the drug**
- ❑ Consent blood showing Alprazolam, Clonazepam and Citalopram suppressed.**

## **6. Suspends drugged drivers' licenses pending prosecution**

- Under current law, a drugged driver can be arraigned and leave court with a valid license until the case is concluded. Drivers with a .08 BAC (or higher) are suspended.**
- The bill suspends both alcohol intoxicated and drugged drivers' licenses when there is a test result or admission.**

# Cannabis Legalization



# **The Insurance Institute for Highway Safety Report**

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- An IIHS study reviewing data from 2009- 2019 found that injury and fatal crash rates in California, Colorado, Nevada, Oregon and Washington increased in the months following the “relaxation” of marijuana laws in each state.**
- There was a 6% increase in injury crash rates and a 4% increase in fatal crash rates compared with other Western states where recreational marijuana use was illegal during the study period. But the same study classified the 4% increase as statistically insignificant.**

# Creating a Functional Drugged Driving Statute:

- ❑ Does not roll back cannabis legalization any more than having a functional alcohol DWI statute rolled back the end of prohibition.
- ❑ S8913/A9554 – does not create any additional bases' for car stops. The sponsors have expressed concern for the equity of those stops. Their bill deals with the loopholes in the law *after* the stop is made. Probable cause or a strictly unbiased checkpoint are required for the stop or the charges will be dismissed by the court.

# CANNABIS

**Delta 9 – THC (Tetrahydrocannabinol)**  
(Main Psychoactive = Gets User High)

**CBD -  
Cannabidiol**  
(Primary  
Medical  
Properties)

**Other  
Chemical  
Compounds**  
(We Don't  
Even Know;  
at least 113)

**Carboxy THC**  
(Inactive  
Metabolite,  
evidence of  
past use)

**11 - Hydroxy THC**  
(Active metabolite, Useful for determining TIME of ingestion)  
**Highly Psychoactive**

Cannabigerol  
|

Cannabinol

Better  
evidence of  
recent use

Does not last  
in blood long  
(declines  
rapidly)

Less likely to  
accumulate  
in fat

About the  
same  $\frac{1}{2}$  life as  
THC

High  
Levels in  
Edibles



# NOT YOUR GRANDMA'S WEED



# POTENCY



- 1975 – Less than 1% THC
- 1985 – Less than 3% THC
- 2018 – Up to 90% THC





[www.nhtsa.gov](http://www.nhtsa.gov)

- “Inadvisable to try and predict effects based on blood THC concentrations alone”
- “It is difficult to establish a relationship between a person’s THC blood or plasma concentrations and performance impairing effects.”
- 2017 – Report to Congress: weak relationship between THC blood levels and impairment
  - Advise AGAINST Per Se laws



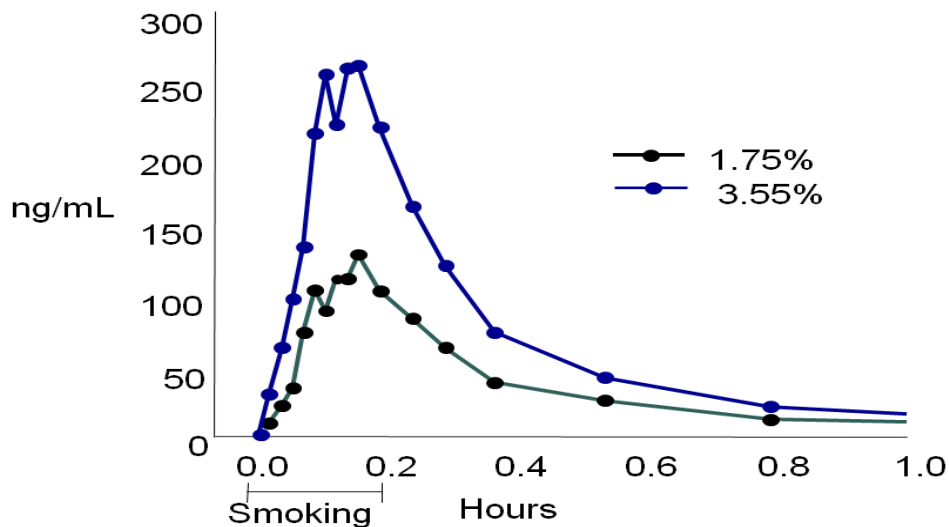
NATIONAL CONFERENCE *of* STATE LEGISLATURES

*The Forum for America's Ideas*

- **1 ng: Pennsylvania**
- **2 ng: Nevada & Ohio**
- **3 ng: West Virginia**
- **5 ng: Illinois, Montana, Washington**
- **5 ng: Colorado = Reasonable Inference**

# $\Delta$ 9 THC – Rapidly Dissipates from the Blood

## Smoked THC Time-Concentration Curve



## Effect of Blood Collection Time on Measured Delta 9 – THC (Hartman, Marilyn Huestis, 2016)

- THC in the blood reduces by 73.5% within 30 minutes of smoking
- THC in the blood reduces by 90.3% within 1.4 hours of smoking

## NHTSA

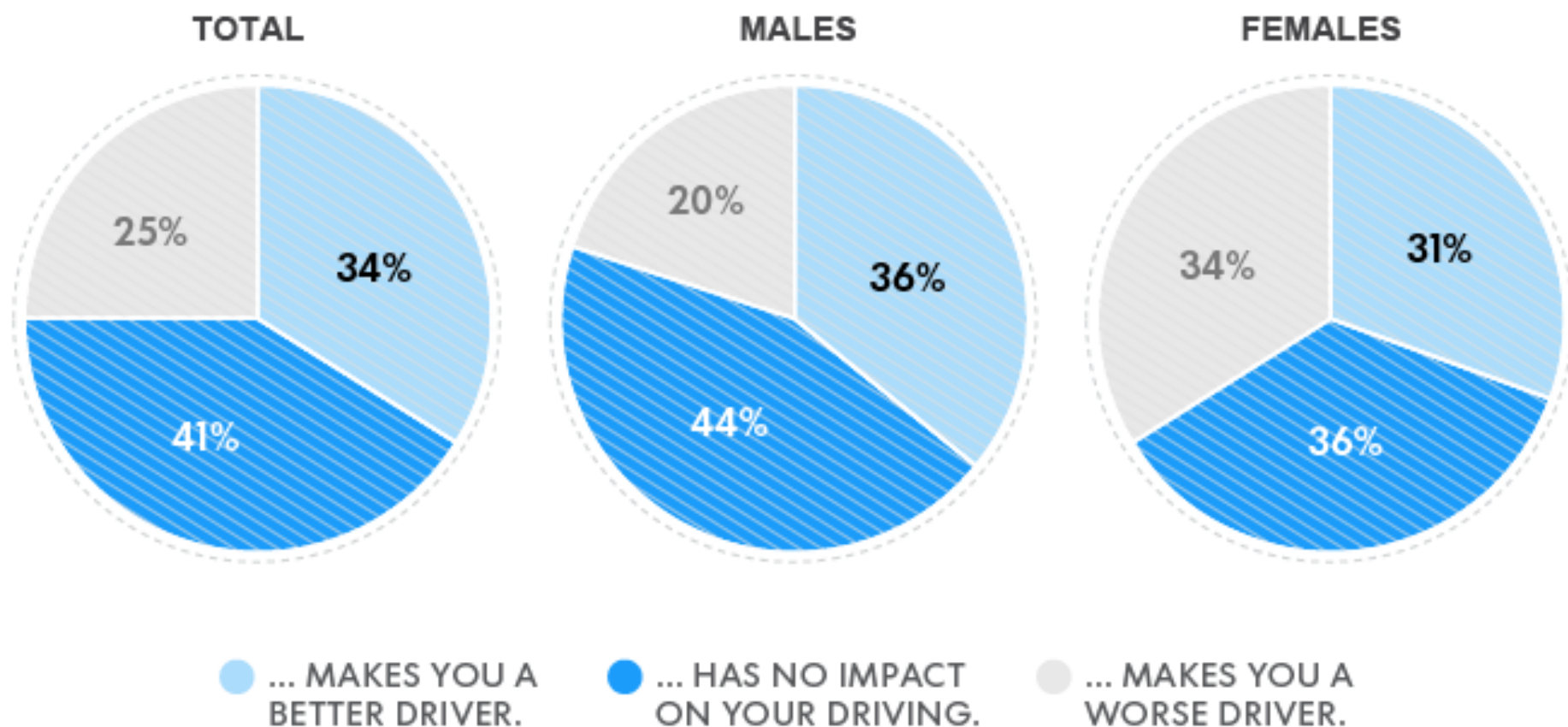
- “It is possible for a person to be affected by marijuana use with concentrations of THC in their blood **BELOW** the limit of detection”

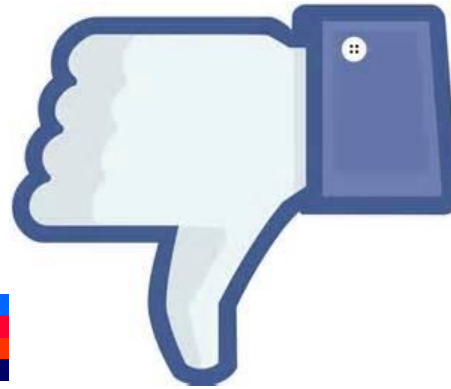
*Courtesy Marilyn Huestis, Borkenstein Drug Course, 2012*



# Teens driving under the influence

PERCENTAGE OF TEENS THAT BELIEVE DRIVING UNDER THE INFLUENCE OF MARIJUANA...





## **BIGGEST MISCONCEPTIONS**

- 1) There has to be  $\Delta$ -9 THC in the blood for the user to be impaired by marijuana, and
- 2) People drive slower while impaired by marijuana. (Most marijuana crashes involve speed)

newsday.com  
\$1.25 LI EDITION  
Tuesday  
Oct. 9, 2012

# Newsday

SPORTS FINAL  
THE LONG ISLAND NEWSPAPER

HI 63° LO 52°  
CHANCE OF SHOWERS



Darian Ramnarine



Neal Rajapa



Peter Anthony



Christopher Khan



**4 TEENS DEAD ON PARKWAY**

**DRIVER ONLY  
HAD PERMIT**

**Boy behind wheel was lone survivor**

A2-3 | WATCH VIDEO AT NEWSDAY.COM

## P v. Joseph Beer

Monday, October 8, 2012

3:30 AM

Southern State Parkway,  
Hempstead

## Profile Pictures

by Joseph Beer (Albums) · Updated about 2 weeks ago



Profile Pictures 2 of 2

Options | Share



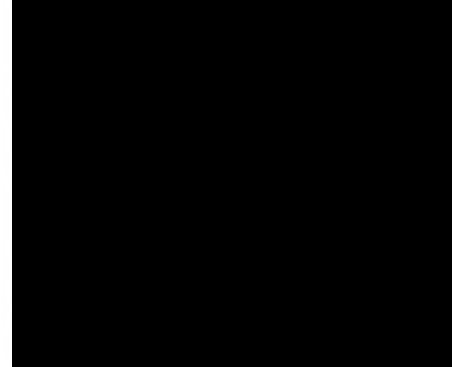
Joseph Beer

August 30

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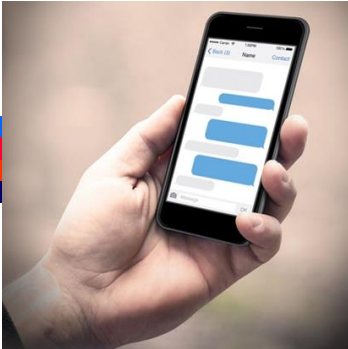
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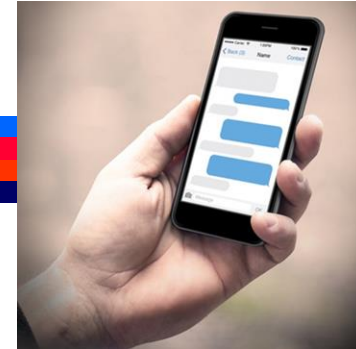




**“2012  
Subaru  
wrx sti  
limited  
its like  
a  
rockets  
hip  
Imfao”**



# Text Messages



Name	Date & Time	Status	Folder	Type	Text
* Brandon	10/05/12 02:51:16 PM (GMT-4)	Sent	Sent	Outgoing	Word where you work at ? Same shit school and what not lol I got the whip now :)
* Brandon	10/05/12 02:52:02 PM (GMT-4)	Read	Inbox	Incoming	Airport yea I heard trav was tellin me you whippin the sti now
* Brandon	10/05/12 02:52:44 PM (GMT-4)	Sent	Sent	Outgoing	Yea shit crazy if you want we can go on a l ride laterrr



Name	Date & Time	Status	Folder	Type	Text
* Woods Shayan	09/22/12 07:48:08 PM (GMT-4)	Sent	Sent	Outgoing	Fine lets go on a blunt ride one day shit is mad fun you'd love it
* Woods Shayan	09/22/12 07:59:04 PM (GMT-4)	Read	Inbox	Incoming	A blunt ride?
* Woods Shayan	09/22/12 08:00:34 PM (GMT-4)	Sent	Sent	Outgoing	We drive around the highway smokingg weed lol didnt you say you wanted to try the urb :x?

















# Toxicology

Time	Specimen	Drug	$\Delta$ – Joseph Beer	V – Neal Rajapa	V – Chris Kahn	V – Peter Kanhai	V – Darian Ramnarine
3:30 AM	Whole Blood	Delta-9		39.5 ng	35.4 ng	15.9 ng	7.6 ng
3:30 AM	Whole Blood	Carboxy		101.6 ng	190.6 ng	74.8 ng	67.7
4:30 AM (1 hr. after crash)	Whole Blood	Delta-9	7.0 ng				
4:30 AM (1 hr. after crash)	Whole Blood	Carboxy	15 ng				
5:15 AM (1 hr. 45 min. after crash)	Whole Blood	Delta-9	4.5 ng				
5:15 AM (1 hr. 45 min. after crash)	Whole Blood	Carboxy	20 ng				



# Drugged Driving Randomness







**9 p.m. on July 24, 2011**

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**Red light cameras capture  
what happens next**



# Eastbound View





# Westbound View



# Southbound View





# Northbound View



In Loving Memory



*Patricia Thomas*  
1944 - 2014



# Thank you



**Maureen McCormick**

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Suffolk County District Attorney's Office

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