



JACKIE LACEY
LOS ANGELES COUNTY DISTRICT ATTORNEY

HALL OF JUSTICE
211 WEST TEMPLE STREET LOS ANGELES, CA 90012 (213) 974-3500

April 10, 2018

TO: Supervisor Mark Ridley-Thomas, Chairman
Supervisor Hilda L. Solis
Supervisor Kathryn Barger
Supervisor Janice Hahn
Supervisor Sheila Kuehl

FROM: Jackie Lacey, District Attorney
Los Angeles County

Jim McDonnell, Sheriff
Los Angeles County

SUBJECT: **BEST PRACTICES FOR IDENTIFYING AND EVALUATING DRIVERS UNDER THE INFLUENCE OF CANNABIS (FEBRUARY 7, 2017, AGENDA ITEM NO. 6) REPORT ID NO. 07627**

On February 7, 2017, pursuant to a motion by Supervisors Kuehl and Hahn, the Board of Supervisors instructed County departments to establish a comprehensive regulatory framework to coordinate existing laws with the recent passage of Proposition 64. By the terms of the initiative, the State will begin issuing various licenses beginning January 2018. The initiative allows local jurisdictions to enact appropriate regulations to govern licensing and siting of cannabis cultivation, distribution, manufacturing, testing and retail sales. The county's regulations should prioritize the protection of public safety, health, and quality of life in our communities.

In accordance with this motion, the Sheriff and District Attorney, in consultation with the Public Defender, Alternate Public Defender, and the Civilian Oversight Commission were directed to report in writing on best practices used across the country for methods of identifying and evaluating when drivers are held to be legally under the influence of cannabis with particular attention paid to methods that go beyond simply measuring the level of THC in the bloodstream.

In January 2017, District Attorney Jackie Lacey announced the creation of the DUI Training and Prosecution Section (DTAPS) after voter approval of Proposition 64. This section provides training on the effective prosecution of impaired drivers under the influence of alcohol and/or drugs who endanger public safety. DTAPS prosecutors work closely with law enforcement to increase the number of Drug Recognition Experts (DREs) in the County, and the Scientific Services Bureau of the Los Angeles County Sheriff's Department.

The Los Angeles County District Attorney's Office's DTAPS is funded with a 2016 grant from the California Office of Traffic Safety to address the growing threat to public safety posed by drivers operating motor vehicles while impaired by alcohol, drugs or a combination of both. DTAPS is tasked with addressing Proposition 64 as it relates to the investigation and prosecution of cannabis impaired drivers. After a thorough assessment of reoccurring challenges in prosecuting Driving Under the Influence of Drugs (DUID) cases, DTAPS has consistently come to one conclusion – Drug Recognition Experts are essential to the successful investigation and prosecution of DUID cases.

The valuable contributions of the DRE Program to the successful prosecution of DUI–cannabis cases cannot be understated, particularly when viewed in light of the substantial challenges we face in successfully prosecuting these cases. First and foremost, unlike alcohol, there are no *per se* limits. Due to current scientific limitations, there is no agreement within the scientific community correlating drug concentrations in the blood with levels of impairment for purposes of driving due to the various factors that contribute to a drug's breakdown in the body (e.g. dosage, potency, tolerance and method of ingestion). A second challenge in detecting and prosecuting DUID cases is the lack of updated detection methods of blood analysis that can be legally admitted in court. Although several companies are working to develop marijuana breathalyzers, testing a person's breath for marijuana-derived compounds is far more complicated than testing for alcohol. More research is needed to understand how breath levels of THC correlate with blood levels, and what blood levels of THC indicate that a person is too impaired to drive. In other words, the science is simply not there, which means there is little chance any results with these breathalyzers would be legally admissible in court. With limited scientific methods for proving impairment, DREs are necessary subject matter experts in these cases.

Many officers may receive training in the identification of impaired drivers under the influence of alcohol. However, these officers may not be adequately trained to identify and evaluate drivers impaired by other substances such as drugs, cannabis, alcohol, or a combination thereof. The lack of training to conduct thorough investigations will ultimately affect law enforcement's ability to convict and remove impaired drivers from the road where they endanger the public and other motorists.

Additionally, delays in obtaining a blood sample, coupled with the varying absorption, distribution, and elimination rates of cannabis, may lead to toxicological results which reflect insignificant drug concentrations. Without *per se* limits, toxicologist will not be able to testify to toxicology results correlating to impairment.

These challenges highlight the crucial need for DRE evaluations in cases of suspected impairment due to cannabis. Unfortunately, Los Angeles County is critically deficient in its number of qualified DREs. Strengthening the number of DREs for the Sheriff's Department, and contract cities serviced by the Sheriff's Department, will enhance investigations, evaluations and successful prosecutions of DUID cases in Los Angeles County. As a result of the extensive training DRE officers receive, they are in a unique position to articulate the effects of impairment caused by cannabis, and several other drug categories, and correlate these effects to the complex, divided-attention task of driving. The toxicological results serve only as objective corroboration of the DRE's opinion in a particular case. DREs are also able to articulate cross reaction of drugs (combo cases) as well as symptomology that is consistent with withdrawal of a drug.

Los Angeles County Office of Cannabis Management Countywide Coordinator Joseph Nicchitta was recently selected to serve on the State Advisory Committee. Its purpose is to advise state licensing authorities about ways to improve cannabis laws, regulations and enforcement. On November 16, 2017, the State Advisory Committee had its inaugural meeting in Sacramento. During the meeting, Coordinator Nicchitta met California Highway Patrol (CHP) Captain Helena Williams who was also selected to serve on the State Advisory Committee. CHP Captain Williams told Coordinator Nicchitta that the CHP has elected to use a substantial portion of the \$3.0 million provided by Proposition 64 to fund free DRE training to local law enforcement agencies. The CHP monies would be used for DRE certification of sworn peace officers in conjunction with their reimbursement program for travel, lodging and backfill expenses; not to exceed specified cost and annual caps.

DTAPS prosecutors conduct quarterly roundtables with different law enforcement agencies from throughout the County. At each quarterly roundtable, DTAPS promotes and encourages law enforcement training and the need for Drug Recognition Experts for the successful prosecution of DUID cases. At the DTAPS quarterly meeting on December 11, 2017, CHP DRE Coordinator Glen Glaser discussed DRE classroom trainings and field certifications along with their reimbursement and backfill program. Additional information regarding the CHP DRE program may be found at: <https://www.post.ca.gov/reimbursement-program.aspx>.

National trends indicate that states that have legalized recreational use of cannabis have seen significant increases in fatal collisions involving drug impaired drivers. Whether this is the result of changing public attitudes towards legalized cannabis use, or merely an increase in the number of people using cannabis remains unclear. The first National Roadside Survey (NRS) was conducted in 1973, followed by national surveys of drivers in 1986, 1996, 2007 and 2013–2014. These surveys used a stratified random sample of weekend nighttime drivers in the contiguous 48 states and collected data directly from drivers on the road. In 2007, NRS added procedures to estimate other potentially impairing drugs used by drivers. Earlier roadside surveys only collected breath samples to determine alcohol concentration. Due to analytical toxicology, the National Highway Traffic Safety Administration used the 2007 and 2013–2014 surveys to determine whether drivers use potentially impairing drugs, which included illegal as well as legal medications. Based on the NRS surveys from 2007 and 2013–2014, *alcohol use declined* with 12.4 percent of drivers testing positive for alcohol in 2007, and 8.3 percent of drivers testing positive for alcohol in 2013–2014. On the other hand, *THC use increased* during the same time period, with 8.6 percent of drivers testing positive for THC in 2007, and 12.6 percent of drivers testing positive for THC in 2013–2014. This represents a 48 percent increase in drivers testing positive for THC (a metabolite of cannabis) in just seven years.¹

DUID is a public safety issue that law enforcement must continue to address.

The July Report to Congress also made the following recommendations – at a minimum:

1. Effective and efficient methods for training law enforcement, including Drug Recognition Experts, to detect or measure the level of impairment of a driver, by technology or otherwise;
2. If feasible, an impairment standard for driving under the influence of marijuana; and
3. Methodologies for increased data collection regarding prevalence and effects of driving under the influence of marijuana. While several states have enacted zero-tolerance laws (making it illegal to drive with any drug or metabolite while driving a motor vehicle) or *per se* laws (designating an amount of drug or metabolite that presumes a driver is impaired for purposes of driving), law enforcement observations and expertise to identify and articulate impairment observations and symptomology continues to be the most relied on resource, given all the limitations discussed above.

¹ Compton, R. (2017, July). Marijuana–Impaired Driving – A Report to Congress. (DOT HS 812 440). Washington, DC: National Highway Traffic Safety Administration.

Accordingly, the Sheriff and District Attorney recommend that Los Angeles County take the following steps to increase its number of DREs:

1. Fund the Los Angeles County Sheriff's Department to implement a comprehensive DRE training program to expeditiously train and certify existing deputy sheriffs assigned to specified sheriff stations. Funding for supplemental DRE training and recertification of deputy sheriffs assigned to specified sheriff stations should be allocated. Currently, there are only 12 DREs in the Los Angeles County Sheriff's Department.
2. The Los Angeles County Sheriff's Department DRE training program will train and certify existing patrol deputies on the recognition of drivers under the influence of alcohol, drugs, or both. At a minimum, Standard Field Sobriety Test (SFST) and Advanced Roadside Impaired Driving Enforcement (ARIDE) courses will be provided. The Traffic Services Detail (TSD) currently provides three SFST/ ARIDE classes a year. Approximately 100 deputies are trained in SFST/ ARIDE annually. The TSD currently has four instructors. The expansion of TSD with additional sheriff personnel could be used to house the DRE Unit. The DRE Unit would host trainings; track certification, and recertification of DRE deputies every two years; and provide law enforcement with updated DRE training opportunities.
3. The Los Angeles County Sheriff's Department Risk Management Bureau strongly endorses the need to enhance the DRE program. DRE trained deputies need to be available 24 hours a day to conduct DUID evaluations and investigations. Around-the-clock availability is currently not possible with only 12 DRE deputies in the entire county. The \$3 million training reimbursement funding made available to all 58 California counties through CHP is commendable but insufficient to cover the costs of certifying deputies in DRE training, and the costs associated with covering those absent deputies during their 3-week DRE training. Additional identified funding commensurate with needed growth of the DRE program will provide DRE trained deputies at each station 24 hours a day. In the meantime, stations without assigned DRE deputies should be given priority in training. Los Angeles County sheriff stations that service communities in unincorporated areas of the County, and contract cities of the Los Angeles County Sheriff's Department, are included as specified sheriff stations. As technology, scientific methods and detection analyses evolve, supplemental DRE training may be necessary.

The Honorable Board of Supervisors
April 10, 2018
Page 6

A Drug Recognition Expert Unit within the Los Angeles County Sheriff's Department is essential to the continued successful prosecution of DUID cases throughout Los Angeles County. Based on trends seen in Colorado and Washington after legalization of recreational cannabis use, law enforcement must be well prepared to identify drug impaired drivers.

This memorandum is being submitted after consultation with the Public Defender, Alternate Public Defender and the Civilian Oversight Commission.

EDP/LW

c: Executive Office, Board of Supervisors
Chief Executive Office
Office of Cannabis Management
Public Defender
Alternate Public Defender
Sheriff Civilian Oversight Commission