IMPAIRED DRIVING
A New Twist to an Age-Old Problem

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Disclaimer

We do not have any financial or commercial relationships relevant to the educational content of our presentation and/or in the planning of this educational activity.

Learning Objectives

At the conclusion of this workshop, you should be aware of...

1. current data on impaired driving arrests, crashes, and fatalities in Louisiana and the nation
2. proven countermeasures to impaired driving
3. types of drugs appearing in blood samples of impaired drivers involved in crashes in Louisiana
4. effects of marijuana legalization on traffic safety
La. R.S. 14:98 - Operating a Vehicle While Intoxicated

A.(1) The crime of operating a vehicle while intoxicated is the operating of any motor vehicle, aircraft, watercraft, vessel, or other means of conveyance when any of the following conditions exist:

(a) The operator is under the influence of alcoholic beverages.

(b) The operator’s blood alcohol concentration is 0.08 percent or more by weight based on grams of alcohol per one hundred cubic centimeters of blood.

(c) The operator is under the influence of any controlled dangerous substance listed in Schedule I, II, III, IV, or V as set forth in R.S. 40:964.

(d) The operator is under the influence of a combination of alcohol and one or more drugs that are not controlled dangerous substances and that are legally obtainable with or without a prescription.

(e) The operator is under the influence of one or more drugs that are not controlled dangerous substances and that are legally obtainable with or without a prescription.

La. R.S. 14:98 - Affirmative Defenses

A.1.(d)(ii) It shall be an affirmative defense to any charge under this Subparagraph that the label on the container of the prescription drug or the manufacturer’s package of the drug does not contain a warning against combining the medication with alcohol.

A.1.(e)(ii) It shall be an affirmative defense to any charge under this Subparagraph that the operator did not knowingly consume quantities of the drug or drugs that substantially exceed the dosage prescribed by the physician or the dosage recommended by the manufacturer of the drug.
DWI is a CRIME!

- DWI is a Criminal Offense, Not a Traffic Violation
  - 1st offense: 10 days to 6 months
  - 2nd offense: 30 days to 6 months
  - 3rd offense: 1 year to 5 years
  - 4th and subsequent offense: 10 years to 30 years
- DWI is an Enhancable Offense
- Administrative Sanctions

And, yet...

- Each day, people drive drunk more than 300,000 times, but only about 2,800 are arrested. Source: FBI “Crime in the United States: 2015”
- The average drunk driver has driven 80 times before the first arrest. Source: FBI “Crime in the United States: 2014”

DWI Arrests in Louisiana for 2017

Source: Louisiana CDOR/A Dashboard

http://datareports.lsu.edu/cobradashboard.aspx
2017 DWI Fatalities: Louisiana vs. United States

Alcohol-involved fatal crashes in Louisiana: 2008-2018

Source: http://datareports.lsu.edu/SHSPCrash.aspx

So, What Can You Do?
Part 2: Proven Countermeasures

Proven DWI Countermeasures

1. DWI Courts
   - Specialized, comprehensive court programs that provide individual treatment, supervision, and accountability for DWI offenders
   - Based on premise that impaired driving can be prevented if underlying causes, such as substance use disorders and mental health disorders, are addressed
   - Post-conviction and follow Ten Guiding Principles
   - Research-driven and cost effective

2. Ignition Interlock Devices

3. Sobriety Checkpoints / High Visibility Enforcement

4. Offender Screening and Assessment

NHTSA’s Countermeasures That Work, 9th edition, 2017
Research on DWI Courts

- DWI Court participants are **19 times less likely to reoffend** than offenders processed through traditional court. (Michigan)

- DWI Court participants had a **recidivism rate of 15%**, compared to a **recidivism rate of 35%** among offenders processed through traditional courts. (Georgia)

- DWI Courts reduced recidivism by up to 69% and showed an **average yearly savings of $700,000.00** in taxpayer money. (Minnesota)

Louisiana's DWI Courts

- Eight DWI Courts currently operating in LA: Baton Rouge City, Calcasieu Parish, Lafayette Parish, Jefferson Parish, Ouachita Parish, St. Mary Parish, St. Tammany Parish, and Terrebonne Parish

- Funded by LA Highway Safety Commission and managed by LA State Supreme Court drug court office

- RFPs released in February for funding to begin in October. Only courts may apply, and preference is given to Tier I parishes. (lahighwaysafety.org)

2. Ignition Interlock Devices (IIDs)

- **3 in 4 DWI offenders** whose licenses are suspended continue to drive.

- Ignition interlock devices prevent the vehicle from starting if any measurable amount of alcohol is detected in the sample.

- 30 states (including LA) plus D.C. require interlocks for all offenders.

- While LA has necessary laws in place, they need to be strengthened and enforced.
Research on Ignition Interlock Devices

- IIDs are 74% more effective in reducing DUI recidivism than license suspension alone for first offenders during first 182 days after conviction.*
- IIDs are 45% more effective in preventing a repeat DUI incidence when compared to license suspension alone during days 183-365 after conviction.*
- CDC finds reduction in repeat offenses of about 2/3 of offenders after interlocks were installed.

*California DMV Study of Four-County Ignition Interlock Pilot Program, June 2016

3. Sobriety Checkpoints (SCs) and High Visibility Enforcement (HVE)

- These are law enforcement-led strategies to identify and divert people in the act of operating a vehicle while intoxicated
- Both provide general deterrence
- Success is measured by how few arrests are made, not how many

Sobriety Checkpoints

- Law enforcement officers stop vehicles at a predetermined location to check whether the driver is impaired.
- They either stop every vehicle or stop vehicles at some regular interval, such as every third or tenth vehicle.
- Checkpoints are proven to reduce fatalities by 20%.
High Visibility Enforcement

- HVEs are carefully coordinated strategies, typically done in waves.
- Combine highly visible, proactive law enforcement presence with media coverage and public awareness using visibility elements.
- HVE resources: [https://one.nhtsa.gov/Driving-Safety/Enforcement-&-Justice-Services/HVE%20resources](https://one.nhtsa.gov/Driving-Safety/Enforcement-&-Justice-Services/HVE%20resources)

4. Screening and Assessment

- Screening and assessment in the criminal justice setting can identify DUI offenders who have SUDs that require further intervention.
- Helps address underlying causes of offending and reduces recidivism.
- Ideally, screening and assessment would occur at the beginning of the process (such as during the pre-trial stage).
- Results can then be used to inform sentencing decisions, case management plans, supervision levels, and treatment referrals/plans.

Tool 1: Impaired Driving Assessment (IDA)

- 2008; NHTSA funded a study; American Probation and Parole Association
- Developed a screening tool specifically for DWI offenders
- Based on existing general SU assessments, but also includes questions about major risk areas identified for DWI recidivism
- Two components: Self-Report and Evaluator Report
- Practical application for individuals arrested & convicted of DWI: provide guidelines for practitioners to assess risk to reoffend, service-level needs, level of responsiveness to supervision and services, and the degree to which the DWI jeopardized traffic safety.
Tool 2: Computerized Assessment and Referral System (CARS)

- Sponsor: Foundation for Advancing Alcohol Responsibility
- Identifies SUDs, array of mental health issues
- Validated for a DUI offender population
- Fully electronic and standardized, Free to download and use
- Contains a self-screener, a screener, and a full assessment
- Can be used by clinicians and non-clinicians alike
- Generates a report indicating risk of recidivism and treatment needs
- Can inform sentencing and treatment decisions
- Connects people to LOCAL treatment facilities based on assessment outcome

Screening and Assessment in Louisiana

- Allowed as a condition of probation upon conviction of **DWI first and second offense**:
  
  “Participate in a court-approved substance abuse program, which may include an assessment by a licensed clinician to determine if the offender has a diagnosis of substance abuse disorder. Nothing in this Section shall prohibit the court from modifying the portions of the program as may be applicable and appropriate to an individual offender as shown by the assessment.”

Screening and Assessment in Louisiana

- Required as a condition of probation upon conviction of **DWI third and subsequent offenses**:
  
  “Immediately undergo an evaluation by the Louisiana Department of Health, office of behavioral health, to determine the nature and extent of the offender’s substance abuse disorder and to participate in any treatment plan recommended by the office of behavioral health, including treatment in an inpatient facility approved by the office for a period of not less than four weeks, followed by outpatient treatment services for a period not to exceed twelve months.”
Part 3: Drug Impaired Driving

LA State Police Crime Lab (LSPCL) Toxicology Unit

- In 2018:
  - Analyzed over 90% of LA's blood/urine kits. Of those, 93% of kits were traffic related.
  - Samples came from over 160 agencies
  - Received 1,906 BAC requests and released 1,970 reports. Received 2,525 tox requests and released 2,905 reports.
  - Identified over 70 individual drugs. LSPCL tests for 120 individual drugs.

- All stats in this presentation are based on LSPCL submissions and results

BAC Stats for 2017

- Cases released by offense type (total 1,695)
  - DWI: 58%
  - Fatality: 16%
  - Serious Injury: 25%
  - Other Crash: 12%

- Percent of results 0.08 or greater per offense type (58% overall)
Impaired Driving – A New Twist to an Age-Old Problem

BAC Stats for 2018

Cases released by offense type (total 1,791)

- DWI: 61%
- Fatality: 19%
- Serious Injury: 14%
- Other Crash: 11%

Percent of results 0.08 or greater per offense type (60% overall)

- Fatality: 0%
- Serious Injury: 10%
- Other Crash: 20%
- DWI: 30%
- Overall: 40%

Number of BAC results per BAC value: 2011-2018

16,039 samples tested
5,848 negative samples
10,191 samples with detectable alcohol (63.5%)

Number of BAC results with detectable alcohol per BAC value: 2011-2018

8,852 samples (out of 16,039) were ≥ 0.08 = 55.1%
Toxicology Screens of Blood

- Currently, LSPCL has **98 drugs/metabolites** on confirmation list, plus **22 synthetic cannabinoids**
- Caution: When looking at stats on drugs other than alcohol, there are no laboratory tests to determine if someone is impaired by those drugs.
- ONLY LEO that use SFST, ARIDE, DRE evaluations can determine impairment.

On average, 57% of blood samples have had at least one drug of impairment besides alcohol.

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<table>
<thead>
<tr>
<th>Year</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>0%</td>
<td>60%</td>
<td>65%</td>
<td>70%</td>
<td>68%</td>
<td>62%</td>
</tr>
</tbody>
</table>

Source: LSP Crime Lab

Average number of drugs/metabolites in positive blood samples per year

<table>
<thead>
<tr>
<th>Year</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
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<tbody>
<tr>
<td>2.1</td>
<td>2</td>
<td>2.7</td>
<td>3.8</td>
<td></td>
</tr>
</tbody>
</table>

Source: LSP Crime Lab
Blood Only Specimen Data: 2018

<table>
<thead>
<tr>
<th>Substance</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>11-nor-delta-9-THC-COOH inactive</td>
<td>28.19%</td>
</tr>
<tr>
<td>Methamphetamine</td>
<td>16.91%</td>
</tr>
<tr>
<td>Amphetamine</td>
<td>12.40%</td>
</tr>
<tr>
<td>THCOH (Hydroxy-delta-9-THC)*</td>
<td>8.96%</td>
</tr>
<tr>
<td>Noroximene</td>
<td>7.63%</td>
</tr>
<tr>
<td>THC (Delta-9-THC)*</td>
<td>6.98%</td>
</tr>
<tr>
<td>Oxycodone Methyl Ester</td>
<td>3.53%</td>
</tr>
<tr>
<td>Xanadive</td>
<td>2.31%</td>
</tr>
<tr>
<td>Diphenhydramine</td>
<td>2.00%</td>
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* Data only from July-December 2018 (implemented in July); Source: LSP Crime Lab

% blood samples positive for 3 main categories

- **THC-CA**: 10% increase
- **Opioids**: 53% increase
- **Stimulants**: 70% increase

Source: LSP Crime Lab

National Data for Fatally Injured Drivers - FARS, 2016

- 43.6% of drivers with known drug test results were drug-positive
- 37.9% of drivers with known alcohol test results were alcohol-positive
- 50.5% of drug-positive drivers were positive for two or more drugs
- 40.7% of drug-positive drivers were positive for alcohol

Drug testing rate: The proportion of fatally injured drivers tested is similar in 2016 and 2015.
FARS data limitations mean that quantitative conclusions cannot be made. However, the following qualitative conclusions regarding fatally-injured drivers are fully supported:

- Drug presence: substantial increase from 2006 to 2016
- Drug presence: slight increase from 2015 to 2016
- Alcohol presence: decrease from 2006 to 2016
- Alcohol presence: same in 2015 and 2016
- More drug-positive than alcohol-positive in 2015 and 2016

Part 4: Marijuana’s Impact on Traffic Safety

There’s no public consensus on whether marijuana increases crash risk.

<table>
<thead>
<tr>
<th>Marijuana differs from alcohol.</th>
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<tbody>
<tr>
<td><strong>Alcohol:</strong> measured in breath, blood, or urine.</td>
</tr>
<tr>
<td>BAC reaches a peak @ 20 mins - 1 hour. Drops steadily and gradually thereafter.</td>
</tr>
<tr>
<td>Many studies have documented how a driver’s crash risk increases as BAC increases.</td>
</tr>
<tr>
<td><strong>Marijuana:</strong> measured in blood, urine, or saliva.</td>
</tr>
<tr>
<td>BAC rises quickly after consumption, then drops rapidly. Impairment rises rapidly and remains.</td>
</tr>
<tr>
<td>THC in blood/urine is not related to impairment. Non-impairing metabolites can remain for weeks.</td>
</tr>
</tbody>
</table>
Marijuana Use by Drivers Nationally

2016: 41.1% of the drug-positive drivers were positive for marijuana.
2006: marijuana-positive proportion was 34.5%.

*Source: NHTSA FARS

Conclusion: Marijuana is the most common other drug found in fatally-injured drivers.

Marijuana impairment and crash risk

Many experimental studies document that marijuana affects psychomotor skills and cognitive functions critical to driving.

Marijuana’s effect on crash risk is far less clear.

The most supportable research conclusions:

- Marijuana has caused or contributed to some crashes.
- It can, but need not necessarily, increase crash risk in a driver.
- Best overall estimate of marijuana’s effect on crash risk is an increase of 25-35%, or a factor of 1.25 to 1.35.
Driving related laws

Three types of state laws apply to driving under the influence of marijuana.

| Driving Under the influence of Drugs (DUID) is illegal in every state. |
| Zero Tolerance laws prohibit driving with any amount of specified drugs in the body. |
| Per se laws prohibit driving with an amount of a drug above a specified per se limit, similar to the 0.08 or 0.05 BAC per se laws for alcohol in every state. |

DUID has two requirements: an officer must observe signs that the driver is impaired and the impairment must be linked to a drug. Marijuana is not an impairing drug, so DUID laws apply to marijuana.

As of April 2018, 12 states have zero tolerance laws for marijuana. 3 states (THC or a metabolite and 3 states for THC, but no restriction on metabolites (GHDA, 2019b; NCL, 2019a). South Dakota's zero tolerance law applies only to drivers under the age of 21.

In La., R.S. 14:98 Addresses DUID

A.(1) The crime of operating a vehicle while intoxicated is the operating of any motor vehicle, aircraft, watercraft, vessel, or other means of conveyance when any of the following conditions exist:

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Analyzing blood for THC and metabolites

- Prior to 2012, LSPCL did not have the equipment to detect THC in blood samples because they needed derivatizing.

- From 2012 to July 2018, LSPCL utilized LC technology and reported THC-carboxy metabolite at a detection limit of 15 ng/mL. This metabolite is non-psychoactive but is very stable in the blood vs. THC and THC-hydroxy.

- July 2018, the LSPCL implemented a method that allows them detect and report THC (active), THC-hydroxyl (active) and THC-carboxy (inactive) at 0.5, 0.5, and 5 ng/mL respectively.
Prior to July 2018, ~25% of the blood samples submitted to LSPCL had THC-carboxy detected in them.

Since implementation of new methods:
- 36% THC-carboxy (reported at 5 ng/mL or greater)
- 20% THC-hydroxy (reported at 0.5 ng/mL or greater)
- 20% THC (reported at 0.5 ng/mL or greater)

Marijuana Decriminalization & Traffic Safety

3/17/16 - Orleans Parish passed an ordinance: Marijuana possession would remain illegal, but enforcement can be through a summons and fines instead of arrest.

Penalty provisions for marijuana possession:
- First conviction, fine of $40
- Second conviction, fine of $60
- Third conviction, fine of $80
- Fourth or greater conviction, fine of $100

2/28/2018 – East Baton Rouge parish passed a very similar ordinance.
Marijuana Decriminalization & Traffic Safety

LSP Crime Lab compared driver's blood only data

Pre and post marijuana decriminalization for Orleans and EBR parishes
- Orleans: 18 months before and 18 months after the law went into effect
- EBR: 15 months before and 15 after

<table>
<thead>
<tr>
<th>Orleans</th>
<th>E. Baton Rouge</th>
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<tbody>
<tr>
<td>Pre-samples</td>
<td>78 samples; 25% tested positive for THC-C metabolite</td>
</tr>
<tr>
<td>Post-samples</td>
<td>74 samples; 43% tested positive for THC-C metabolite</td>
</tr>
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</table>

52% difference | 58% difference

This data indicates that a decrease in penalties for marijuana use increases the propensity to use and drive.

No conclusion can be made regarding THC impairment of the drivers in the positive samples from this data.

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