

**CALIFORNIA HIGHWAY PATROL
IMPAIRED DRIVING TASK FORCE
MEETING MINUTES**

**September 27, 2018
4920 Lang Avenue
McClellan, CA 95652**

MEMBERS PRESENT

California Highway Patrol - Commissioner Warren Stanley, Chief Esmeralda Falat
Assistant Chief Kevin Davis, Captain Helena Williams
Alcohol Beverage Control - Joseph McCullough
American Automobile Association - Anita Lorz
American Civil Liberties Union of Southern California - Peter Bibring
Bureau of Cannabis Control – Lori Ajax
California Department of Justice – Toxicology - Kristen Burke
California Narcotic Officers' Association - Vaughn Gates
California National Association for the Advancement of Colored People - Alice Huffman
California National Organization for the Reform of Marijuana Laws - Dale Gieringer,
Ellen Komp
California Police Chiefs - Jonathan Feldman, Ken Corney
Ceres Strategies - Elizabeth Ashford
Department of Motor Vehicles - Veronica Bowie
Drug Policy Alliance - Rodney Holcombe
Friday Night Live - Jim Kooler
International Association of Chiefs of Police - Christine Frank
Kern County Deputy District Attorney - Michael Yraceburn
Medical Examiner, San Francisco - Dr. Luke Rodda
National Highway Traffic Safety Administration - Chris Murphy, Scott MacGregor
Office of Traffic Safety - Randy Weissman, Nicole Osuna
Orange County Crime Lab - Jennifer Harmon
Stanford University - Shan Wang, Dana Lee Kralicek
University of California, San Diego - Dr. Thomas Marcotte
Ventura County Behavioral Health - David Tovar

MEMBERS ABSENT

California Attorneys for Criminal Justice - Rich Hutton
California District Attorneys Association - Amanda Martin, Creg Datig
California State Sheriffs' Association - Marcus James
Department of Veterans Affairs - Dr. Anthony Albanese
Orange County Health Care Agency - Kathy Kendricks
Peace Officer Standards and Training - Jana Munk
Pharmacist - Dr. Phillip Drum

Rocker's Against Drunk Driving - Erin Meluso
Sacramento County District Attorney's Office, Supervising Criminalist - Michael Toms

GUESTS

California Highway Patrol - Assistant Chief Richard Desmond, Sergeant Glen Glaser,
Sergeant Oscar Chavez

OPENING COMMENTS

California Highway Patrol (CHP) Chief Esmeralda Falat opened by welcoming everyone to the fourth Impaired Driving Task Force (IDTF) meeting. Assistant Chief Kevin Davis then introduced CHP Commissioner Warren Stanley.

Commissioner Stanley welcomed everyone to IDTF and thanked them for their continued efforts and support. He reminded members of the importance of their role in shaping California's impaired driving laws and keeping the public safe.

Chief Falat made a motion to approve the June 7, 2018, IDTF Meeting Minutes. A second to the motion was made, and all members in attendance voted to approve the meeting minutes.

Public Comment

A member of the public inquired about the rules relating to conflicting financial interests. California Vehicle Code Section 2429.7(c) states, "*The task force members shall be free of economic relationships with any company that profits from the sale of technologies or equipment that is intended to identify impairment. Members and their organizations shall not receive pay from, grants from, or any form of financial support from companies or entities that sell such technologies or equipment.*"

PRESENTATION – ORAL FLUID DRUG TESTING

Dr. Luke Rodda provided an overview of oral fluid testing in Victoria, Australia. Although Victoria is comparable to California in size, it has a population of about 6.4 million people. This is considerably less than California's population of approximately 40 million people.

In Australia, authorities are required to test for drugs in all persons involved in a motor vehicle collision. As such, approximately 10,000 people are tested each year. Additionally, Australia has a national coroner's database that details all autopsy reports, police reports, and investigations that result from fatality collisions. All states in Australia and New Zealand can access the coroner's database. Currently, Australia tests for methamphetamine (meth), methylenedioxymethamphetamine (MDMA), and tetrahydrocannabinol (THC).

Oral fluid testing started in the early 1990s. Currently, THC can be detected for several hours after ingestion, while meth and MDMA may be detected up to a day after use. The Parliamentary Road Safety Committee examined the issue of drugs, other than alcohol, from 1994-1996. After their review, they made 41 recommendations to the Australian Parliament. These recommendations included using roadside and standard laboratory techniques, selecting a device to detect impairment, and using laboratory confirmation to confirm the roadside testing results. This led to the creation of a specialty vehicle known as a “Drug Bus,” and standard protocols for roadside drug testing. Australia uses the WIPE II oral fluid device which has a 99 percent accuracy rate.

Members’ Comments

Ms. Elizabeth Ashford inquired if roadside oral fluid testing devices determined percentages or drug levels in a subject’s system. Dr. Rodda explained when a driver is stopped and an oral fluid test is administered, the device provides a positive or negative reading. A positive result means a set level of a chemical is present in the saliva. If positive, a blood draw will be conducted to confirm the positive oral test sample.

Mr. Dale Gieringer inquired about the potential for false positive results. Mr. Gieringer further noted he had read studies that detailed the possibility of false positive results in oral fluid testing. Dr. Rodda was not able to comment as he had not read the report or studies referenced by Mr. Gieringer. Mr. Gieringer then inquired about the sensitivity of THC detection in oral fluid testing devices, and asked if a false positive was possible. Mr. Gieringer noted a positive reading could occur 12 hours after ingestion, although it may not necessarily be an indicator of impairment. Dr. Rodda suggested that California may need to determine a level of THC in the blood that correlates with impairment. Mr. Gieringer then inquired if there were any studies being conducted to determine the average level of THC for a medical marijuana user. Dr. Rodda noted repeat usage over time does increase THC detection. Mr. Gieringer then asked if any studies were being conducted comparing smoked marijuana to other methods of ingestion, and if the ingestion method for cannabis could affect oral fluid testing. Dr. Rodda noted there is current discussion in the research community about this exact subject.

Director Chris Murphy noted one of the many advantages of oral fluid testing is the broad acceptance of the ability to detect THC, which is present in the saliva within minutes of being smoked. Dr. Rodda then emphasized oral fluid testing is the first step in the testing process. Following an oral fluid test, a blood draw is conducted to confirm the results from oral fluid testing. Director Murphy inquired about oral fluid testing devices only registering metabolites and not the parent drug. Dr. Rodda confirmed oral fluid testing only detects the parent drug delta-9 THC; however, a blood test will detect both the parent drug delta-9 THC and the metabolite Carboxy-THC.

Mr. Michael Yraceburn asked if there is a device that can detect THC, and quantify concentration levels. Dr. Rodda explained there may be a device, but he was unsure if it was commercially available. Mr. Yraceburn then asked about device testing limits,

and inquired if thresholds are set by the manufacturer. Dr. Rodda indicated thresholds are set by the manufacturer. Dr. Rodda also noted oral fluid devices are only one part of a multi-step process to detect impairment.

Ms. Dana Lee Kralicek inquired about the increased use of synthetic cannabinoids and asked if oral fluid testing devices can keep up with changes in the chemical composition of synthetic cannabinoids. Dr. Rodda explained oral fluid devices test for a range of drugs. However, oral fluid testing devices currently cannot detect synthetic cannabinoids. Unfortunately, the synthetic cannabinoid chemical compounds in use change quickly, which makes it difficult to design a test that can detect new synthetic cannabinoid compounds.

Ms. Ellen Komp asked about oral fluid device testing sensitivity and why specific testing devices are used in Australia. Dr. Rodda reported detection sensitivity/thresholds are different for each jurisdiction, and Australia is required by legislation to use a specific oral fluid testing device.

Ms. Jennifer Harmon wanted to ensure the members understood the difference between a screening test and a confirmation test. Dr. Rodda explained that a screening test requires higher drug concentrations, while a blood test, or confirmation test, requires lower concentrations. Additionally, a blood test provides more details such as drug concentration levels in a subject's blood. Ms. Harmon explained that a screening test will pick up multiple drugs, while a confirmation test will detail which drugs and how much of that drug is in a subject's system.

Mr. Gieringer inquired if oral fluid testing devices can tell the difference between non-psychoactive THC and psychoactive THC. Captain Helena Williams explained the oral fluid testing devices only test for the delta-9 THC.

Public Comment

A member of the public stated a Michigan law currently requires the use of the Alere DDS 2 oral fluid testing device. Additionally, Mr. Yraceburn noted four counties in California tested the Dräger and Alere oral fluid testing devices in 2013.

Demonstration

Captain Williams informed the Task Force that the CHP is currently evaluating both the Dräger and Alere oral fluid testing devices at Drug Recognition Expert (DRE) field certification sites. This allows DRE officers to use the device in a real world setting. The CHP plans to review their feedback when evaluating the potential application of these devices in the future.

Sergeant Oscar Chavez then demonstrated the process for both oral fluid testing devices. Sergeant Glen Glaser noted the biggest issue with the samples is hydration. Subjects who are dehydrated can have a difficult time providing sufficient saliva

samples. Several members asked how long a sample is viable and the cost per test. Generally, there is a four hour time period to have the sample tested; however, extreme heat or cold could affect this. The single use test kits cost approximately \$18 - \$20, and can only be used once.

Dr. Rodda indicated oral fluid testing device swab samples can be retested in a lab up to two years after the sample is taken, if stored properly. Dr. Rodda further clarified that oral fluid testing devices are looking for enzymes associated with specific metabolites not specific drugs.

Sergeant Glaser reminded the members that persons are not being solely arrested on the oral fluid test device test results. Impairment must still be articulated by the officer through the performance of field sobriety tests, signs and symptoms of impairment, poor driving, and other indicators. Oral fluid testing is generally the last step in the process and provides the officer with additional information.

Chief Falat invited the members to view the oral fluid testing devices.

Public Comment

A member of the public asked if DREs are the only officers trained or are all officers trained in how to use the oral fluid testing devices. Sergeant Glaser explained the CHP is still early in the evaluation phase; however, at this time, only DREs are using the devices.

PRESENTATION – CURRENT CANNABIS RESEARCH EFFORTS BY UNIVERSITY CALIFORNIA, SAN DIEGO

Dr. Thomas Marcotte provided an overview regarding public THC use and the cannabis study currently underway at the University of California, San Diego. According to Dr. Marcotte, the use of THC has doubled in all age ranges in the last decade.

Additionally, the use of THC is increasing at a rapid pace in all metrics, including: sex, race/ethnicity, education level, income level, and geographic areas. Drivers using THC in combination with alcohol are twice as likely to swerve in a driving simulator when compared to subjects using just alcohol or THC alone. Legalization in Colorado has resulted in a 50 percent increase in fatalities with the national average increasing 11 percent.

Dr. Marcotte noted there are inconsistencies in testing procedures and capabilities. Some states only test fatally injured drivers, some states test all drivers in fatal collisions, some states do no testing, and some states do not test for THC if alcohol is present. Dr. Marcotte noted THC stays in the blood stream much longer than other drugs and 80 percent is detectable after 7 days. Most people feel “high” within 5 minutes of ingestion and remain feeling “high,” even though the concentration of THC in their blood decreases.

Dr. Marcotte spoke about the current double blind study underway at University of California, San Diego. In this study, 60 participants are getting zero percent THC, 60 participants are getting 5.9 percent THC, and 60 participants are getting 13.4 percent THC. A participant will be assessed throughout the day on driving performance in a simulator; perform Standardized Field Sobriety Tests, and DRE assessment; undergo a tablet-based cognitive/motor performance test; and submit blood, saliva, and breath samples for testing. Distracted driving is also being factored into the testing during the driving simulator.

Members' Comments

Ms. Ashford asked if the study included real world habits to mask the effects of THC such as drinking soda or coffee, eating a meal etc. Dr. Marcotte said this is not addressed in the study.

Ms. Alice Huffman asked if there would be preliminary reports on the research. Dr. Marcotte stated preliminary report data will not be available as it is a double blind study and the researchers do not know what percentage of THC has been administered to each participant, but he anticipates a report being completed in 2019.

Ms. Komp inquired as to when and how often blood and urine samples are being collected from participants. Dr. Marcotte reported that there are nine blood draws, five oral fluid tests, and five breath tests throughout the day. Ms. Komp then inquired if other drugs in the system were being taken into consideration. Dr. Marcotte explained that the Dräger test is being administered at the start of the day to check for additional drugs.

Public Comment

No members of the public wished to comment.

NEXT STEPS FOR THE COMMITTEE

Captain Williams recapped the information provided to the members over the last four meetings, and reminded members of the committee mandates. Captain Williams also noted law enforcement has been trained for decades to look for impaired drivers. Now that the members understand what impairment is and how it is detected, they need to decide how best to move forward.

Mr. Ken Corney asked what legislative barriers the Task Force would face moving forward. Chief Falat recommended this would be a great discussion for the next meeting. California Highway Patrol Chief Rich Desmond reported Assembly Bill (AB) 2058, the only bill specific to driving under the influence of cannabis that made it through to the Governor, was vetoed. This bill would have created separate cannabis related subsections for the purposes of capturing cannabis arrest and collision data.

However, Chief Desmond anticipates continued legislative discussions on cannabis per se limits, including a combination per se limit for alcohol and cannabis use.

Mr. Jonathan Feldman spoke about the challenges associated with the lack of cannabis per se standards. Unfortunately, the research is still inconclusive, and the Legislature will likely need more information before enacting per se laws. The California Police Chiefs Association is waiting on the recommendations of the Task Force regarding a possible per se standard and other recommendations.

Assistant Chief Davis noted the Task Force is mandated to come up with recommendations for the Legislature and hoped enough has been learned from the presentations to start moving forward with formulating recommendations. Assistant Chief Davis then recommended forming subcommittees to focus on specific Task Force mandates, keeping in mind they are also subject to the Bagley – Keene Open Meeting Act.

Captain Williams reminded the group there are four areas the Task Force is mandated to focus on: best practices, protocols, research, and technology. Ultimately, the committee agreed to form three subcommittees, including: education and prevention; technology, research, and data; and best practices and protocols.

Mr. Gieringer asked to see a demonstration on the technology and applications being used to test for impairment on a personal cellular telephone. There are currently three applications. Dr. Marcotte thought that a presenter of an application would need to be able to validate the application and the data provided. Dr. Marcotte noted the presenter would need to demonstrate the effectiveness of the application. Absent independent verification, such an application would lack credibility and could even be misleading.

Dr. Rodda inquired if a per se law set at five nanograms would prohibit or deter prosecution for someone with less in their system. Mr. Yraceburn explained, from a prosecutorial perspective, impairment is impairment. Impairment is determined by the totality of the circumstances, not simply a number. If someone has three nanograms of delta-9 THC in their blood, but they are unable to safely operate a motor vehicle, they could be prosecuted.

Sergeant Glaser informed the group Washington State has a five nanogram per se limit; however, blood must be drawn within two hours of arrest. Anything after two hours is not admissible in court.

Assistant Chief Davis resumed discussions on the subcommittees. Any group can make a recommendation for any of the mandates. Subcommittees can be changed as needed. Assistant Chief Davis said subcommittees could meet between quarterly IDTF meetings, and the subcommittee chair could report back to all members at the following quarterly meeting.

Ms. Huffman asked about receiving a timeline for Task Force mandates. Assistant Chief Davis reminded the group the report to the Legislature is due by January 1, 2021. The Task Force members requested a timeline for the next meeting.

Ms. Harmon asked about clarification regarding the legislative recommendations and if the research data needed to be available before the Task Force issued its report. Chief Falat stated the research did not need to be completed or available before the Task Force issued its report. However, specific research or data could be referenced in the Task Force's report to the Legislature as part of its recommendations.

Ms. Kristen Burke asked if it would be helpful to the Task Force to hear a presentation on how THC breaks down and is metabolized in the body. Most of the Task Force believed this would be helpful, and requested the presentation.

Public Comment

No members of the public wished to comment.

MEETING INFORMATION

The meeting began at 10:08 a.m. and was adjourned at 1:56 p.m.

The next meeting will be scheduled at a future date. Members will be e-mailed meeting notifications and a public posting will be uploaded to the CHP public Web site.