

Decoding the DRE Program: A Judge's Primer for the Texas Center of the Judiciary

Hon. Kate Huffman

College Station, TX | August 1, 2024



THE NATIONAL JUDICIAL COLLEGE

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Dear Friend:

On behalf of the Board of Trustees, faculty and staff, welcome to The National Judicial College.

Last year the college celebrated its 60th Anniversary of our founding by a committee headed by Supreme Court Justice Tom C. Clark. Since then, more than a quarter of a million judges from around the country and abroad have become NJC alumni by taking one course or many. Past participants and instructors include Stephen Breyer, Anthony Kennedy, Antonin Scalia and Sandra Day O'Connor.

Justice Kennedy has said, "Judicial independence cannot exist unless you have skilled, dedicated, professional judges."

Our goal is to help you carry out your sacred responsibilities confidently and expertly -- and sustainably, because judging is often a stressful, isolating experience. Know that as a member of the NJC family, you will never be alone. If you are like most participants, you'll build friendships and mentorships with faculty and classmates that last a lifetime. Please consider me to be a part of your support system. I also invite you to join In Chambers, our private group on Facebook for judges only.

Our college is a nonprofit organization and is, in many ways, a cooperative effort. Many NJC judges choose to give back by donating their time as an instructor (nearly all faculty are volunteers) or by making a financial contribution -- or both. Financial support is necessary to develop new courses, upgrade classrooms, and provide scholarships. You can donate online at any time at the NJC website, judges.org/donate.

Former federal appeals judge Andre Davis, an NJC alumnus and instructor, has said, "No judge aspires to be average." If this is your first NJC experience, rest assured that you are in good company this week and from this point forward in your career.

Welcome to the NJC family of exemplary judges.

Truly yours,



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Making the world a more just place by educating and inspiring its judiciary

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Course and Program Attendance Policy Statement

The National Judicial College (NJC) has a responsibility to the funding agencies that sponsor your attendance. NJC must ensure that the tax dollars spent on continuing education are utilized for the maximum benefit.

It is therefore the policy and practice of the NJC to award Certificates of Completion to participants who attend all educational sessions. If a participant is unable to attend a class session(s) due to an emergency situation, the participant must contact the program attorney or judicial education manager for the course immediately.

If any portion of the course is missed, the participant may be required to submit a written project determined in consultation with the program attorney for the course. Failure to receive written permission or completion of the written project may result in the denial of the Certificate of Completion and notification to the funding agency.

Continuing Judicial or Legal Education Credits (CJE/CLE)

While NJC courses are nationally recognized by CLE Commissions or Boards, participants are asked to please follow their state's specific filing rules to have their CLE/CJE credits approved. The NJC provides each participant a uniform certificate of attendance form upon completion of applicable NJC courses detailing how many CLE/CJE hours may be possible. Participants are responsible for filing this form with their state's Continuing Legal Education Commissions or Boards where required. Your state may require you to pay a filing fee for CLE approval. If further clarification is needed, please contact the NJC Registrar's Office at (800) 255-8343 or (775) 784-6747 or registrar@judges.org.

The amount of CJE/CLE credit you are eligible to receive may be reduced if you are absent during any class sessions. If you need to leave during the class, please make the appropriate deduction from your CJE/CLE request.

Courtesy to Faculty and Fellow Participants

Please note scheduled breaks will be offered during the class. Therefore, out of respect for your colleagues and speakers we ask that you not engage in activities that may be distracting during the class. Before each session, we ask that all electronic devices be muted or turned off. If you must take a call during the presentation, please take the call outside of the room.

Judicial Studies Program Exam (JSP)

This course qualifies for credit in the Judicial Studies degree program upon successful completion of the course and the course exam for those participants who are candidates in the University of Nevada, Reno Masters or Ph.D. Judicial Studies degree programs. Please see the course program attorney during the class for information regarding the exam. Additional information about this degree program can be viewed at <https://www.unr.edu/judicial-studies>. A take home JSP exam will be emailed following the conclusion of the course. (NOTE: This exam is optional for non-candidate participants.)

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The National Judicial College continues its long-standing commitment to eliminate and prevent bias and any form of harassment.

Harassment is misconduct which uses words or actions to convey disrespect for the human dignity and worth of a person, thereby creating a hostile, offensive work or study environment. Everyone at The National Judicial College must be assured a work and study environment free from any torment, verbal or physical harassment, and sexual overtures and innuendoes which debilitate morale and interfere with the mission of the College.

Harassment Policy Statement (Continued)

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Staff, faculty, and participants are accountable for their personal behavior and for supporting and encouraging the rights of all others to be free from improper or inappropriate behavior.

Instances of harassment affecting faculty or participants should be reported to the chief academic officer. Instances of harassment affecting staff members should be reported to the human resource specialist. In the absence of these individuals, the report should be made to the president of the College.

This policy applies, without exception, to all College staff, faculty members, and participants.

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The National Judicial College (NJC) and President Benes Z. Aldana are committed to, and give public notice of, NJC's policy to uphold and assure full compliance with the nondiscrimination requirements of Title VI of the Civil Rights Act of 1964 and related nondiscrimination authority. Title VI and related nondiscrimination authority stipulate that no person in the United States of America shall on the grounds of race, color, national origin, sex, age, disability, income level, or limited English proficiency be excluded from the participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.

Any person who desires more information regarding NJC's Title VI Program may contact NJC's Title VI Program Officer Joy Lyngar at the address noted below.

Any person who believes he or she, individually or as a member of any specific class of persons, has been subjected to discrimination on the basis of race, color, national origin, sex, age, disability, income level, or limited English proficiency has the right to file a formal complaint. Any such complaint must be in writing and submitted to NJC within 180 days following the date of the alleged occurrence.

Mail to: Title VI Program Officer
Joy Lyngar, J.D.
The National Judicial College Judicial College Building / MS 358 Reno, NV 89557
(775) 784-6747
lyngar@judges.org

You may also file a Civil Rights complaint directly with the Office for Civil Rights within the U.S. Department of Justice as well as the Nevada Office of the Attorney General's Grants Unit.

Mail to: U.S. Department of Justice, Civil Rights Division 950 Pennsylvania Avenue, N.W. Washington, D.C. 20530 Hotline (English & Spanish): (888) 848-5306	Office of the Attorney General, Grants Unit 100 North Carson Street Carson City, Nevada 89701-4717 Phone: (775) 684-1110
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Decoding the DRE Program: A Judge's Primer for the Texas Center of the Judiciary

August 1, 2024

College Station, Texas

Faculty Biography

HONORABLE MARY KATHERINE (KATE) HUFFMAN

Judge Huffman serves on the Second District Court of Appeals located in Dayton, Ohio, and serving a six-county region in southwestern Ohio. She was a General Division Judge from 2002 until February, 2023, and served as the elected Administrative Judge of the General Division from January, 2016 through December, 2018. At various times during her trial court tenure, she presided over the Women's R.I.S.E. court, and the Drug Court program. Prior to becoming a judge, she had a civil and criminal law trial practice for eleven years with the firm Huffman, Landis & Weak. Judge Huffman received her bachelor's degree, summa cum laude, from Wright State University, her Juris Doctor, summa cum laude, from University of Dayton School of Law, and a Master of Judicial Studies degree from University of Reno, Nevada. Judge Huffman has been an adjunct faculty member at the University of Dayton School of Law since 2003. She recently served as the Chair of the Ohio Supreme Court Commission on the Rules of Practice and Procedure and is currently the Vice-Chair of the Ohio Judicial College. As the ABA National Judicial Fellow Judge Huffman provides peer-to-peer education to other judges on impaired driving and related issues. She has written a number of scholarly articles for publication, including "Tort Law: Social Host Liability for the Negligent Acts of Intoxicated Minors," "Immunity and Mental Health Professionals," and "The Politics of Fear: The Dubious Logic Underlying Sex Offender Registration Statutes". Judge Huffman is an NJC alumna and joined the NJC faculty in 2016.

Decoding the DRE Program: A Judge's Primer

DIVIDER 1

Judge Kate Huffman

OBJECTIVES:

After this session, you will be able to:

1. Demonstrate an understanding of the impact of drug use on the tasks critical to driving;
2. Outline the key components of the twelve-step DRE protocol; and
3. Evaluate the admissibility of DRE testimony in impaired driving cases.

Decoding the DRE Program: A Judge's Primer

Judge Kate Huffman
American Bar Association National Judicial
Fellow
August 1, 2024



Learning Objectives

- Demonstrate an understanding of the impact of drug use on the tasks critical to driving
- Outline the key components of the twelve-step DRE protocol
- Evaluate the admissibility of DRE testimony in impaired driving cases



**CAUTION
NEW DRIVER**



Why is it important?

Driving is "a complex activity requiring alertness, divided yet wide-ranging attention, concentration, eye-hand-foot coordination, and the ability to process visual, auditory, and kinesthetic information quickly."

P. Larkin, *Medical or Recreational Marijuana and Drugged Driving*, 52 Am. Cr. L. Rev. 454 (2015)

The Big Four:

1. Judgment
2. Vision and visual perception
3. Muscular coordination
4. Reaction time



Impaired Driving By the Numbers

- In 2022, there were 13,524 alcohol-related traffic fatalities in the U.S., representing 32% of all traffic deaths
- 32 people in the U.S. die every day in impaired-driving crashes - one person every 45 minutes
- In 2019, 1,024,508 drivers arrested for DUI, with 121m impaired driving episodes
- An impaired driver gets behind the wheel and drives between 300 and 1,200 times before first arrest



The good news and the bad news

2/3 of first-time impaired drivers self-correct and do not recidivate

40% of fatally injured impaired drivers have a history of repeat DUI offenses

Less than 5% of drivers account for about 80% of the impaired driving episodes

Views on Substance Use and Driving

- Drivers perceive the use of marijuana and alcohol differently
- 95% of survey respondents believe it is dangerous to drink and drive
- 69% of the same respondents believe it is dangerous to use marijuana and drive



Risk of Motor Vehicle Collisions

- Alcohol use alone consistently associated with elevated motor vehicle collision risk
- Cannabis use alone (at all levels) not consistently associated with elevated motor vehicle collision risk
- Alcohol and cannabis in combination consistently associated with elevated motor vehicle collision risk

Drugged Driving Defined

Driving after the use of impairing substances other than alcohol or combined with alcohol

- Illegal drugs
- Prescription drugs
- Over-the-counter medications
- Chemical consumption
- Combination of any of the above and/or with alcohol



Question

How many people in the U.S. drive under the influence of drugs annually?

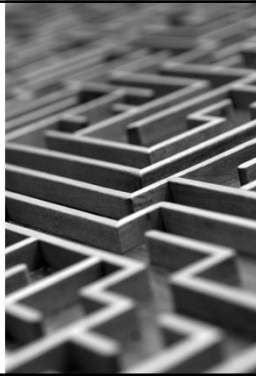
1. 10 million
2. 25 million
3. 62 million
4. 100 million

Struggling with Drug Data

- Labs may not test for drugs if driver has reached an illegal/per se blood alcohol level because there is already enough evidence to support an impaired driving charge - stop limit testing
- Many drivers who cause crashes have both drugs and alcohol/more than one drug in their system, making it difficult to know which substance had the greater effect
- Data is reported inconsistently and difficult to correlate
- Some drugs stay in the system for days or weeks after use, making it difficult to determine when the drug was used, and how and if it impaired driving

Why is this difficult?

- Varied substances with different means of impairing the driver
- The lack of information about many potentially impairing drugs
- Individual differences, sensitivity and tolerance
- Myriad of ways various substances interact
- Study limitations/data incomplete
- Testing inadequacies/failure to test for all drugs



Driving Under the Influence of Drugs (DUID)



- DUID offenders 5x more likely to reoffend as compared to DUI offenders
- DUID where a scheduled prescription was the impairing drug reoffend much less frequently (about 17%) compared to those consuming illicit drugs (68%)

Drug Impaired Driving

- Recreational cannabis use associated with increased motor vehicle crashes
- Chronic, heavy recreational cannabis use associated with worse driving performance
- In 2022, daily or near daily marijuana use exceeded daily alcohol use



- 137.4m current alcohol users
- 61m past month binge drinkers (44.5%)
- 61.9m past month marijuana users (22%)
- 8.9m opioid misusers in the past year
- 48.7m SUD in the past year
 - 29.5m AUD
 - 27.2m DUD
 - 8.0m both



What we know



2022 NTSB Report

Analyzed toxicology data from four labs including drivers arrested for DUID and fatally injured drivers:

Between 71% and 99% of drivers tested positive for one or more potentially impairing drugs

Approximately 50% of the drivers had more than one drug category present on toxicology screen



that it's just alcohol

Table 3. Percentage of drivers who reported driving within 2 hours of using various potentially driver impairing medications within the past 30 days, United States, July–August 2021.

Age Group	Anesthetics and/or cough medicines		Antidepressants		Pain medications		Muscle relaxants		Sleep aids, barbiturates, or benzodiazepines		Anticholinergics	
	(%)	(N)	(%)	(N)	(%)	(N)	(%)	(N)	(%)	(N)	(%)	(N)
All drivers	39.9	608	32.6	216	21.6	32	3.2	71	45.0	63	63.3	70
16–18	32.8	55	29.3	276	4.7	56	4.0	39	39.3	54	56.6	46
19–24	31.8	52	20.1	0.0	0.0	0.0	1.0	39	39.3	54	83.6	83
25–39	36.5	74	28.4	20.3	13.8	80	80.7	44	44.8	69	70.0	70
40–64	43.1	60	40.5	22	8.4	6	6	48	48.6	64	72	72
≥65	34.4	49	26.6	22	10.9	14	14	38	38.9	52	64.6	64

Based on 115,000 drivers ages 16+ with a driver's license who reported driving and taking the corresponding medicine for number of medications in past 30 days, weighted to reflect U.S. population. Row numbers indicate significantly different across age groups based on unadjusted statistical analysis (corrected Pearson χ^2 test). Blue shading indicates small sample size (<100). *Not necessarily at the same time.



Impaired Drivers: Not the Usual Suspects

Impaired Drivers are Different

- Tend to score lower on traditional risk assessments
- Often lack an extensive criminal history
- High degree of denial - alcohol consumption is legal, highly prevalent and socially encouraged
- Tend to be employed and may have a stable social network
- Do not view themselves as criminals
- But, repeatedly engage in behavior that is dangerous

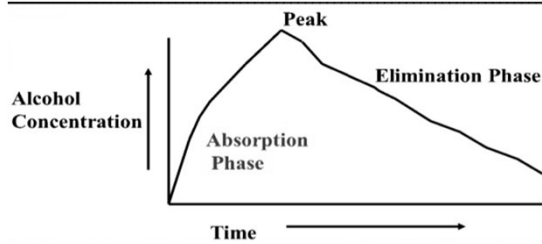


Co-Occurring Disorders

Study of repeat impaired drivers found 45% have a lifetime major mental health disorder

Mental health issues linked to impaired driving include:
 Depression, bipolar disorder, conduct disorder, anxiety, anti-social personality, PTSD

Alcohol - A Simple Drug



BLOOD ALCOHOL CONCENTRATION	NUMBER OF DRINKS	EFFECTS ON DRIVING
0.02% BAC	2 drinks	<ul style="list-style-type: none"> Decline in visual functions Inability to perform two tasks at the same time Loss of judgment Altered mood
0.05% BAC	3 drinks	<ul style="list-style-type: none"> Reduced coordination Reduced ability to track moving objects Difficulty steering Slower response to emergency driving situations
0.08% BAC	4 drinks	<ul style="list-style-type: none"> Reduced ability to concentrate Short-term memory loss Lack of speed control Impaired perception and self-control
0.10% BAC	5 drinks	<ul style="list-style-type: none"> Clear deterioration of reaction time Reduced ability to maintain lane position Reduced ability to brake appropriately Slurred speech
0.15% BAC	6 drinks	<ul style="list-style-type: none"> Substantial impairment in vehicle control Loss of auditory information processing Major loss of balance Vomiting may occur

Source: Centers for Disease Control and Prevention

THC and the Brain

THC structure similar to the brain chemical anandamide

The similar structure allows the drug to be recognized by and activate cannabinoid receptors and to alter normal brain communication

Cannabinoid receptors abundant in the parts of the brain that regulate movement, coordination, learning and memory, higher cognitive functions such as judgment, and pleasure regions

Activates the brain's reward system - which releases dopamine at levels higher than typically found, prompting a repetition of the behavior

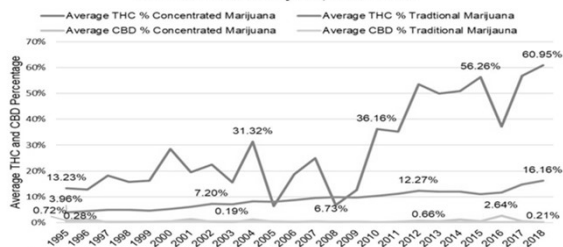
Cannabis

- Affect varies by product, dose, route of administration, experience of user
- Short term effects - problems with memory and learning, distorted perception, difficulty in thinking and problem-solving and loss of coordination, difficulty sustaining and shifting attention and in registering, processing and using information
- Driving concerns - distortion of distance, and vigilance, loss of coordination in divided attention tasks

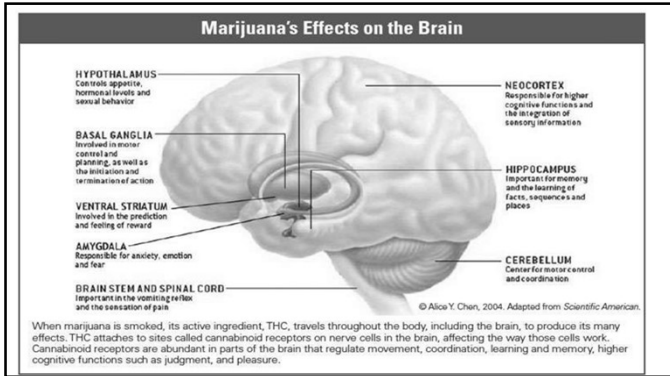


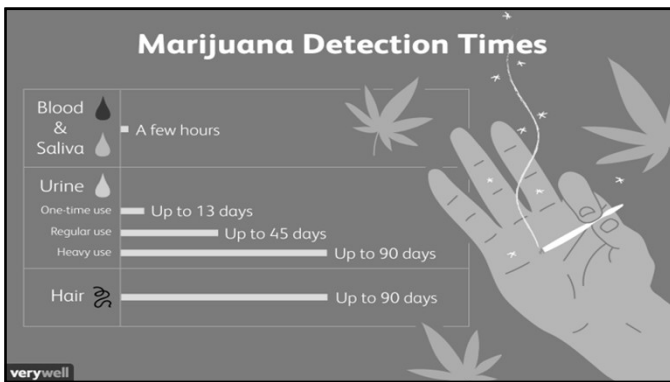
It's Not Your Grandpa's Weed

Figure 71. Average THC and Cannabidiol Potency of Traditional and Concentrated Marijuana, 1995 - 2018



Source: University of Mississippi





What makes cannabis and alcohol use different?

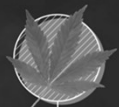
- Alcohol eliminated at a fairly constant rate of 0.01%-0.03% per hour
- Peak effects of alcohol use occur at peak blood concentration
- THC concentration cannot be correlated to specific impairment
- THC dissolves in fatty tissue, which acts like a sponge to reduce measurable amounts in blood, saliva or breath
- THC rapidly moves from the blood stream to the brain, yet has a long half-life to metabolize
- As a result, impairment does not uniformly rise and fall based upon how much THC is present in bodily fluids
- Peak effects of cannabis occur after peak blood concentration

No BAC for THC



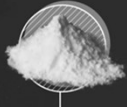
WHAT ARE EFFECTS OF DRUGS ON DRIVING?

Driving under the influence of drugs affects you and everyone around you.



MARIJUANA

Slows reaction time and impairs judgment of time and distance



METHAMPHETAMINE OR COCAINE

Aggressive and reckless behaviors



OPIOIDS

Drowsiness and impaired memory and thinking skills



SEDATIVES

(benzodiazepines, barbiturates, etc.)
Dizziness and drowsiness

Diphenhydramine (Benadryl, Unisom, Dramamine)

- Can act as both a stimulant and a depressant
- Diminishes cognitive and psychomotor performance, decreased alertness, decreased reaction time, impaired concentration, time estimation, tracking and attention, ability to maintain a constant distance and lane keeping
- A single 50 mg dose has been shown to cause significant impairment in measuring vehicle following, constant speed and lateral position - effects correspond to a BAC of 0.1



Dextromethorphan

- Synthetic analog of codeine
- Effects of recreational doses include dissociation of mind from body, creating a dream-like experience, disorientation, confusion, altered time perception, visual and auditory hallucinations
- Little to no effect on driving at therapeutic levels, but high doses result in significant impairment - marked drowsiness, impairment of mental and/or physical abilities required to perform driving tasks



Ketamine

- Decreased awareness of general environment, dream-like state, feelings of invulnerability, increased distractibility, disorientation, intense hallucinations, impaired thought processes, out-of-body experiences, changes in perception about body, surroundings, time and sounds
- Increased reaction time, distorted perception of space, blurred vision
- Manufacturer suggests no driving within 24 hours of ingestion



Diazepam (Valium)

- At low doses, a moderate tranquilizer, causing sleepiness, drowsiness, confusion
- At high doses, results in excitement, disinhibition, severe sedation, and effects on respiration
- May produce a state of intoxication similar to that of alcohol, including slurred speech, disorientation
- Results in significant driving impairment - decreased divided attention, increase in lane travel, slowed reaction time, increased braking time, decreased eye-hand coordination, and impairment of tracking and vigilance

Harmful Intoxicants



- Common household items
- Purchased legally with little to no regulation
- No age restriction on purchase
- Inexpensive
- Produce a high
- Impair motor function
- Difficult to detect
- May result in an impaired driving conviction

The Process of an Impaired Driving Stop

- Officer observes inappropriate driving behavior
- Officer stops vehicle, engages driver in conversation, forms suspicion that the driver is impaired
- Standardized field sobriety tests
- Request for BAC sample
- Only when BAC level incompatible with observed impairment will the officer consider drugs other than alcohol
- Typically, if the BAC is at or above the legal limit, the investigation stops

Standardized Field Sobriety Tests

1981 - NHTSA develops standardized field sobriety tests (SFST)

Divided attention tests:

- ✓ Horizontal gaze nystagmus
- ✓ Walk-and-turn
- ✓ One-leg stand

SFST

- Listen to instructions
- Remember instructions
- Follow instructions
- Maintain attention to the task at hand
- Physically perform the task
- Perform more than one activity at once
- Not sensitive to alcohol only

Divided attention tests,
not driving tests



What if the BAC is
inconsistent with the
level of impairment?

How Impaired Are You? Body Response at Rising BAC Levels

Mild Impairment 0.0 - 0.05% BAC

- Mild speech and attention impairments
- Decreased beneficial effects, such as relaxation
- Reaction time can lengthen

Increased Impairment 0.06 - 0.09% BAC

- Perceived beneficial effects of alcohol, such as relaxation, begin to increase
- Increased risk of aggression in some people
- Balance, memory, attention, coordination, balance further impaired
- Significant impairments in all driving skills
- Increased risk of injury to self and others
- Moderate memory impairment

Severe Impairment 0.10 - 0.20% BAC

- Speech, memory, coordination, attention, reaction time, balance significantly impaired
- All driving-related skills comprehensively impaired
- Aggression and decision-making dangerously impaired
- Blackouts (amnesia)
- Vomiting and other signs of alcohol poisoning
- Lack of consciousness

Life-Threatening 0.31 - 0.45% BAC

- Lack of consciousness
- Danger of the developing alcohol poisoning
- Significant risk of death in most countries due to respiratory or vital life functions

Drug Recognition Experts

Police officers trained to recognize impairment in drivers under the influence of drugs other than, or in addition to alcohol

Began in Los Angeles in the early 1970s

Administered by NHTSA and the International Association of Chiefs of Police

Now a nationally standardized DRE protocol

Identifies seven different categories of drugs and the physical symptoms associated with each

Important Terms

Drug Recognition Expert - a law enforcement officer certified by the IACP

Drug Influence Evaluation - a formal *standardized* assessment of an impaired driving suspect performed by a DRE

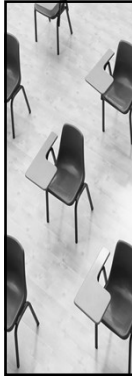


Drug Influence Evaluation

- Based upon the principle that a given drug category will produce physiological responses in the body which can be observed and measured
- Not a test
- A method of collecting and interpreting evidence

Drug Categories

- CNS depressants
- CNS stimulants
- Hallucinogens
- Dissociative anesthetics
- Narcotic analgesics
- Inhalants
- Cannabis



DRE Selection and Training

- ✓Employed as a paid law enforcement officer
- ✓Experience in preparing comprehensive reports and in providing detailed court testimony
- ✓Completed training in and develop proficiency in SFST pre-DRE candidate acceptance (ARIDE required in NV)
- ✓Phase I - 16 hour "pre-school"
- ✓Phase II - 56 hour classroom program; examination
- ✓Phase III - field training, satisfactorily complete a minimum of 12 DIE, with conclusions supported by forensic testing; examination and recommendation by two DREs

The DRE Protocol

A standardized and systematic method of examining a DUID suspect to determine:

1. Whether or not the suspect is impaired; if so,
2. Whether the impairment relates to drugs or a medical condition; and if drugs
3. What category or combination of categories of drugs are the likely cause of the impairment

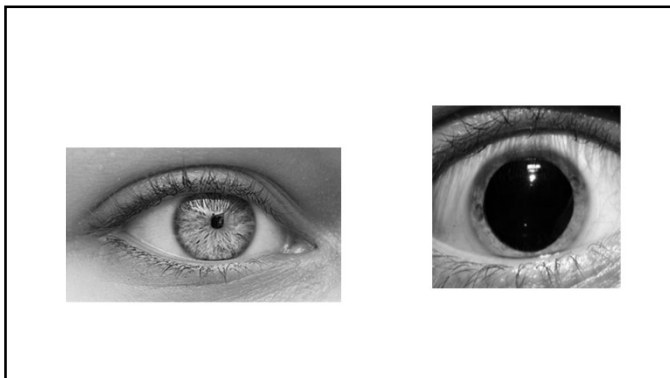
Based on a complete set of observable signs and symptoms that are known to be reliable indicators of drug impairment



Standardized DRE 12-Step Protocol

- | | |
|-----------------------------------|----------------------------|
| 1. Breath Test | 7. Dark Room Examination |
| 2. Interview of Arresting Officer | Room Light |
| 3. Preliminary Exam | Near Total Darkness |
| First Pulse | Direct Light |
| 4. Eye Examinations | 8. Muscle Tone |
| 5. Psychophysical Tests | 9. Injection Sites |
| 6. Vital Signs | Third Pulse |
| Second Pulse | 10. Interrogation |
| | 11. Opinion of DRE |
| | 12. Toxicology Examination |





The DRE Matrix

Indicators Consistent with Drug Categories							
	Alcohol	Drugs	Psychomotor Impairment	Respiratory Distress	Unusual Odors	Unusual Behaviors	Unusual Vital Signs
Alcohol	Present	Absent	Absent	Absent	Absent	Absent	Absent
Drugs	Absent	Present	Present	Present	Present	Present	Present
Psychomotor Impairment	Absent	Absent	Present	Absent	Absent	Absent	Absent
Respiratory Distress	Absent	Absent	Absent	Present	Absent	Absent	Absent
Unusual Odors	Absent	Absent	Absent	Absent	Present	Absent	Absent
Unusual Behaviors	Absent	Absent	Absent	Absent	Absent	Present	Absent
Unusual Vital Signs	Absent	Absent	Absent	Absent	Absent	Absent	Present
Alcohol	Absent	Present	Present	Present	Present	Present	Present
Drugs	Present	Absent	Absent	Absent	Absent	Absent	Absent
Psychomotor Impairment	Present	Present	Present	Present	Present	Present	Present
Respiratory Distress	Present	Present	Present	Present	Present	Present	Present
Unusual Odors	Present	Present	Present	Present	Present	Present	Present
Unusual Behaviors	Present	Present	Present	Present	Present	Present	Present
Unusual Vital Signs	Present	Present	Present	Present	Present	Present	Present
Alcohol	Present	Present	Present	Present	Present	Present	Present
Drugs	Present	Present	Present	Present	Present	Present	Present
Psychomotor Impairment	Present	Present	Present	Present	Present	Present	Present
Respiratory Distress	Present	Present	Present	Present	Present	Present	Present
Unusual Odors	Present	Present	Present	Present	Present	Present	Present
Unusual Behaviors	Present	Present	Present	Present	Present	Present	Present
Unusual Vital Signs	Present	Present	Present	Present	Present	Present	Present

Limitations

- A conclusion is never based on any one element of the evaluation, but instead on the totality of facts that emerge
- Err in favor of the subject
- Rules out medical conditions
- Records all observations, which are subject to peer review
- Observations confirmed by urine, blood or oral fluids
- Subject to cross-examination

The Texas Experience

- Two years experience as a Texas peace officer employed by a state, county or municipal law enforcement agency
- Completed NHTSA 24 hour SFST course
- Possess a reasonable background in impaired driving enforcement
- Possess a documented ability to complete thorough and accurate reports
- Recommendation of two current DREs
- Training
 - Three phases
 - DRE pre-school and DRE school (9 days)
 - DRE field certification
 - DRE examination
- Recertification every two years

- 335 certified DREs in 2022
- 261,194 square miles of land in Texas
- 2,332 square miles per DRE per shift



State v. Olenowski

Special Master appointed to consider and decide whether DRE evidence has achieved general acceptance within the relevant scientific community and therefore satisfied the reliability standard of Evid. R. 702.

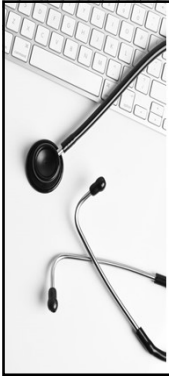
42 days of testimony
16 witnesses
300+ page final report

The Special Master's Report

1. The seven drug categories in the DRE matrix are consistent with comparable matrices used and generally accepted in the medical field
2. DREs can be and are adequately trained to competently perform all of the scientifically based steps in the DRE protocol and to reliably observe and report on the results in a manner that is comparable to the training and performance of individuals in the medical field, such as clinical technicians and EMTs

The *Olenowski* Legacy

Specially trained police officers who serve as DREs can be, and are adequately trained in those aspects of the protocol that are scientifically based; laypersons - not just police officers - are routinely trained to reliably make assessments and perform medical tasks and are thus enabled to reliably apply the protocol



Admissibility of DRE Testimony

The protocol is scientifically reliable; a DRE may testify as an expert witness regarding the administration and results of the protocol as applied to a particular defendant. While the protocol as a whole is not scientific, there is a sufficient scientific foundation for the protocol to be admissible under *Daubert*, many of the steps are non-scientific, such as the officer's observations and interview, but are reliable.

New Mexico v. Aleman, 145 N.M. 79 (2008)

"Nothing contained in the protocol is a new invention," and the protocol is "rather a compilation of tried and true procedures utilized by medical science and the law enforcement community in similar contexts for many years."

People v. Quinn, 580 N.Y.S.3d 818 (1991)

DRE officers "may not predict the specific level of drugs present in a suspect," but may, when properly qualified, "express an opinion that a suspect's behavior and physical attributes are or are not consistent with the behavioral and physical signs associated with certain categories of drugs."

State v. Baily, 991 P.2d 1151 (Wash. 2000)

Admissibility in Texas



- The drug-recognition field is an experience- and training-based field
- Because this analysis is rooted in experience and training, as opposed to the rigors of the scientific method, the less-stringent soft-science requirements of reliability is applicable to drug-recognition-expert testimony

Sanders v. Texas
(2020)(Unpublished)

Richter v. Texas, 482 S.W. 3d 388 (2015)

- The field of drug recognition is noted as a recognized field
- A trial court has great discretion in determining whether a witness possesses sufficient qualification to assist the jury as an expert on a specific topic in a particular case
- The experience of a DRE goes to the weight, but not the admissibility of the testimony



Contact Information

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INDICATORS CONSISTENT WITH DRUG CATEGORIES

	CNS DEPRESSANTS	CNS STIMULANTS	HALLUCINOGENS	DISSOCIATIVE ANESTHETICS	NARCOTIC ANALGESICS	INHALANTS	CANNABIS
HGN	PRESENT	NONE	NONE	PRESENT	NONE	PRESENT	NONE
VGN	PRESENT (HIGH DOSE)	NONE	NONE	PRESENT	NONE	PRESENT (HIGH DOSE)	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
MUSCLE TONE	FLACCID	RIGID	RIGID	RIGID	FLACCID	NORMAL OR FLACCID	NORMAL

FOOTNOTE: These indicators are those most consistent with the category, keep in mind that there may be variations due to individual reaction, dose taken and drug interactions.

- (1) Soma, Quaaludes and possibly 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.

INDICATORS CONSISTENT WITH DRUG CATEGORIES

	Possible Effects	CNS Depressants	CNS Stimulants	Hallucinogens	Dissociative Anesthetics	Narcotic Analgesics	Inhalants	Cannabis
HGN	Present or None	Present	None	None	Present	None	Present	None
VGN	Present or None	Present (High Dose)	None	None	Present	None	Present (High Dose)	None
Lack of Convergence	Present or None	Present	None	None	Present	None	Present	Present
Pupil Size	Normal Dilated Constricted	Normal (1)	Dilated	Dilated	Normal	Constricted	Normal (4)	Dilated (6)
Reaction to Light	Normal Slow Little to None Visible	Slow	Slow	Normal (3)	Normal	Little to None Visible	Slow	Normal
Pulse Rate	Normal Up Down	Down (2)	Up	Up	Up	Down	Up	Up
Blood Pressure	Normal Up Down	Down	Up	Up	Up	Down	Up/Down (5)	Up
Body Temperature	Normal Up Down	Normal	Up	Up	Up	Down	Up/Down/Normal	Normal
Muscle Tone	Normal Flaccid Rigid	Flaccid	Rigid	Rigid	Rigid	Flaccid	Normal or Flaccid	Normal

FOOTNOTE: These indicators are those most consistent with the category, keep in mind that there may be variations due to individual reaction, dose taken and drug interactions.

(1) Soma, Quaaludes and possibly some anti-depressants usually dilate pupils.

(2) Quaaludes, ETOH and some anti-depressants may elevate.

(3) Certain psychedelic amphetamines may cause slowing.

(4) Normal, but may be dilated.

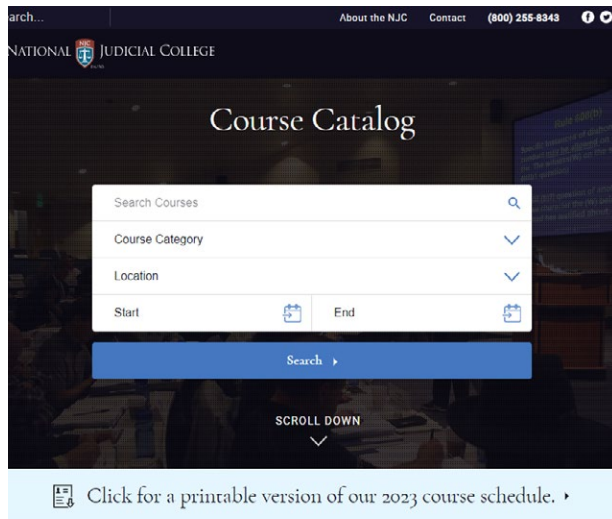
(5) Down with anesthetic gases, up with volatile solvents and aerosols.

(6) Pupil size possibly normal.

MAJOR INDICATORS	CNS DEPRESSANTS	CNS STIMULANTS	HALLUCINOGENS	DISSOCIATIVE ANESTHETICS	NARCOTIC ANALGESICS	INHALANTS	CANNABIS
GENERAL INDICATORS	Disoriented Droopy eyes (Ptosis) Drowsiness Drunk-like behavior Gait ataxia Slow, sluggish reactions Thick, slurred speech Uncoordinated *NOTE: With Methaqualone, pulse will be elevated and body tremors will be evident. Alcohol and Quaaludes elevate pulse. Soma and Quaaludes dilate pupils.	Anxiety Body tremors Dry mouth Euphoria Exaggerated reflexes Excited Eyelid tremors Grinding teeth (Bruxism) Increased alertness Insomnia Irritability Redness to nasal area Restlessness Runny nose Talkative	Body tremors Dazed appearance Difficulty w/speech Disoriented Flashbacks Hallucinations Memory loss Nausea Paranoia Perspiring Poor perception of time and distance Synesthesia Uncoordinated NOTE: With LSD, piloerection may be observed (goose bumps, hair standing on end).	Blank stare Confused Chemical odor Cyclic behavior Difficulty w/speech Disoriented Early HGN Onset Hallucinations Incomplete verbal responses Increased pain threshold "Moon Walking" Muscle rigidity Non-communicative Perspiring Possibly violent Sensory distortions Slow, slurred speech Warm to touch	Constricted pupils Depressed reflexes Drowsiness Droopy eyelids (Ptosis) Dry mouth Euphoria Facial itching Nausea "On the Nod" Puncture marks Slow, low, raspy speech Slowed breathing NOTE: Tolerant users exhibit relatively little psychomotor impairment.	Bloodshot, watery eyes Confusion Disoriented Flushed face Intense headaches Lack of muscle control Non-communicative Odor of substance Possible nausea Residue of substance Slow, thick, slurred speech **NOTE: Anesthetic gases cause below normal blood pressure; volatile solvents and aerosols cause above normal blood pressure.	Body tremors Disoriented Debris in mouth Eyelid tremors Impaired perception of time & distance Increased appetite Marked reddening of conjunctiva 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 Meth: 12 hours	Duration varies widely from one hallucinogen to another. LSD: 4-6 hours Psilocybin: 2-3 hours	PCP Onset: 1-5 minutes Peak Effects: 15-30 minutes Exhibits effects up to 4-6 hours DXM: Onset 15-30 min. Effects 3-6 hours	Heroin: 4-6 hours Methadone: Up to 24 hours Others: Vary	6-8 hours for most volatile solvents Anesthetic gases and aerosols – very short duration	2-3 hours – exhibit effects (Impairment may last up to 24 hours, without awareness effects.)
USUAL METHODS OF ADMINISTRATION	Oral Injected (occasionally)	Insufflation (snorting) Smoked Injected Oral	Oral Insufflation Smoked Injected Transdermal	Smoked (PCP) Oral Insufflation (PCP) Injected (PCP) Eye drops	Injected Oral Smoked Insufflation	Insufflation (Historically, have been taken orally.)	Smoked Oral
OVERDOSE SIGNS	Shallow breathing 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

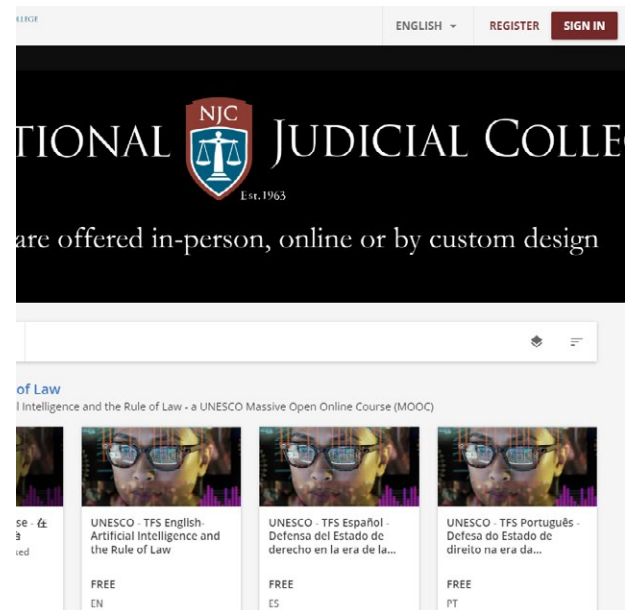
Additional Resources

For a full catalog of courses visit: judges.org/courses

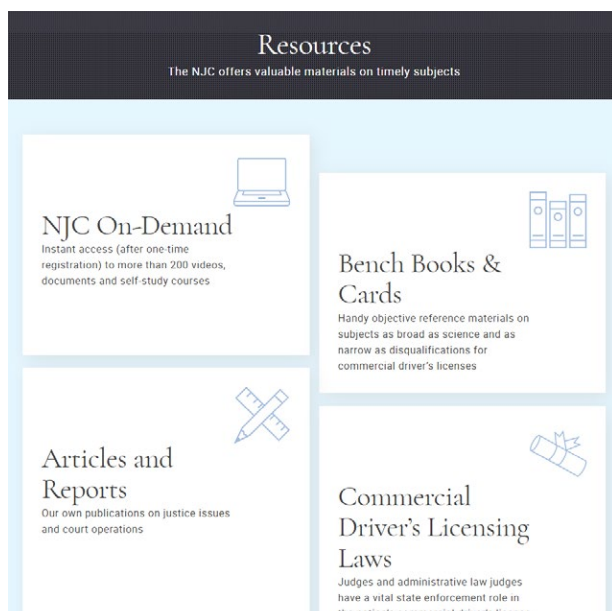


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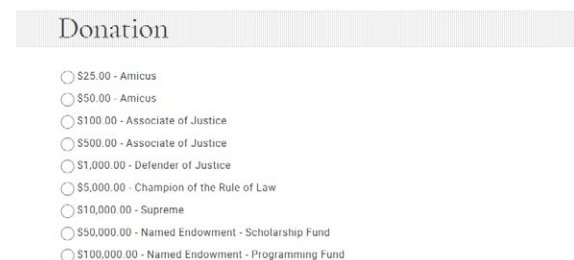
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- The self-study course *Search & Seizure in Impaired Driving Adjudication*

This program has been specifically designed for nonlawyer traffic court judges, magistrates and hearing officers who handle motor-vehicle-related cases. Criteria must be met during 2020-2025.

Please contact Bryan Walker at bryanwalker@judges.org for more information on how to get yours.

