



The Miami-Dade Protocol: Making Drugged Driving Enforcement a Reality

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Introduction

Drugged driving is national epidemic. About 16% of weekend nighttime drivers tested positive for drugs in the 2007 National Roadside Survey (including both legal and illegal drugs) [1]. Drug use is associated with a significantly increased risk of fatal crash involvement [2]. Data from the Fatality Analysis Reporting System (FARS) demonstrates that the problem is worsening. Researchers examining FARS data from 23,591 drivers in six states who died within one hour of a motor vehicle crash between 1999 and 2010 found that the percentage of them who tested positive for drugs other than alcohol increased from 16.6% to 28.3% [3]. Nationally, the National Highway Traffic Safety Administration reported that 32% of fatally injured drivers with known test results tested positive for drugs in 2012, an increase of six percentage points since 2008 [4].

While law enforcement officers and safety advocates have conceived and considered numerous ways to address this problem [5], drugged driving enforcement and prosecution has been stagnant for years. Traditionally, drivers who are arrested for DUI and provide breath samples at or above the illegal 0.08 blood or breath alcohol (BAC) limit are not tested for drugs unless they are involved in a crash where someone is seriously injured or killed as discussed below.

Several years ago, Talpins, DuPont, and Walls proposed screening every driver arrested for DUI who provided samples above the illegal alcohol limit for drugs using on-site oral fluid methods. Those who screened positive would be required to submit additional samples for confirmation testing (the "Miami Protocol") [6]. They argued that agencies could more effectively and efficiently identify drugged drivers with BACs over the illegal limit by triaging the drivers above 0.08; agencies can more efficiently identify the drugged drivers with BACs above the illegal limit. Many expressed skepticism, arguing that on-site oral fluid testing was too unreliable. They noted that the available kits screened for a limited panel of drugs and/or drug categories and were especially poor at identifying marijuana use. However, improving technology has changed this calculation. New oral fluid test kits are easy to use (an hour of training is sufficient), quick (tests take only a few minutes), relatively inexpensive (\$15-\$25 per test), and far more effective than those previously available. In 2012 and 2013, researchers partnered with the Miami-Dade County Police Department and tested the Miami Protocol [7]. Study results support the author's belief that the protocol is feasible, cost-effective, and useful.

The Traditional Approach to Impaired Driving

The vast majority of law enforcement agencies in the United States, including those in Miami-Dade County, Florida, do not test drivers arrested for driving under the influence (DUI) for drugs (other than those involved in crashes causing serious bodily injury or death) unless they provide breath samples below the illegal limit (0.080 g/dl) [8]. There are two primary reasons for this. First, traditional urine and blood testing are time consuming and expensive; collecting a sample may take hours and laboratory testing typically costs in excess of \$100. Second, many law enforcement officials believe that the conviction rate

under the per se alcohol law is "high enough" to justify ignoring these drivers drug use. Unfortunately, this practice has significant unintended consequences. Third, many judges exclude positive drug tests in the absence of expert testimony, typically provided by a Drug Recognition Expert or toxicologist, linking the positive test to impairment.

In every state, DUI offenders are required to participate in treatment programs designed to address their substance misuse issues as a condition of probation. They also may be monitored for alcohol and/or drug use. The intensity of their supervision typically depends upon their criminal history and known substance misuse issues. Providers routinely rely on screening, assessment, and evaluation tools to identify offenders' problems. Offenders often conceal or minimize their issues to avoid more stringent treatment and monitoring options [9]. This is extremely concerning because the prevalence of drug use is so high in the driving population, as noted above, and drugged drivers are notoriously recalcitrant [10]. A positive drug test from the night of the arrest could give the providers the information they need to identify and treat a drug problem that may otherwise go undiscovered.

Saliva Testing and the Miami Protocol

In 2012, the Institute for Behavior and Health, Inc. (IBH), the NMS Foundation, and the Miami-Dade County Police Department (MDPD) partnered in an effort to assess the Miami Protocol using two of the most effective on-site systems: Drug Wipe, manufactured by Securetec and distributed in the United States by Affiniton, and the Drager Drug Test 5000. Affiniton and Drager trained MDPD DUI Squad officers how to use the kits.

DUI Squad officers asked every eligible DUI arrestee to participate in the study after the criminal investigation and arrest were completed. In order to test the protocol, without jeopardizing criminal cases, researchers excluded juveniles and offenders involved in accidents. Officers tested the offenders who agreed to participate in the study using the two on-site kits. Additionally, they collected an oral fluid sample and a urine sample for laboratory testing.

Ninety-two (92) DUI suspects participated in the study. Thirty-eight (41%) participants tested positive for substances other than alcohol during laboratory testing [11]. Twenty (53%) of these individuals had breath alcohol levels of 0.08 or higher [12]. Interestingly, less than half

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of the suspects with BACs less than 0.08 tested positive for drugs [13]. Some of these suspects may be low tolerance drinkers or may have been over the illegal limit at the time of driving and “sobered up” during the time it took to transport them to the station for evidential breath testing [14].

After the study was completed, researchers met with the officers who used the kits. All appreciated the additional opportunities the kits provided to identify drugged drivers. Interestingly, half preferred the Affiniton kit and half preferred the Drager device. One officer referred to the kits as a “blessing.”

Conclusion

This study provides preliminary data documenting drug usage rates among the impaired driving population and suggests that a significant portion of drivers with BACs above the illegal limit also have drugs in their system. It also demonstrates the feasibility of implementing a cost-effective drug screening program for such drivers, as well as the need to further develop on-site drug testing and to implement practical methods to reduce drugged driving.

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