|  |  |  |
| --- | --- | --- |
| Gold LA State Seal | State of Louisiana**Office of the Governor****DRUG POlicy** |  |
| **John Bel Edwards**Governor | **Kristy Miller**Director |

**GOVERNOR’S DWI TASK FORCE**

**May 18, 2022; 10:00 AM - 12:00 PM**

**MINUTES**

**Call to Order**

Lisa Freeman, Chair of the DWI Task Force and Executive Director of the Louisiana Highway

Safety Commission (LHSC), called the meeting to order at 10:07 AM. She announced that there were 12 members or proxies in attendance which achieved a quorum.

**Welcome and Introductions**

Beginning with the voting members seated at the table, each member was asked to introduce him/her self. After these introductions, stakeholders were invited to introduce themselves as well. Then, Lisa recognized Frank Marrero, Program Manager with the Region 6 Office of the National Highway Traffic Safety Administration. Finally, Lisa acknowledged Mr. Mike Barron, a recently retired contractor with the Louisiana Highway Safety Commission. She presented Mr. Barron with an Official Statement signed by Governor Edwards commemorating his contributions to advancing highway safety in the state of Louisiana.

**Old Business**

1. *Discuss and Approve: Minutes from February 2022 meeting*

Lisa turned to the first item of business which was to approve minutes from the previously held meeting. She acknowledged that the minutes had been emailed to all members two weeks prior to the meeting and were also included in the meeting packets. She asked each member to take a few minutes to review the document, and offer any edits or approval. Hearing no edits, Dr. Beau Clark (At-Large Member) made a motion to approve the minutes. Norma DuBois (LDAA Representative) seconded the motion. A voice vote was taken to approve the motion with 12 yeas, 0 nays, and 0 abstentions.

**New Business**

1. *Presentation: Oral Fluid Screening to Detect Drugged Driving*

Next, Lisa turned our attention to the presenters for the day. She introduced them as Dr. Darrin Grondel, VP of Traffic Safety and Govt. Relations, Responsibility.org and Mr. Robert Duckworth, Director of Traffic Safety, Indiana Criminal Justice Institute. Lisa provided a brief introduction to the credentials of the presenters and then turned the podium over to Dr. Grondel.

Dr. Grondel kicked off the presentation by providing some background information on the complexity of impaired driving and public perception based on a NHTSA National roadside survey. He followed that information up with data about motor vehicle crashes attributable to impairment:

* 50.5% of fatally injured drug-positive drivers (with known drug test results) were positive for ***two or more drugs*** and 40.7% were found to have alcohol in their system (NHTSA FARS as cited in Hedlund, 2018)
* Among **drug-positive drivers killed in crashes**, 4% tested positive for both marijuana and opioids, 16% for opioids only, 38% for marijuana only, and 42% for other drugs (Governors Highway Safety Association, 2017)
* The number of alcohol-positive drivers killed in crashes who also tested positive for drugs increased by 16% from 2006 to 2016 (Governors Highway Safety Association, 2017)

Dr. Grondel concluded this portion of the presentation by talking briefly about recreational marijuana’s impact on traffic safety. He offered the following recommendation for states that haven’t legalized marijuana for recreational use yet: Consider adopting roadside drug testing strategies as it can provide better insight into the magnitude and characteristics of the DUID problem to inform decision-making.

The primary method for roadside testing is through oral fluid screening**.** Oral fluid is a mixture of saliva and other materials found in the mouth including: bacteria, blood, gingival fluid, epithelial cells, food debris. Drugs circulate in the blood and pass into the oral cavity via saliva. This leads to a relationship between the concentration of drugs in circulating blood and those that pass into oral fluid. Drug deposits can form in the mouth following recent oral ingestion, smoking, or snorting.

Drugs in oral fluid can be detected using common toxicological methods known as immunoassays. This is a common testing process used in laboratories to screen for drug use. It confirms the presence or absence of a target analyte. The process uses antibodies to bind to specific target chemicals to produce a measurable effect. Current roadside oral fluid screening technology typically utilizes an oral fluid collector and cartridge that gets inserted into an analyzer that uses lateral flow immunoassay. The oral fluid sample is introduced to testing membranes and flows up the test strip which determines whether drugs are present. Common examples of lateral flow tests: COVID rapid screens, urinalysis drug strip tests, pregnancy tests, etc.

How does the technology work? Analyzer devices use lateral flow immunoassay technology. Simple and quick collection process; subject performs oral fluid collection using swab. Cartridges inserted into instruments analyze oral fluid sample. Most devices test for common drugs of abuse including: Cannabis (THC), cocaine, amphetamines, methamphetamines, opioids, benzodiazepines. Devices use pre-set cut-off levels for each drug. The screening device is searching for **active drugs** indicative or recent use (within 6-8 hours for cannabis) and not historical use. Rapid screening results returned in minutes. Officers do not have to interpret results as the analyzer will indicate whether the subject is positive or negative for the different drugs tested (qualitative result); optimizes officer safety. Ability to print results (e.g., to attach to arrest reports); technology can store test results (including date/time). Technology has built-in quality checks and procedures.

Based on the advances in this technology, Responsibility.org has recently issued Position Statements focused on multi-substance impaired driving, why to increase drug testing in impaired driving cases, and why oral fluid screening is important for impaired drivers.

Dr. Grondel moved on to discuss oral fluid screening and its role in the DUI/D investigative process. For context, he provided the following graphic to emphasize that oral fluid screening occurs in much the same way as a portable breath test for alcohol and/or a breathalyzer test.



Why are oral fluids helpful? Oral fluid strengthens DUID investigations.Law enforcement need more tools. Not all officers receive specialized training (e.g., ARIDE, DRE). Availability of Drug Recognition Experts (DREs) is often limited. Polysubstance-impaired driving is increasingly common. Drugs metabolize quickly; evidence is lost due to delays in sample collection (e.g., blood draw). Warrants take time as does transporting impaired driving suspects to medical facilities to have blood drawn. Public opinion data shows a lack of general deterrencestemming from the belief that officers cannot detect if someone is driving under the influence of drugs.

Benefits of roadside drug testing:Roadside drug testing programs have multiple benefits:

Aid the investigative process (e.g., help establish probable cause); enhance public safety; support strategic use/allocation of resources; and create general deterrence. Advantages of oral fluid technology include: easy and rapid sample collection (ideal for roadside environment); minimally invasive; comparable to a preliminary breath test; ability to collect sample proximalto the time of a traffic stop; active drug detection shows recent use; objective measure to supplement officer observations of signs/symptoms of impairment; and medical personnel are not required for sample collection.

Current policy landscape: Authorization -- Oral fluid can be authorized for screening, evidential testing, or both. 23 states authorize oral fluid testing in statute in some form (approaches include: implied consent, preliminary testing, pilot laws, etc.). Many states have implemented oral fluid pilots or are in the process of initiating programs or other initiatives (e.g., feasibility studies): AL, AZ, CA, CO, FL, IL, IN, KS, MA, MI, ND, OK, VT, and WI.

After discussing the current policy landscape, Dr. Grondel turned the presentation over to Rob Duckworth. Rob provided some excellent background information about the decision-making process and eventual statewide implementation of oral fluids screening in the state of Indiana.

After Rob’s presentation about Indiana’s experience, the floor was opened for questions. The first question asked by Norma DuBois requested clarification on the types of drugs that can be detected by oral fluids screening equipment. Rob responded that the brand of devices used in Indiana screen for THC (not synthetics), amphetamines, methamphetamines, cocaine, benzodiazepines, and opiates (not synthetics). Norma followed up with a question about

whether fentanyl would fall under opiates or does it not test for that. Rob responded that the screening does not test for fentanyl because it is a synthetic. Naturally-occurring opium based drugs that it tests are morphine-based, heroin-based, oxycontin-based, and oxycodone-based. Rob continued to point out that the equipment they use has a cut off for Delta-9 THC at 29 ng and for Delta-8 THC, it is 50 ng.

Norma had an additional referencing the “impaired driving investigative process” slide (included above in the minutes). Norma asked for clarification from Rob to confirm that the step colored lighter blue and label as “field testing” is where they (IN) does oral fluid screening. Rob replied in the affirmative. He went off to remind everyone that this is just like any other traffic stop in which the officer suspected something was going on in the vehicle (could be distraction, medical emergency, inattention, impairment, etc). An officer sees a vehicle in motion acting in an unusual manner which causes the officer to stop the vehicle and engage in personal contact. Personal contact leads to confirmation that the driver is likely impaired. The officer who is trained in basic SFST begins to take the driver through the various tests. If the officer has ARIDE training, they should also perform those tests. After concluding the physical tests and the officer still feels there is impairment, the oral fluid screening is deployed (this is just like when an officer initiates SFST/ARIDE and then deploys a passive breath test (PBT)). Norma pointed out that Louisiana does not utilize PBTs for alcohol. Instead, once SFST/ARIDE tests are completed and the officer is still suspicious, he gets probable cause and makes the arrest. Then, after transport, gets implied consent for breath or a warrant for blood. The question is, since Louisiana law doesn’t allow for “field testing/preliminary screening” of any kind, how would you recommend Louisiana deploy oral fluid screening? Dr. Grondel responded that he recently reviewed Louisiana’s DWI statute and noted that the law refers to tests/testing; he postulated that the oral fluid screening could be classified as testing during the “seek consent/exigency/warrant” phase. Norma’s response was “that’s actually evidentiary” and Rob was clear that Indiana doesn’t use screening for evidentiary purposes.

Lisa followed up by saying that she had previously shared the rights form related to chemical tests for chemical tests that LA Department of Public Safety requires to be read to someone after arrest. That form allows for a test or multiple tests, but that happens after arrest. What can we do so we could legally deploy the oral fluid screening like Rob does in Indiana before that step? To Lisa’s question, Rob posed one of his own about whether the lack of use of PBTs is due to legislative prohibition or just standard practice which could be shifted. Chief Shayne Gibson (LA Assoc of Chiefs of Police Rep) responded that it has simply been practice that PBTs aren’t used. Norma and Lisa both agreed that they didn’t know of any legislative prohibition against PBTs, but also didn’t want to have a case filed against an oral fluid pre-arrest screening attempt that could rule against the practice. Thus, Norma postulated we may want to change our legislation to explicitly allow for “pre-arrest field testing” such as oral fluids screening (or breath test). Lisa responded that her understanding is that Louisiana law is silent on pre-arrest field testing so defense attorneys would argue that it isn’t allowed unless Louisiana law affirmatively allowed for it. Dr. Grondel responded that the states of Michigan and Minnesota are working around this similar challenge by establishing pilot studies of oral fluid screening at the “field testing” stage to build evidence for making legislative change. Michigan, specifically, did 2 phases of pilots to prepare for legislative change.

Rachel Smith (TSRP for Louisiana) offered that a review of the states’ laws shown in the slide

“Current policy landscape: Authorization“ to authorize oral fluid screening to detect drugs shows that most account for pre-arrest screening in their statutes. Also, most of those states also use PBTs. Rachel agreed that establishing a pilot is a different animal and could be done with all players on board, especially as a pre-cursor to efforts to change state law.

At this point, Norma yielded the floor to Judge Jules Edwards (Ret.) (At-Large member and Judicial Outreach Liaison contractor). Judge Edwards asked Darren and Rob about any data they have regarding numbers of convictions after trial when an oral fluid screening has been conducted vs. cases that did not. Rob reminded Judge Edwards that their effort is fairly recent so they are really just seeing many of the cases go to court after the backlog of stalled cases due to Covid. However, he reported that they worked with their JOL to present to the Judiciary at their most recent Judicial College training about the concept of oral fluids screening, the national evaluations that have been conducted thus far, and the device they are using. They have the device they are using listed on their PC (probable cause) Affidavit so they do have a way to catalog the use of the screening device and then correlate backwards in which cases they were used and track it. But, currently, they don’t have any fully adjudicated cases they can point to.

Norma asked another question to Rob about whether they have ever had a situation in which the oral fluid screening showed positive which led the officer to have probable cause for a warrant to draw blood, but then the blood sample came back negative for drugs. Or vice versa where the oral fluid screening was negative, but the officer still had enough other elements of cause to file for and obtain a warrant in which the blood draw came back positive. Rob responded that they have had some cases that fit the first scenario of positive report with screening, but negative blood test for drugs. One of those cases was specifically for flualprazolam (a benzo) because “none detected” on the blood sample simply means you didn’t detect what you tested for. With flualprazolam not being on their standard testing panel, their system wouldn’t show positive. But, they were able to send to a contracted tester to affirm that. They have not had any cases of negative screening, but positive blood test. Standard practice for DRE cases and oral fluids is, if you see a positive, the tox form has been amended with a box to check for oral fluids screening so they can match them up and much as possible. They are emphasizing the importance of noting the screening on the form with a code or checking the box, but it is voluntary for each officer to do.

Kelly Dair (MADD) asked whether oral fluid screening would always be used in addition, not instead of, blood testing. Rob reiterated that yes, they are using for screening only, not evidentiary value. So, they screen, but then test blood. Kelly followed up by asking for a cost per screening tool for the state. Rob responded that each company has its own price point. He reminded everyone that Indiana uses the SoToxa units and each unit costs $4,500. Each screening test run is $25.They began by providing the screening units to folks with ARIDE training and are already a traffic safety partner. If they are doing overtime enforcement for impaired driving, that is usually the time they deploy the units. They fund completely through NHTSA highway safety dollars.

Lisa asked Rob if he had any experience with customization of the SoToxa units. For example, as Norma referenced in an earlier question, fentanyl is a big deal in Louisiana. The LSP Crime Lab is reporting 22% of blood tests are positive for it. What can we do to test for the item that is causing a good amount of impairment crashes? Rob responded that they have not requested customization, but he does recall that there is some opportunity to customize and test for additional drugs. He knows that the SoToxa units they use are also in use in Canada and they specifically only test for THC (because that’s Canadian law).

Lt. Jared David (LSP/DRE Coordinator) wanted Rob’s opinion about his biggest concern regarding roadside screening. His concern is whether the initial officer’s roadside screening is going to taint any assessment done by a DRE. Part of the evaluation that a DRE conducts includes an interview with the responding officer. Should there be concern that, if the

responding officer tells the DRE that he/she conducted a field test using an oral fluids device and it was positive, then the DRE will be biased to conclude the suspect is impaired? Rob responded by equating it to the high number of times a responding officers discloses that he/she found drug substance and/or drug paraphernalia in the car during the course of the personal contact stage before the DRE arrived. This happens often and DREs are trained not to allow this to bias their conclusions. The revealing of the fact that an oral fluids screening was conducted and it came back positive should similarly not bias the DREs final conclusion.

Any member or stakeholder interested in viewing the presentation by Dr. Grondel and Mr. Duckworth can access the recording at <https://www.youtube.com/watch?v=Nb82-En5Mp0>.

1. *Recommendation Workgroup Updates*

At this point in the meeting proceedings, there was only 10 minutes remaining so a decision was made to refrain from having every Recommendation Workgroup report out. However, Recommendation 3 Workgroup consisting of Norma DuBois, Rachel Smith, and Jules Edwards requested to make a brief update.

Norma shared that the Workgroup members convened to review and edit La. R.S. 14:98 Operating a Vehicle While Intoxicated. The major edits consist of changing all referenced from intoxicated to impaired; striking reference to controlled dangerous substances and restating as impaired by any drug, combination of drugs, or combination of alcohol and drugs; and adding a definition of the word “drug.” Norma referenced that a hard copy of the revised statute with edits is included in the Meeting Packets. Further, she asked Kristy to email it to all members and stakeholders so they can review more closely and provide feedback.

**Other Business**

1. *Office of Drug Policy update*

Kristy reminded everyone that she was promoted to Director of the office effective in January which left a vacancy in her former staff position. She introduced everyone to Dr. Shayla Polk who was offered the position of Prevention Systems Manager and was set to begin employment on May 30. She agreed to attend the meeting as a member of the community to observe the proceedings.

1. *Member agency updates*

Dr. Leslie Freeman (OBH) announced that OBH is the recipient of the State Opioid Response grant from the federal government. Funds from this grant have been used to purchase naloxone kits which can be disseminated to individuals, state and local government agencies, community-based organizations, and any other entity that would like to have access to this important overdose reversal substance. Please let Leslie or Kristy know and we will ensure your need is met. Dr. Beau Clark (EBR Coroner and At-Large Member) recommended that two kits should be disseminated due to the strength of fentanyl currently.

Kelly Dair announced that her organization is hosting its annual Walk Like MADD event on June 4 at Lafreniere Park in Metairie, LA. The website to register is [www.walklikemadd.org/NewOrleans](http://www.walklikemadd.org/NewOrleans).

**Comments from stakeholders and members of the public**

Lisa called for comments from stakeholders and members of the public. She followed by two additional calls for comments. None were offered.

**Upcoming Meetings of Other Office of Drug Policy boards**

Upcoming meeting dates for the five boards and commissions under the Office of Drug Policy were provided. The next DWI Task Force meeting is scheduled for August 24, 2022.

**Adjournment**

With no further business to conduct, Kristy Miller (Office of Drug Policy) moved to adjourn the meeting at 12:22pm. Jules Edwards second the motion. Twelve members approved, none objected, none abstained.

**DWI TASK FORCE MEMBERS**

|  |  |  |
| --- | --- | --- |
| **Member Agency**  | **Appointee/Designee**  | **Present**  |
| Attorney General’s Office  | Amanda Martin  | No |
| Governor’s Office of Drug Policy  | Kristy Miller  | Yes |
| House of Representatives member  | Marcus Bryant  | No |
| Office of Behavioral Health  | Dr. Leslie Freeman  | Yes |
| Office of Motor Vehicles  | Kelly Sittig  | Yes |
| LA District Attorneys Association  | Norma DuBois  | Yes |
| Louisiana Highway Safety Commission  | Lisa Freeman  | Yes |
| Louisiana Alcohol and Tobacco Control  | Ernest Legier  | No |
| Department of Transportation and Development  | Adriane McRae | Yes |
| Louisiana Sheriffs’ Association  | Sheriff K.P. Gibson  | No |
| Louisiana State Police Crime Lab  | Rebecca Chiasson  | Yes |
| Louisiana State Police  | Sgt. Barry Spinney (for Lt. Col. Chavez Cammon)  | Yes |
| Property and Casualty Insurance Commission  | Tom Travis  | Yes |
| Senate Member  | Vacant | -- |
| Mothers Against Drunk Driving  | Kelley Dair  | Yes |
| LA Restaurant Association  | Jeff Conaway  | No |
| LA Association of Chiefs of Police  | Chief Shayne Gibson | Yes |
| At-Large  | Delia Brady  | No |
| At-Large  | Dr. Beau Clark  | Yes |
| At-Large  | Judge Jules Edwards (Ret.)  | Yes |

**Guests**

Cathy Childers – LA Highway Safety Commission

Robyn Temple - Office of Motor Vehicles

Dortha Cummins - Louisiana Highway Safety Commission

Jessica Bedwell – LA Highway Safety Commission

Rachel Smith – LA District Attorneys Association

Austin Mathews – LSU Social Research and Evaluation Center

Shayla Polk – Member of the community

Katina Simien Smothers – Director of Community Programs

Frank Marerro – National Highway Traffic Safety Administration

Lt. Jared David – LA State Police

Joey Jones – N. LA Crime Lab

Bobby Breland – LA Highway Safety Commission

Mike Barron – Member of the community