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Impaired driver beware: You can't fool the cops anymore

Drug-recognition officers are law enforcement's answer to Initiative 502 and a U.S. Supreme Court ruling that officers must have a warrant for a drug test. They are trained to identify symptoms of impairment from alcohol and a variety of drugs.

By Colin Campbell /

Seattle Times staff reporter



Seattle police DUI Officer Mike Lewis hears it all the time when he pulls over stoned drivers crawling along Interstate 5 at half the speed limit.

“But it's legal.”

They're right — sort of.

Initiative 502 legalized recreational marijuana use in Washington last year, but if drivers are too high to safely operate a vehicle, they'll still face a DUI charge.

Just as state law limits drivers to a .08 blood alcohol content, it limits them to five nanograms of THC, marijuana's active ingredient, per milliliter of whole blood.

A blood test is the quickest way to tell, but getting one became trickier when the U.S. Supreme Court ruled in April that officers must have a warrant to obtain blood samples.

Because many stops are made late at night, when judges aren't available, officers must determine on the scene whether the driver is impaired.

Lewis and more than 200 other officers around the state have been trained to make that determination. As drug-recognition experts, or “DREs,” they receive two weeks of instruction on picking out impaired drivers and analyzing their behavior for the presence of alcohol or drugs.

Since the program is administered on the state level, DRE officers can respond to DUI calls outside their jurisdiction and perform impaired-driver examinations wherever they're needed.

Different agencies' policies vary on when a DRE is needed, but they're always called to investigate major collisions, especially those involving fatalities, and any in which officers suspect drug involvement beyond alcohol.

Seattle police Officer Jon Huber, a regional DRE coordinator and instructor, likens each officer to a “walking, talking, drug-testing machine.”

Their observations aid state prosecutors in DUI cases that often can be complicated.

The determination

Around 9 p.m. on a recent Friday, a call came over Lewis' radio that a woman had sideswiped several cars on a residential street in Northwest Seattle. The driver told responding officers that she'd taken Risperdal, a prescription drug used to treat symptoms of schizophrenia and other forms of psychosis.

The middle-aged woman was sitting on a row of steps near the sidewalk when Lewis arrived. Her hands were shaking. She looked up at Lewis with wide eyes as he introduced himself and asked if she'd be willing to answer a series of questions.

Was she OK? Yes.

Did she need to wear her glasses to drive? Yes.

Had she been wearing them when she hit the cars? Yes.

He brought up the Risperdal. Did she have any medical conditions he should be aware of?

She did: “a nervous condition.”

How often did she take Risperdal? How much was she prescribed? When had she last taken it? When had she last eaten?

After she described what had happened, she agreed to take a sobriety test and trembled wildly as she attempted the various tasks.

She was clearly in no state to drive.

But it was her nervous condition that had caused the crash, not the Risperdal, Lewis determined. Her symptoms weren't consistent with the drug's effects as a central-nervous-system depressant. No DUI.

Other cases are more open-and-shut.

Later that night, officers on patrol spotted a car backing out of a driveway. As the driver saw them, he stopped his car, opened the door and stumbled out sideways.

The man's breath reeked of alcohol, and he hadn't even been able to follow the questioning, the patrol officers told Lewis.

Swaying slightly on the front bumper of the patrol car, the man gave Lewis varying answers as to how much he'd had to drink, among them “yes” and “no.”

Nabbing obvious drunks like this is easy, Lewis said.

The program

The DRE is a nationwide program administered in Washington by the State Patrol. The state's 230 DREs make up about 2 percent of its total police force, Huber said. Lewis is one of SPD's 12 active-duty drug recognition experts.

The program costs \$3,000 per officer, funded by the Washington Traffic Safety Commission, and 30 to 50 "top-notch" applicants are accepted per year, said Sgt. Ken Denton, who works in the impaired-driving section of the Washington State Patrol.

The two-week course, which is offered in the spring and fall, is rigorous and includes lectures, quizzes and comprehensive tests.

Before they get to the final evaluation, though, training officers must also perform six field-sobriety tests and observe another six by their colleagues. They'll write reports for all 12 tests, which are reviewed and signed by an observing instructor.

After the course is completed, each officer must perform four evaluations in front of an instructor every two years to maintain DRE status.

The field sobriety-test training, held at Seattle's West Precinct, involves an unusual deal.

In order to practice judging impairment, officers need subjects. So, each day of the course, police accompany Department of Corrections employees on visits to drug users out on parole, who are often violating probation for previous convictions. And, though it means spending an afternoon with the cops, most will happily take a free sandwich or slice of pizza for assisting, rather than a jail cell.

It isn't mandatory, but State Patrol Lt. Rob Sharpe said participating can lead to treatment as well, since talking about their drug use helps encourage users to do something about it.

The test

DREs face an array of challenges when they're evaluating drivers' impairment.

Many drivers lie about what they've taken, how much and whether it's prescribed to them. Analysis becomes even more complicated when drugs are mixed, as some symptoms of one drug can be mistaken for those of another.

Huber, the instructor, doesn't focus on the accuracy of the DRE officer's conclusions, as long as the reports are thorough, and the conclusions are "logical and defensible."

After all, he says: "I wasn't high on this; I was high on that" doesn't hold much weight in court.

The officers don't even have to determine exactly what drug the driver has taken, just which of seven categories it falls under.

Lewis called the 15-minute roadside test's accuracy "uncanny."

Most often, an impaired driver's eyes are the giveaway. In one part of the test, a driver must follow a pen-sized light left and right without turning his or her head. If the driver is impaired, the eyes often have trouble tracking the light, or don't dilate properly.

A subsequent recital of the alphabet isn't just a memory test: It can give way to slurring the letters "L-M-N-O-P" if the speaker has been drinking or doing drugs. And most people say the letters quickly, all in one or two big exhaled breaths that can carry the telltale scents of alcohol or marijuana.

The walk-and-turn, counting backward, standing on one leg, and other tests give officers a clear picture of the person's motor skills. The test ends with a Breathalyzer.

Most of the time, impaired drivers aren't obvious, Lewis said. Some, especially seasoned alcoholics, can balance fine, but show mental indicators that they aren't safe to drive, like slurred speech and glazed eyes.

"It gets worse with drugs," he said. "Everybody knows what drunk looks like. Not everybody knows what meth looks like."

DREs focus on the more "subtle" signs in drivers while on patrol. "You look for a wide turn, crossing the line, taking an extra second or two to realize the light is green," Lewis said.

He switched lanes to trail a speeding Honda with its headlights off. Lewis flicked on his police lights and pulled the car over into the lot of the Elephant Super Car Wash.

The man behind the wheel admitted to having had "three beers" at a nearby bar. He took the test, and seemed to do well enough, but told Lewis he'd rather not take the roadside breath exam.

Didn't matter.

He smelled of alcohol. He had swayed too much in the balance test. His eyes had difficulty tracking the light in the nystagmus test. He had slurred the "L-M-N-O-P."

Even if the driver had agreed and blown a .07, there was cause enough to handcuff him and arrest him on suspicion of drunken driving.

Back at the station, after speaking to a lawyer on the phone around 2 a.m., the man finally agreed to a Breathalyzer exam.

He blew a .16, twice the legal limit.

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