

California Highway Patrol
Impaired Driving Task Force
Best Practice Protocols Meeting Minutes

September 30, 2019

601 North 7th Street

Sacramento, CA 95811

MEMBERS PRESENT

California Narcotic Officers' Association – Vaughn Gates

California National Organization for the Reform of Marijuana Laws – Ellen Komp

Kern County Deputy District Attorney's Office – Michael Yraceburn

California State Sheriffs' Association – Marcus James

Pharmacist – Dr. Phillip Drum

California Department of Justice – Harinder Kapur

Office of Traffic Safety – Nicole Osuna

Department of Veterans Affairs – Dr. Anthony Albanese

International Association Chiefs of Police – Chuck Hayes

MEMBERS ABSENT

National Highway Traffic Safety Administration – Chris Murphy

Alcohol Beverage Control – Joseph McCullough

Medical Examiner, San Francisco – Dr. Luke Rodda

California District Attorneys Association – Amanda Martin

Drug Policy Alliance – Jeannette Zanipatin

GUESTS

California Highway Patrol – Sergeant Oscar Chavez

OPENING COMMENTS

Dr. Anthony Albanese called the meeting to order and welcomed the members present. Dr. Albanese suggested reviewing the meeting minutes from the July 25, 2019, meeting. Dr. Drum and Ms. Ellen Komp suggested corrections to the meeting minutes. The corrections will be reflected in the amended July 25, 2019, meeting minutes. Dr. Drum made a motion to approve the amended July 25, 2019 subcommittee meeting minutes, and the motion was seconded by Ms. Komp. Members in attendance voted to approve the amended meeting minutes.

Public Comment

No members of the public were present.

OVERALL REVIEW OF THE RECOMMENDATIONS

Dr. Albanese began by referring the group to the second and third page of the agenda. The agenda reflected the original 14 recommendations the subcommittee drafted, with some modifications made in bold by Ms. Harinder Kapur. Dr. Albanese suggested reviewing the revised recommendations.

Dr. Albanese read the following recommendations:

Recommendation #1

“Age appropriate, fact-based education should begin early and be ongoing. It should direct children to avoid using cannabis and/or avoid riding a vehicle with an impaired driver.”

Recommendation #2

“Adult focused cannabis education should be aimed generally to the public, and specifically to cannabis users (beginning at the point of sale).”

Deputy District Attorney Michael Yraceburn asked if the group had returned to four proposed recommendations. Dr. Drum and Mr. Yraceburn informed Dr. Albanese of the updated direction given by Captain Helena Williams. Captain Williams related that there was no limit on the number of recommendations which can be made but suggested the subcommittee work on three to four recommendations at a time.

Dr. Albanese combined recommendation number one and two. Dr. Albanese read the following, “Fact-based education regarding cannabis impairment should be focus on age groups ranging from five years old and older, and be in multiple forms such as pamphlets, social media, billboards, public service announcements, posters at retail establishments, product inserts, etc.”

Dr. Drum suggested timeframes be included, and quoted Mr. Yraceburn from a prior meeting where he stated, “Best practices should be recommended because they are obtainable goals with time.” Dr. Drum stressed we are missing timeframes on some of these recommendations. Dr. Albanese commented he will take it under advisement as they continue through each recommendation.

Recommendation #3

“Traffic safety law enforcement officers should receive training in Advanced Roadside Impaired Driving Enforcement (ARIDE) as part of mandated training and annual continuing education in impaired driving thereafter.”

Dr. Drum referenced a previous discussion regarding changing the “should” into a “must.”

Recommendation #4

Dr. Albanese did not read recommendation four as it was sufficiently discussed at the last meeting.

Recommendation #5 and #6

“Train criminal justice officers (e.g. judges, prosecutors, public defenders) about addiction, drugs of abuse, bias behavior modification, and factors contributing to impairment through initial courses with annual refreshers and updates through required continuing education. The time between appointment to a criminal justice officer position and completion of initial training course should be as soon as possible, but no longer than two years.” The group revised recommendation five and six to read, “Within two years of being appointed and annually thereafter, all criminal justice officers should receive training which covers addiction, drug abuse, behavior modification, factors contributing to impairment, and biased in arrest/prosecution.”

Recommendation #7 and #8

“Evidence of driver impairment is needed, in addition to cannabis presence/level, to conclude that a driver is impaired (at least in part) from cannabis intoxication. Audio/visual body cameras are the preferable devices, but at a minimum, full audio recording should be part of standardized field sobriety test.” The group revised recommendation seven and eight to read, “Evidence of cannabis impaired driving includes, but is not limited to, officer’s observation of dangerous/hazardous driving, performance on standardized field sobriety tests, subjective and objective signs and appearance and cannabis presence/level.” Dr. Drum stated there was no discussion of levels. Dr. Albanese agreed with Dr. Drum and added there was no mention in the revision of body cameras or audio recording devices.

Recommendation #9, #10 and #11

“An oral fluid drug testing panel including delta-9-tetrahydrocannabinol and its active metabolite 11-hydroxy-tetrahydrocannabinol (THC) should be performed within 15 minutes of the traffic stop, immediately after standardized field sobriety tests cues lead the arresting officer to suspect driving under the influence. Blood should be collected within one hour of driving under the influence (DUI) suspicion and should include an extended drug panel, with confirmatory and quantitative high-performance liquid chromatography mass spectrometry(HPLC/MS) or gas chromatography with mass spectrometry (GC/MS) for positive results. The drug recognition expert conducting the exam should be blinded to the results of the oral fluid test until after the exam to prevent bias.”

Recommendation # 12

“Add specific cannabis modules and a victim impact panel to the current mandatory DUI driving school.” The revision states, “Driving and DMV approved traffic schools shall add a cannabis education module, which includes an impact component, to all programs.”

Recommendation # 13

“Use drug courts for adjudication and sentencing in non-injury, single vehicle infractions.” The revision states, “Single vehicle, non-injury, driving under the influence of drug cases should be adjudicated in drug court.” Mr. Yraceburn suggested this should be limited to first time impaired driving violations. Mr. Gates and Dr. Albanese agreed with this statement.

Recommendation #14

“Collect data from those convicted of cannabis related DUI to develop better methods of screening for, and prevention of ‘any drug’ DUI infractions. Data should be statewide, and guide future revision of DUI policy.” The revision states, “Data regarding the cannabis product, quantity of cannabis and time of use prior to the arrest for driving under the influence where cannabis is present in the system shall be collected and maintained in all instances.” Dr. Drum stated this is different on what was intended. The intent was to start collecting data, not only on cannabis, but on all drug-impaired driving cases in the state. Mr. Yraceburn stated, this was more of a model used by NHTSA for the roadside national survey and not sure if police officers would be able to gather this data. Dr. Albanese agrees.

OPEN DISCUSSION

Dr. Albanese addressed the committee and stated there will be a brief open discussion period before going in-depth with each recommendation just reviewed.

Ms. Komp took the floor by discussing the recommended wait time after cannabis. Ms. Komp referred to studies from a congressional research report and a report written by the Deputy Director from the National Organization for the Reform of Marijuana Laws, Paul Armentano, regarding wait times and cannabis impairment. According to the congressional research report and the research conducted by Mr. Armentano, the data indicates the time period of greatest influence on driving skills following marijuana inhalation is 40 to 60 minutes. This time period could be identified as acute impairment and dissipates significantly. Ms. Komp goes further explain that experimental research on the effects of cannabis have produced mixed results, indicating that any effects dissipate quickly after one hour. As such, a day after ingestion cannabis impairment is no longer significant.

Ms. Komp disagrees with the wait time of six hours after smoking and eight hours after oral ingestion for infrequent users using 18 milligrams (mg) of THC. Ms. Komp goes further to say that 18 mg of THC is almost double the amount of a normal adult dose, and is not consistent on what is seen on the roadways.

Dr. Albanese reminded the group there has not been any recommendations of wait times for driving after the consumption of cannabis. Based on what is currently known about cannabis, it would be difficult to recommend a wait time after consumption. There are too many studies that recommend different wait times for driving after consumption of cannabis.

Dr. Drum made a comment that he is quoting scientific evidence and not summaries. Ms. Komp responded noting she is quoting summaries, but they are summaries of scientific evidence. Ms. Komp could provide these studies; however, there is no need as the subcommittee will not be making any recommendations on wait time for driving after the consumptions of cannabis.

Dr. Albanese open the floor for further discussion. There were no additional discussions.

DISCUSSION OF RECOMMENDATION #1

Recommendation #1: Requiring warning inserts in cannabis exit containers with signs and posters at point-of-sale and cannabis consumption sites describing cannabis specific driving risks along with the risks of underage cannabis use and mixing cannabis with alcohol and other psychoactive substances.

Dr. Albanese is satisfied with this recommendations as written. Mr. Yraceburn agreed and asked when the recommendation should be implemented.

Ms. Komp recently attended a Berkley Health Commission meeting where they discussed including inserts in cannabis exit containers. One dispensary had commented they would have to use four pallets of paper and questioned the necessity of including an insert in every container. The comprise at the meeting was that it would available at the dispensary and required on every delivery. Ms. Komp also commented at looking at the state cannabis regulations, which requires warning labels on cannabis products. Ms. Komp feels there should be some environmental leeway. There has been some backlash on all the packaging material that has been produced. It is a best practice and should be available, but not sure if it should be required on every purchase.

Mr. Yraceburn said there are already requirements to put warning labels on drug bottles. Dr. Drum said cannabis is still a schedule one drug. Additionally, pharmacies are still required to give out educational material. It is not an option, it is a requirement.

Mr. Yraceburn commented that there needs some type of warning on the cannabis product. Ms. Kapur added this was discussed in past meeting and there was warning labels already required on the cannabis products. Ms. Kapur's suggestion to the group was, acknowledge there are warning labels, but indicate there is still something lacking, and come up with a best practice. Dr. Drum added cannabis consumption sites are being overlooked, and noted they should provide warning information.

Ms. Komp said the consumption site recommendation should be a separate issue. Ms. Komp went on to highlight the example of a cannabis exit bag she brought to the last meeting, which is given to all new members of a dispensary. Ms. Komp went further saying she was not sure how effective handing out a pamphlet would be, and the subcommittee should consider the associated cost.

Dr. Albanese reminded the group of a discussion on alternative transportation, and asked if it should be added to recommendation one, or if it should be an additional recommendation. Dr. Drum indicated it should be an additional recommendation.

Dr. Albanese started a "parking lot" for ideas that could be discussed at a later time. The first item in the parking lot would be the alternative transportation recommendation. Dr. Drum read the first item, as an example, and stated, "Mandate all cannabis consumption sites to provide free, or a minimum fifty percent discount, for rides home." Dr. Drum further commented this statement is based on the 2019 Eaze survey which stated 78-86% of the respondents that would take a free or discounted ride home. Ms. Komp disagreed and suggested bars should be required to do the same. The group further discussed of whether to rephrase as low cost or get further information from the survey and decide how best to proceed.

Dr. Drum asked recommendation one to be read to the group since Mr. Yraceburn recommend a timeframe.

Dr. Albanese read the following:

“Requiring warning inserts in cannabis exit containers with signs and posters at point-of-sale and cannabis consumption sites describing cannabis specific driving risks along with the risks of underage cannabis use and mixing cannabis with alcohol and other psychoactive substances to be implemented as soon as possible.”

There was a group discussion on whether to change “as soon as possible” to a specific date. Mr. Yraceburn suggested to change “as soon as possible” to “immediately.” The group agreed.

DISCUSSION OF RECOMMENDATION #2

Recommendation #2: All traffic law enforcement officers (including Police officers & Sheriff deputies) must receive training in ARIDE and biannual continuing education on impaired driving enforcement.

Dr. Drum stressed the importance on having a timeframe. Mr. Yraceburn suggested “within ninety days of these officers being assigned to traffic enforcement.” Deputy Marcus James agreed. There was a discussion between Deputy James and Mr. Yraceburn on the difference when it comes to training at different agencies and the officers responsible for traffic enforcement. Dr. Albanese asked Deputy James what would be a reasonable request. Deputy James suggested a year after being on patrol without a field training officer. Mr. Chuck Hayes stresses that ARIDE is an advance impaired driving course. The International Association Chiefs of Police (IACP) is concerned with agencies that want to teach ARIDE at their basic academy. It should be a course taught six months or a year down the line after graduation from a basic academy. Dr. Drum suggested we need to give a timeframe for both new and veteran officers. Mr. Gates suggest new officers within one year and veteran officer should be sooner. Mr. Yraceburn asked Deputy James to suggest a timeframe.

Dr. Albanese read the following:

“All traffic law enforcement officers (including Police & Sheriff Department Deputies) must receive ARIDE training within one year of being assigned to traffic enforcement and bi-annual continuing education on impaired driving.” Dr. Drum commented this would not cover the current officers working traffic enforcement. There was discussion on how to include those officers. Dr. Albanese suggested the following: “All traffic law enforcement officers (including Police & Sheriff Department Deputies) must receive ARIDE training within one year of being assigned to traffic enforcement and biannual continuing education on impaired driving. Experience officers not yet trained must receive ARIDE training within one year of enactment of this policy.” The group agreed to this revision.

DISCUSSION OF RECOMMENDATION #3

Recommendation #3: Increase the statewide percentage of Drug Recognition Expert (DRE) trained traffic enforcement officers by four percent of the total number of traffic enforcement officers each year over the next five years. The California Highway Patrol (CHP) and the Office of Traffic Safety (OTS) will be accountable for reporting accurate number of total officers and officers trained each year.

Mr. Gates asked if this recommendation would include incentive pay. Mr. Gates suggest there should be some type of incentive pay to retain more DREs. Dr. Drum read a suggestion by Ms.

Kapur which states, “An officer certified as a DRE shall receive incentive pay in an amount not to exceed \$2,500 per year, during the time the officer remains certified.” There was a group discussion on whether the incentive pay should be a fixed amount or a salary. Dr. Drum suggested an officer certified as a DRE shall receive incentive pay during the time the officer remains certified. Mr. Yraceburn suggest a percentage to a dollar amount. There was a discussion on whether to put a fixed dollar amount, a percentage, or discuss the language at a later time. Dr. Albanese will put the incentive pay recommendation the “parking lot” to be discussed at a later time.

Mr. Hayes suggested adding “certified” traffic enforcement officer to recommendation number three.

Nicole Osuna questions the role of CHP and OTS regarding the enforcement of this recommendation. Mr. Hayes suggest changing from “enforcement” to “implementation.” Ms. Osuna agrees.

DISCUSSION OF RECOMMENDATION #4

Recommendation #4: Law enforcement must use the best available roadside presumptive screening device and confirmatory tests in the most expedient manner for possible drug and alcohol impaired driving investigations. There should be a standardized, comprehensive testing procedure throughout the state to report accurate data concerning impaired driving.

Dr. Drum stresses a timeframe on this recommendation, and requested a comment from Mr. Hayes. Mr. Hayes said the National Highway Traffic Safety Administration and IACP are frequently asked about roadside testing and screening devices. Mr. Hayes asked, “What does best available mean?” Mr. Hayes continued, “There are both good and bad products in the market; however, he would like to those devices available to law enforcement when impaired driving is suspected.”

Mr. Yraceburn is concerned with putting a timeframe on this recommendation. Mr. Yraceburn does not object with including language that says within a year of passage of this bill. The concern has to with cost. Giving agencies a year would allow them to budget for the cost of purchasing and maintaining a screening device.

Dr. Albanese ask the group if within a year is reasonable. There were no objections.

DISCUSSION ON ADDITIONAL RECOMMENDATIONS:

Dr. Albanese informed the group that the next item in the agenda will be to discuss those items in the “parking lot.” There was a group discussion on how to word a recommendation for alternative transportation. Ms. Kapur suggested the following statement, “All cannabis consumption sites shall provide information regarding alternative transportation to all customers.” Dr. Albanese suggested adding this language to the first recommendation. Dr. Drum was concerned with definition of a customer from a legal standpoint. Mr. Yraceburn suggested some other terms to use in lieu of “customer.” Ms. Kapur suggested “customers” be referred as “consumers.” The group agreed. Dr. Drum suggested giving an example of alternative transport such as, “for example, but not limited to.” There was a group discussion on whether to include examples of alternative transportation. Ms. Kapur made the following suggestion, “Cannabis consumption sites shall provide information regarding locally available

alternative transportation to all consumers.” The group agreed with this statement, it was added to recommendation one.

The next item on the “parking lot” is the idea of using technology to record the signs and symptoms of impairment during the traffic stop. Ms. Kapur reminded the group of a prior discussion at the July subcommittee meeting on the limitations of video recording. Dr. Albanese recalls the conversation, which concluded that there should be at least a full audio recording. Dr. Drum suggested the following, “Audio/visual body cameras are the preferred device, but at minimum, full audio recordings should be part of all SFTS’s by a certain date.” Mr. Hayes, referring to the handout, is concerned with having the phrase “dangerous/hazardous driving.” The concern is with cannabis impaired drivers, they are not always dangerous/hazardous driving. Dr. Albanese suggested the following as recommendation number five, “Evidence of driver impairment is needed in addition to cannabis presence/level to conclude that a driver is impaired from cannabis intoxication. Audio/visual body cams are the preferred devices, but a minimum, full audio recordings should be part of all SFST’s.” There was a group discussion on whether to include “dangerous/hazardous driving” in the recommendation. Ms. Kapur suggested adding the following, “Evidence of cannabis impaired driving, which may include but it is not limited to...” Mr. Hayes suggested adding the following, “Evidence of the driver’s impairment...” Mr. Drum suggested a timeframe. There was a disagreement among the group to put a time frame on this recommendation. Dr. Albanese put the decision on adding a timeframe to a vote. Mr. Gates, Ms. Komp, Mr. Yraceburn, Deputy James, Ms. Osuna, Dr. Albanese and Mr. Hayes voted not to put a timeframe. Ms. Kapur and Dr. Drum voted to put a timeframe.

Dr. Albanese opened the floor to the group to discuss any further recommendations. Mr. Hayes asked to talk about recommendation nine, ten and eleven. Mr. Hayes is concern with the DRE conducting the exam being blinded to the oral fluid results until after the exam to prevent bias. This goes against the DRE program which stresses not to be biased when conducting evaluations. The program also teaches the DREs to use all the available information. The group discussed whether this should be added to recommendation number four to include oral fluid testing. Dr. Albanese put this to a vote. Deputy James, Ms. Osuna, Mr. Gates, Ms. Komp, Mr. Yraceburn, Ms. Kapur and Mr. Hayes voted to leave recommendation number four as it is. Dr. Albanese abstained from voting. Dr. Drum voted yes on adding it to recommendation number four or making a new recommendation.

Dr. Albanese suggested adding back into the list of recommendations, the first-time single vehicle non-injury driving should be adjudicated in a drug court. Mr. Hayes said in the state of Oregon has implemented cannabis training modules and speakers in their victim impact panels. They have also talked about drug court for first time offenders, but there are not enough drug courts in Oregon. Dr. Albanese questioned if the aim of this recommendation is behavior modification or punishment. Dr. Albanese related that this was originally recommendation number twelve and should be made recommendation six. Ms. Komp asked to clarify the meaning of victim impact panel. Mr. Yraceburn explained the purpose of a victim impact panel. Deputy James said there are currently first time driving under the influence of drugs offenders being sentenced to driving under the influence of alcohol courses with no cannabis education component. Dr. Albanese asked the group if there was any objection in adding the revision to recommendation number twelve and making that recommendation number six. There were no objections.

Dr. Albanese suggested recommendation number seven should be revised to, “Single vehicle, non-injury, driving under the influence of drug cases should be adjudicated in drug court.” There was a group discussion on whether to include this recommendation as part of number seven. There was group decision not recommend drug courts.

Dr. Drum recommended Ms. Kapur’s recommendation about criminal justice officers. There was a group discussion on whether to add this recommendation to number seven. Mr. Yraceburn defined the term criminal justice officer as including judges, prosecutors and public defender. The group further discussed what the training entailed and where the funding would come from. Dr. Albanese stated the following from previous discussed recommendations, “Within two years of being appointed and annually thereafter, all criminal justice officers should receive training which covers addiction, drug abuse, behavior modification, factors contributing to impairment, and bias in arrest/prosecution.” There was a discussion on who provides the training, where the training would be provided, and what training criminal justice officers currently receive when it comes to drugs, specifically cannabis. Mr. Yraceburn commented the training is available but not all attend. Dr. Drum suggested changing the wording in the recommendation from a “should” to a “must.” Dr. Albanese read the revised version to the group including the word “must” and suggested making this recommendation number seven. Ms. Komp opposed this recommendation citing a disproportionate amount of drug arrest among minorities. Mr. Gates and Ms. Komp discussed biased arrest and prosecution issues in the criminal justice system.

Dr. Albanese read the following as proposal for recommendation number eight, “Collect data from those convicted of cannabis related DUI to develop better methods of screening for, and prevention of, ‘any drug’ DUI infractions. Data should be statewide, and guide future revisions of DUI policy.” Both Mr. Yraceburn and Mr. Hayes said there cannot be DUI infractions and should be changed to DUI violations. Dr. Drum suggested adding a timeframe. The group agreed of adding “within one year of adoption.”

Dr. Drum suggested at looking at Dr. Rodda’s recommendation which stated in part, “Blood should be collected within one hour of DUI suspicion, and should include an extended drug panel, with confirmatory and quantitative HPLC/MS or GC/MS for positive results.” Dr. Drum suggest from “...should include an extended drug panel” to “...must include an extended drug panel.” There was a discussion on whether to change the recommendation on when to draw blood. Mr. Hayes commented if officer were trained as phlebotomist a blood draw would be easier to accomplish. Ms. Komp suggested one to two hours for a blood draw. The group agreed.

At the close of the meeting, Ms. Kapur made a comment on the “data collection” recommendation. It did not state who would be collecting the data. There a group discussion and this information was left out because it is unknown at this time. Ms. Kapur suggested to subcommittee to read and follow Assembly Bill 397.

FINAL THOUGHTS

Dr. Albanese suggested to all members to send bibliography reference material to Sergeant Chavez. Dr. Albanese concluded the meeting after thanking the members of the subcommittee.

MEETING INFORMATION

The next subcommittee meeting will be on October 14th 2019. Public posting will be uploaded to the CHP public website.