

## Sessions Partially Correct About Drugged Driving

Attorney General Jeff Sessions was wrong, but directionally correct when he said, “I believe last year was the first year that automobile accidents that occurred were found to have been caused more by drugs than alcohol.” Sessions made the statement June 22<sup>nd</sup> in response to a questioner who asked why marijuana laws were so harsh.

In his response, Sessions was paraphrasing the findings of the April 2017 report from Dr. James Hedlund published by the Governor’s Highway Safety Association and the Foundation for Advancing Alcohol Responsibly<sup>1</sup>. The introduction to that report said, “In 2015, the most recent year for which data are available, NHTSA’s **Fatality Analysis Reporting System (FARS)** reported that drugs were present in 43% of the fatally-injured drivers with a known test result, more frequently than alcohol was present (FARS, 2016).”

Sessions’ and Hedlund’s statements are similar, but not the same:

1. Hedlund referred to 2015 occurrences in the 2016 report, not occurrences “last year” as Sessions reported,
2. Crashes caused by an impaired driver are *crimes*, not *accidents*, as reported by Sessions,
3. Drugs being *present* more frequently than alcohol is not the same as saying they *caused* the crashes,
4. The data are valid only for those drivers with known test results, as Hedlund reported not necessarily for all drivers, as implied by Sessions,
5. The questioner asked about marijuana laws, yet Sessions responded with comments about marijuana and about drugged driving in general. Drugged driving is not just about marijuana. Mistaking “drugged driving” with “marijuana-impaired driving” does more to confuse the issues than to clarify them.

Sessions was directionally correct since the earlier 2015 edition of Hedlund’s report said, “...drugs were present in 40% of the fatally-injured drivers with a known test result, almost the same level as alcohol (FARS, 2015),” which supports a claim that drugged driving deaths are increasing and may now have surpassed alcohol-impaired driving deaths.

But a serious caution is warranted, since Hedlund’s comments were based on NHTSA’s Fatality Analysis Reporting System (FARS). FARS was never designed to capture detailed drugged-driving statistics. That is why NHTSA has cautioned against making too many inferences about drugged driving based upon FARS reports<sup>2</sup>. In particular, NHTSA cautioned that, “Data identifying a driver as “drug positive” indicates only that a drug was in his/her system at the time of the crash. It does not indicate that a person was impaired by the drug.”

NHTSA’s caution is appropriate for all drugs, including alcohol, but especially so for marijuana. Most data collected for FARS comes from coroners who perform tests on cadavers, none of

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<sup>1</sup> [http://www.ghsa.org/sites/default/files/2017-07/GHSA\\_DruggedDriving2017\\_FINAL\\_revised.pdf](http://www.ghsa.org/sites/default/files/2017-07/GHSA_DruggedDriving2017_FINAL_revised.pdf)

<sup>2</sup> <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812072>

whom were ever charged with driving under the influence, much less convicted of that offense. Laboratory tests can determine the presence and concentrations of alcohol and other drugs, but cannot prove impairment.

Contrary to popular opinion, even a test for alcohol showing that a driver had a BAC over .08 (or over .05 in Utah) does not prove that the driver was impaired, it merely proves that the driver had a BAC over the *per se* limit and was therefore in violation of the state's *per se* law against driving under the influence. Since sanctions for DUI and DUI *per se* are typically identical, this distinction is overlooked by many.

Tests for drugs other than alcohol also only prove the presence and concentration of the drugs, and do not prove impairment. The critical difference between testing for alcohol and testing for other drugs is that there is a strong and well-accepted correlation between forensically determined blood levels of alcohol and levels of impairment. That correlation does not exist for any other drug, and has been proven to not exist for marijuana's primary active compound, delta-9-tetrahydrocannabinol, otherwise known as THC.

This correlation cannot exist for THC because it is so insoluble in blood that it is quickly absorbed by the brain and other highly perfused fatty tissues, depleting THC from the blood. And since only the brain is impaired, not the blood, it is only brain levels of drugs that truly matter. Hartman et al. reported<sup>3</sup> that the maximum levels of THC in 18 test subjects dropped 73.5% (3.3% - 89.5%) within 25 minutes after beginning to smoke a joint. Therefore, THC tests from blood drawn after an arrest or crash reveal nothing about the levels at the time of the arrest or crash. Furthermore, Mura et al. have shown<sup>4</sup> that THC levels in the brain was higher than THC levels in blood in 100% of their test cadavers. Blood levels are merely a surrogate for brain levels, and for THC, blood levels are a poor surrogate.

FARS data for marijuana presence is even more problematic than for other drugs since FARS does not restrict reporting to merely THC. FARS also reports drivers who were positive for THC's inactive secondary metabolite, 11-nor-9 carboxy tetrahydrocannabinol, otherwise known as carboxy-THC or THC-COOH.

Only 57% of fatally injured drivers were tested for drugs in the 2015 FARS report compared with 70.9% tested for alcohol. Hedlund was careful to confine his conclusions to only those drivers that were tested. Sessions' comment appearing to cover all reported crashes would be valid only assuming that 57% and 70.9% were representative samples.

In spite of its acknowledged deficiencies, FARS is frequently used by researchers, including Dr. Hedlund simply because no better data sources for drugged driving are available. Most states charge a driver with a single count of driving under the influence, regardless of the cause of

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<sup>3</sup> <https://www.ncbi.nlm.nih.gov/pubmed/26823611>

<sup>4</sup> P Mura, P Kintz, V Dumestre et al., THC Can Be Detected in Brain While Absent in Blood, J Anal Tox, Vol 29, Nov/Dec 2005, pp842-843

impairment: alcohol, drugs, or a combination of both. Therefore, most state databases cannot distinguish between the various causes of impairment. Hedlund noted this problem in his report, saying, “States cannot estimate the size or characteristics of their drugged driving problem without good data on drugs in crashes and arrests. This requires drugs and alcohol to be assessed and recorded separately.”

Drugged driving is not just about marijuana. A 2016 study of court records found that polydrug use, rather than marijuana, was the most common cause of drugged driving injuries and fatalities in Colorado in 2013<sup>5</sup>. Not surprisingly, alcohol was the most common cause of impairment in death and injury cases, followed by alcohol combined with marijuana. Marijuana *alone* tied for fifth place in the list of impairment causes.

Yes, marijuana use can and does cause driving impairment, crashes, injuries and deaths, and the number of those deaths and injuries may now be increasing. But better data must be collected and published by states to understand the true magnitude of the drugged driving problem.

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<sup>5</sup> <https://www.ncbi.nlm.nih.gov/pubmed/27178077>