





*Growing Problem*

# Difficulties in Drugged Driving Cases

- The effects of alcohol are much better known and understood than the effects of other drugs
- The public and the officers are most familiar with alcohol
- Blood testing takes longer than breath testing, is more invasive and more costly



# Drugged Driving in Court

Assume drugs are found

- Is concentration sufficient to show impairment at time of stop?
- Link drug use with impairment?

**Presence does not  
by itself prove impairment**

# Proof Required

Toxicological  
Result

Impairment

Nexus

# Common Concern

Jury may acquit without testimony from a toxicologist that  $x$  amount of a drug correlates to  $y$  degree impairment

- Jurors aware of .08 for alcohol
- Expectation of legal limit for drugs

# Resulting Consequences

- Historically, drug impaired drivers escape prosecution
- No conviction
- No punishment
- No rehabilitation
- No protection to society



# Drugged Driving Challenges

Drugged Driving cases are OPINION based

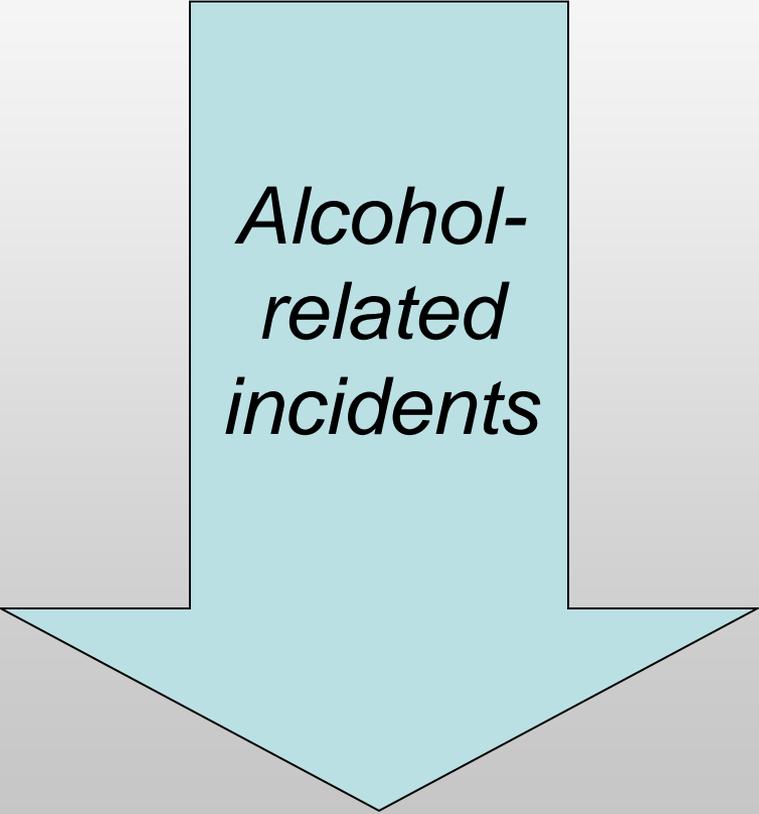
Jurors taught to seek second opinion

– Never simply trust the first one

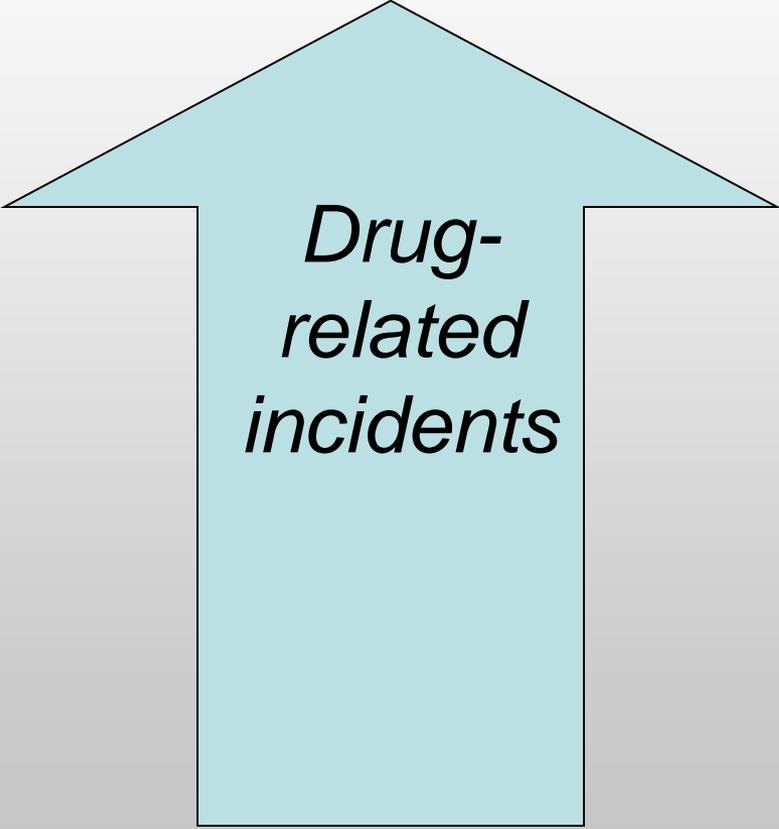


# Michigan Problem

# Michigan Drugged Driving Issues

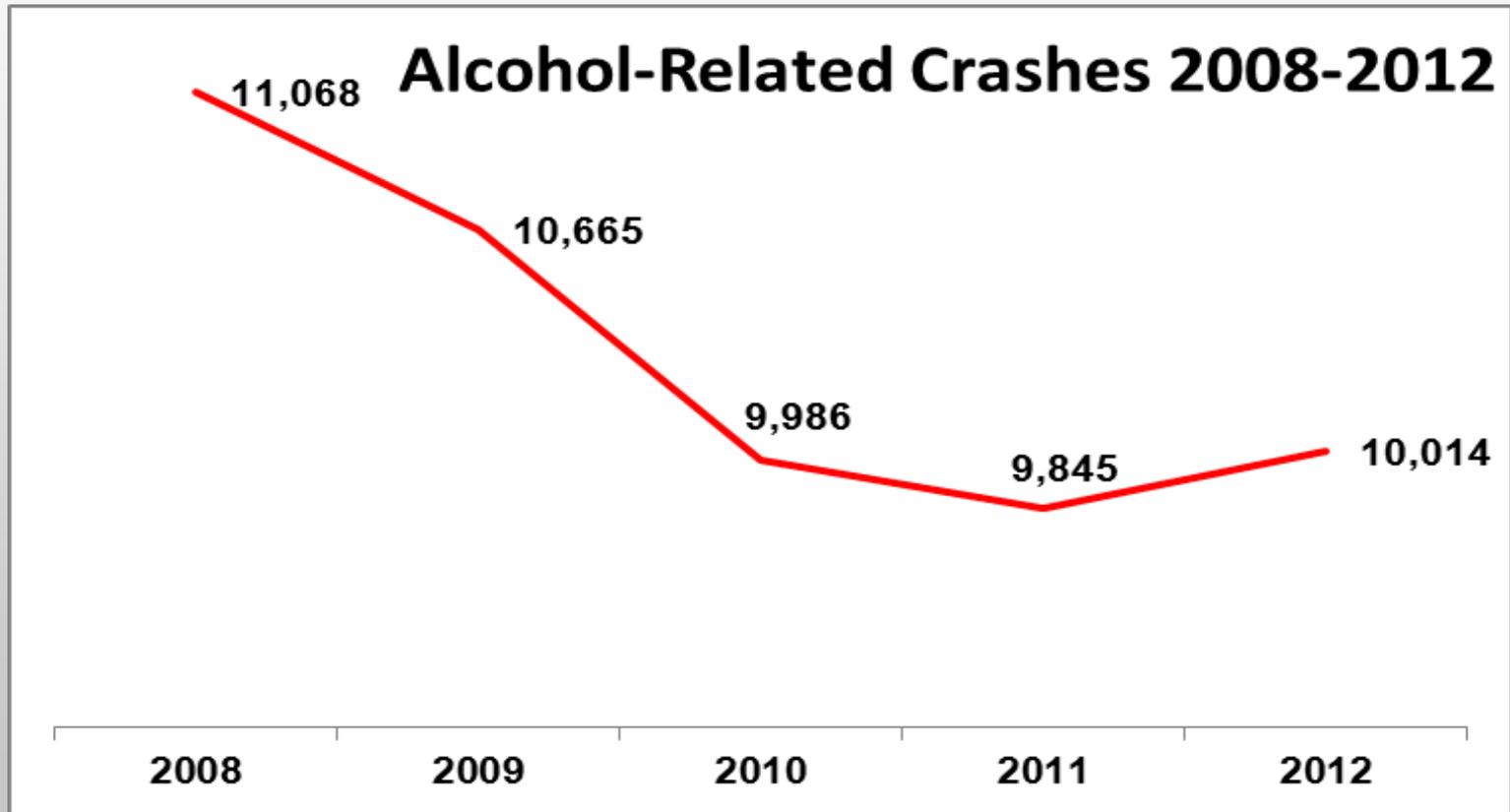


*Alcohol-  
related  
incidents*

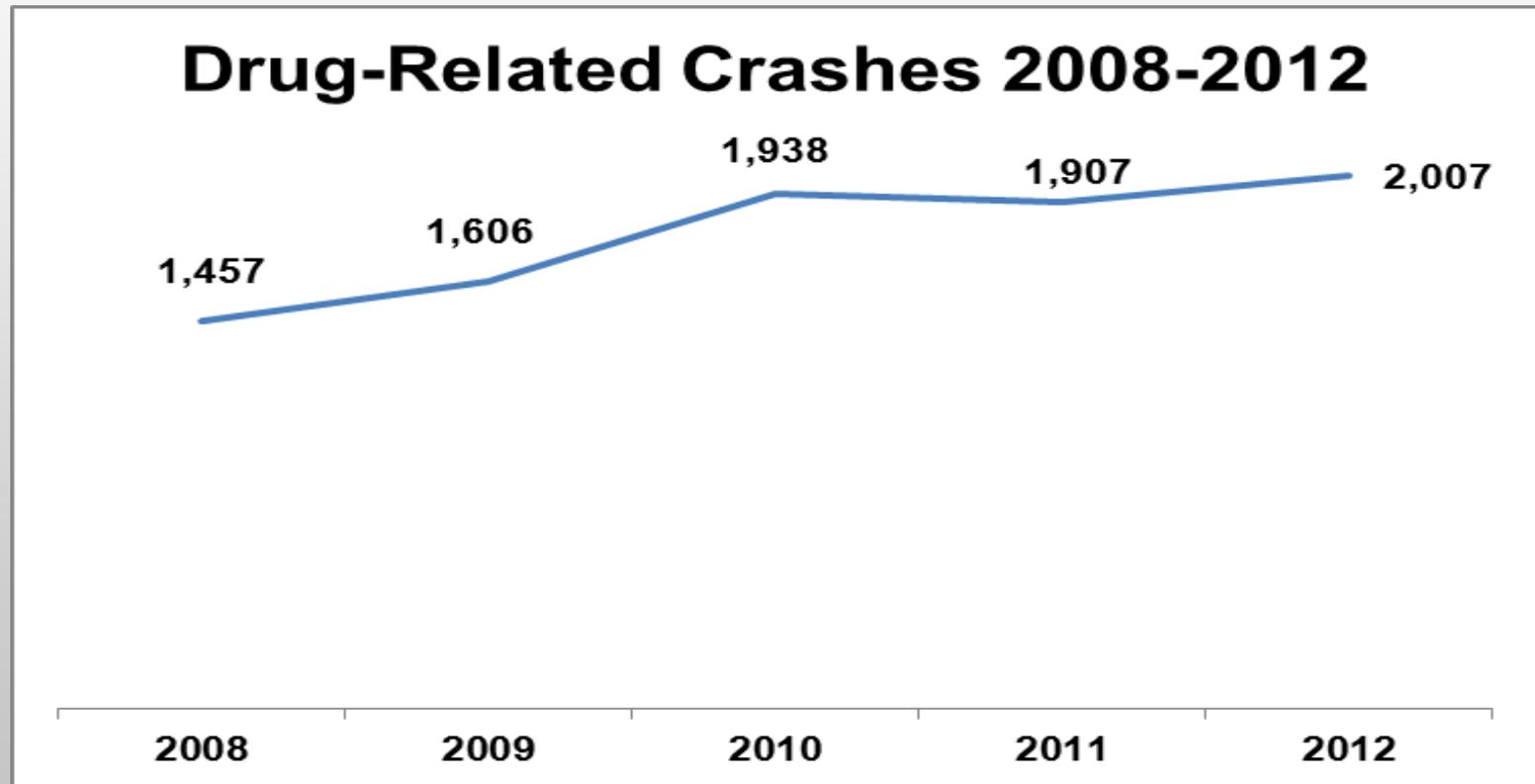


*Drug-  
related  
incidents*

# Alcohol-Related Crashes 2008-2012



# Drug-Related Crashes 2008-2011



# Marihuana Involved in Fatal Crash



# Pharmageddon?

- 2011 – **4.2 Billion** prescriptions filled:
  - #1 - Hydrocodone (Vicodin) - 131.2 million
  - #11 - Alprazolam (Xanax) - 46.3 million
  - #15 - Zolpidem (Ambien) – 38 million
  - #17 - Sertraline (Zoloft) - 35.7 million
  - #19 - Citalopram (Celexa) - 32.1 million
  - #21 – Oxycodone (Oxycontin) – 31 million



# Drugs Found by MSP (2012)

<u>Drug</u>	<u>% of Cases</u>	<u>Drug</u>	<u>% of Cases</u>
•THC	57	•Clonazepam	2
•Alprazolam	16	•Zolpidem	2
•Hydrocodone	11	•Trazadone	2
•Morphine	8	•Methamphetamine	1
•Soma	7	•Cyclobenzaprine	1
•Cocaine	6	•Fluoxetine	1
•Diazepam	6	•Butalbital	1
•Diphenhydramine	4	•Sertraline	1
•Codeine	4	•Phenobarbital	<1
•Methadone	3	•Venlafaxine	<1
•Amphetamine	3	•MDMA (ecstasy)	<1
•Citalopram	3	•Fentanyl	<1
•Oxycodone	2	•Bath salts	<1
•Tramadol	2		

# Casework Volume

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## Alcohol Analysis:

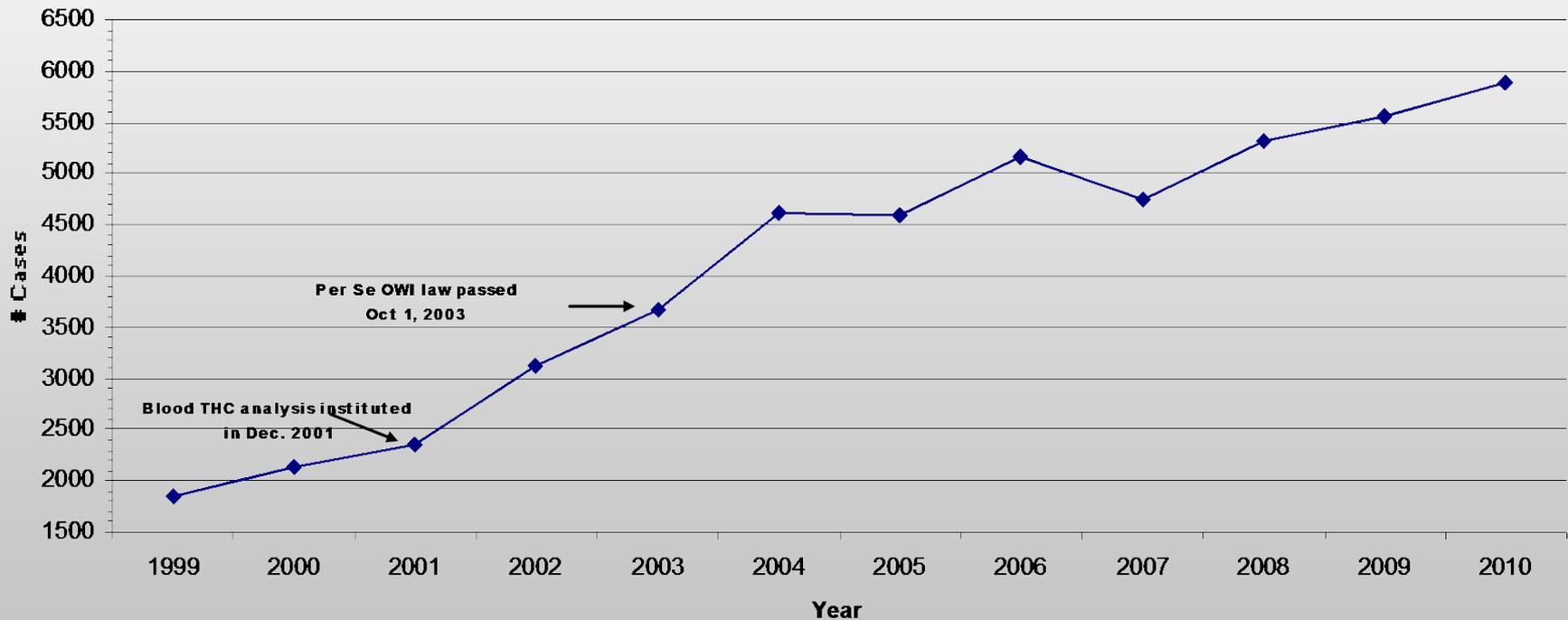
- They receive between 40 and 100 tri-tech kits per day

## Drug Analysis in 2013:

- 3957 THC confirmations
- Approximately 6000 drugs screens

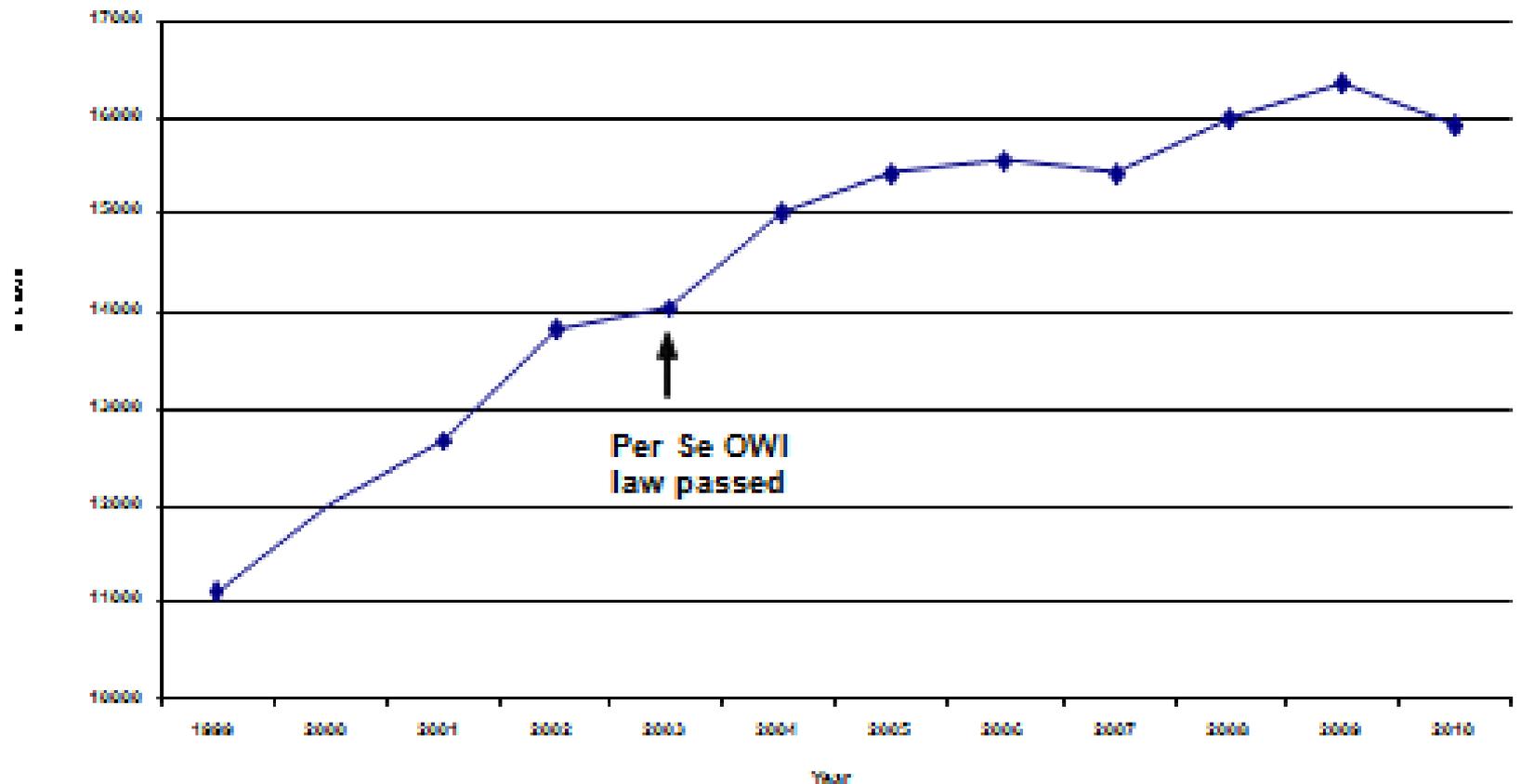
# Number of Drug Cases Analyzed by MSP

Toxicology Cases Per Year



# *Number of Alcohol Cases Analyzed*

Alcohol Cases Per Year



# Item 1 vs. Item 2

## Questions regarding Item 1 and Item 2 on the laboratory reports

- Item 1 and Item 2 refer to the two blood tubes they generally receive as evidence in most of their cases.
- They try to perform all of their analyses on Item 1.
- When they do not have enough volume of blood in tube 1, they will use sample from tube 2 as well.
- Tube 2 is almost always reserved in case the defendant requests independent analysis at a third party lab.
- In this case, upon receiving authorization from the prosecutor's office, they will send tube 2 out for independent analysis. They will only send the tube directly to the third party lab. They never return samples to the defendant, submitting agency or prosecuting attorney. This maintains the chain of custody.

OWI LAW

# Michigan Compiled Law 257.625(1)

- (1) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person is operating while intoxicated. As used in this section, "operating while intoxicated" means any of the following:
- (a) The person is under the influence of **alcoholic liquor, a controlled substance, or other intoxicating substance** or a combination of alcoholic liquor, a controlled substance, or other intoxicating substance.
  - (b) The person has an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or, beginning October 1, 2018, the person has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
  - (c) The person has an alcohol content of 0.17 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

# OPERATE WHILE INTOXICATED

## “UNDER THE INFLUENCE”

Because of drinking alcohol (and/or the use or consumption of a controlled substance and/or intoxicating substance) the defendant's ability to operate a motor vehicle in a normal manner was **substantially lessened**.... The test is whether the defendant's mental or physical condition was **significantly affected** and the defendant was no longer able to operate a vehicle in a normal manner.

CJI2d 15.3

Cite: (MCL 257.625)(1)  
Citation Description: OWI

## “OPERATING WITH AN UNLAWFUL BODILY ALCOHOL LEVEL”

To prove the defendant operated while intoxicated the prosecutor must prove beyond a reasonable doubt that the defendant operated the vehicle with a bodily alcohol level of .08 grams or more per 100 milliliters of blood/210 liters of breath/67 milliliters of urine.

CJI2d 15.3

\*Requires a legally admissible chemical test  
Blood or Datamaster or New DMT

Cite: (MCL 257.625)(1)  
Citation Description: OWI

# *People v Koon*, No. 145259 (Mich. Sup. Ct., May 21, 2013)-Footnote 14

- Significantly, “under the influence” is a term of art used in other provisions of the Michigan Vehicle Code. See, e.g., MCL 257.625(1)(a) (stating that a person is “operating while intoxicated” if he or she is “under the influence of . . . a controlled substance . . .”). See also *People v Lambert*, 395 Mich 296, 305; 235 NW2d 338 (1975) (concluding that an acceptable jury instruction for “driving under the influence of intoxicating liquor” included requiring proof that the person’s ability to drive was “**substantially and materially affected**”); Black’s Law Dictionary (9th ed), p 1665 (defining “under the influence” as “**deprived of clearness of mind and self-control because of drugs or alcohol**”).

# Michigan Compiled Law 257.625(8)- Operating Under the Influence of Drugs (OUID) Per Se

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- A person, whether licensed or not, shall not operate a vehicle upon a highway...within this state if the person has in his or her body **any amount** of a controlled substance listed in schedule 1 under section 7212 of the public health code,...or a rule promulgated under that section, or of a controlled substance described in section 7214(a)(iv) of the public health code.

# OPERATING WITH THE PRESENCE OF SCHEDULE 1, OR COCAINE

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- Requires evidence of specified substance in the blood
- This will require a blood draw
- Does not require evidence of “bad driving”
- Marihuana is a Schedule 1 Drug
- Cocaine is added by reference

# What is a Controlled Substance under Michigan Law?

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“Controlled substance” means a drug, substance, or immediate precursor included in schedules 1 through 5. Michigan Compiled Law 333.7104(2).



# “Intoxicating Substance”-March 31, 2013

- “Intoxicating Substance” is defined as any substance, preparation, or a combination of substances and preparations other than alcohol or a controlled substance, that is either of the following:

- i. Recognized as a drug in any of the following publications or their supplements:

The official U.S. Pharmacopoeia, the official Homeopathic Pharmacopoeia of the USA, or the official national formulary

- ii. A substance, other than food taken into a person’s body. This would include, but not be limited to, vapors or fumes used in a manner or for a purpose for which it was not intended, and that may result in a condition of intoxication.



# Drugs that are covered

- Amitriptyline – Elavil, prescription antidepressant
- Buspirone – Buspar, prescription antianxiety drug
- Carbamazepine – Tegretol, prescription anticonvulsant
- Citalopram – Celexa, prescription antidepressant
- Clomipramine – Anafranil, prescription antidepressant
- Cyclobenzaprine – Flexeril, prescription skeletal muscle relaxant
- Desipramine – Norpramin, prescription antidepressant
- Dextromethorphan – Coracidin, Robitussin, over the counter antitussive
- Difluoroethane – Dust Off, over the counter dust remover commonly used for huffing
- Diphenhydramine – Benadryl, over the counter antihistamine
- Doxepin – Adapin, prescription antidepressant
- Ephedrine – Quadralin, over the counter stimulant
- Fluoxetine – Prozac, prescription antidepressant
- Gabapentin – Neurontin, prescription anticonvulsant
- Haloperidol – Haldol, prescription antipsychotic
- Hydroxyzine – Atarax, prescription antihistamine
- Imipramine – Tofranil, prescription antidepressant
- Lamotrigine – Lamictal, prescription anticonvulsant
- Meclizine – Antivert, prescription antihistamine
- Metaxalone – Skelaxin, prescription skeletal muscle relaxant
- Methocarbamol – Robaxin, prescription sedative/muscle relaxant



# More Drugs covered

- Olanzapine – Zyprexa, prescription antipsychotic
- Orphenadrine – Norflex, prescription sedative/anticholinergic
- Oxcarbazepine – Trileptal, prescription anticonvulsant
- Paroxetine – Paxil, prescription antidepressant
- Phenazepam – Fenazepam, sedative/hypnotic prescribed primarily in Russia (no legitimate medical use in US)
- Phenytoin – Dilantin, prescription anticonvulsant
- Promethazine – Phenergan, prescription antihistamine/sedative
- Propofol – Diprivan, sedative/hypnotic used as anesthetic in surgical procedures
- Propranolol – Inderal, prescription antihypertensive/antiarrhythmic
- Pseudoephedrine – Sudafed, over the counter nasal decongestant
- Quetiapine – Seroquel, prescription antipsychotic
- Sertraline – Zoloft, prescription antidepressant
- Toluene – Toluol, commonly abused solvent
- Topiramate - Topamax, prescription anticonvulsant
- Tramadol – Ultram, prescription narcotic analgesic
- Trifluoroethane – Endust, over the counter dust remover commonly used for huffing
- Trazodone – Desyrel, prescription antidepressant
- Valproic acid – Depakote, prescription anticonvulsant



# Drugs Analyzed by MSP Toxicology

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- Alcohol
- Amphetamines
- Antidepressants
- Benzodiazepines
- Barbiturates
- Cannabinoids
- Carbon Monoxide
- Cocaine & metabolites
- GHB
- Hallucinogens
- Inhalants
- Muscle Relaxants
- Narcotic Analgesics
- Over the counter drugs
- Opiates
- Bath Salts
- Other prescription and street drugs

# Drugs Quantified by MSP Toxicology

- Alprazolam
- Amphetamines
- Benzoyllecgonine
- Butalbital
- Carisoprodol
- Chlordiazepoxide
- Cocaine
- Codeine
- Diazepam
- Hydrocodone
- Methadone
- Methamphetamine
- Morphine
- Meprobamate
- Nordiazepam
- Oxycodone
- Phenobarbital
- Tramadol
- Zolpidem
- THC
- THC-COOH
- GHB
- Temazepam
- Oxazepam
- Clonazepam
- Carbon Monoxide

# Drug Analysis: Not Tested

There are certain drugs the MSP Toxicology unit is not able to test for.

Other designer drugs change at such a rapid pace that it is difficult to keep their methods up with the production of these drugs on the street.

The following drugs are not currently analyzed:

- Buprenorphine
- LSD or psilocybin (mushrooms)
- Synthetic cannabinoids

**If you require analysis for any of these compounds, they can assist by sending the sample out to a laboratory that does perform the analysis.**

# Interpretation of Results

- Negative Test
  - No drug present
  - Drug is present, but below threshold of detection
  - Drug is present but not tested for
  - Drug WAS present, but window of detection has passed
- Positive Test
  - Drug present due to recent use
  - Drug present due to past use

When in doubt about an interpretation, give them a call!  
They are always available to help you interpret your laboratory reports.

# Testimony

Scientists in the Toxicology Unit provide more testimony each year than any other unit in the MSP Laboratory system

- The scientists testify to the receipt of the evidence, analysis of that evidence and chain of custody of that evidence while in the custody of their laboratory
- The scientists may not testify about impairment of a defendant
- The scientists may not perform retrograde extrapolations for alcohol cases
- If there is a question about how much testimony one of the scientists will be able to provide for your case, please contact the scientist or unit supervisor well before trial to discuss the results and testimony
- They are encouraging all courts to take advantage of their video testimony capabilities as it allows the analysts to remain in the laboratory completing more casework until it is time to testify

# MSP Backlog

- Currently 0-2 days for alcohol analysis. All alcohol reports are released within 7 days of receipt of the evidence
- Currently approximately 30 days for THC analysis.
- Currently 12 months for all other analysis. They are diligently working to get caught up.
  - New scientists
  - New instruments, very close to being validated
  - They expedite all fatal cases
  - They expedite all cocaine cases, as the cocaine will break down in the blood over time
  - They are making progress!

CASE LAW

# *People v Koon*, No. 145259 (Mich. Sup. Ct., May 21, 2013)

- The Michigan Supreme Court ruled that “The immunity from prosecution provided under the MMMA to a registered patient who drives with indications of marihuana in his or her system but is not otherwise under the influence of marihuana inescapably conflicts with MCL 257.625(8), which prohibits a person from driving with any amount of marihuana in her or system.”
- “Under the MMMA, all other acts and parts of acts inconsistent with the MMMA do not apply to the medical use of marihuana. Consequently, MCL 257.625(8) does not apply to the medical use of marihuana.”

# Marihuana Potency

Average THC:

2008: 10.1%

2007: 7.3%

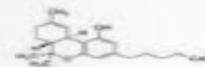
1983: <4%

A 50% concentration of THC can remain in the body up to 8 days after marihuana use.

# White Dawg

Hybrid

White Fire OG X Chemdog



**THC:21.03%**

(Tetrahydrocannabinol)

THC is used to treat pain, nausea, muscle spasms and stimulate appetite. Other effects include relaxation, euphoria and altered space-time perception.



**CBD:0.18%**

(Cannabidiol)

CBD may hold the most promise for many serious conditions. CBD is a non-psychoactive cannabinoid that is believed to relieve pain and anxiety; reduce blood sugar levels, seizures, inflammation, nausea, vomiting and risk of artery blockage.



**CBN:0.01%**

(Cannabinol)

High CBN levels in a medical cannabis can indicate its age. The longer cannabis is exposed to light and air, the more other cannabinoids will degrade into CBN's, which have been known to aid sleep, relieve pain and suppress muscle spasms.

*Fweedom*  
Collective

7027 15th Ave NW Seattle WA 98117

Fweedom.com

206.734.9333

*People v Feezel*, No. 138031 (Mich.  
Sup. Ct., June 8, 2010)

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The Michigan Supreme Court ruled that the presence of 11-Carboxy-THC (“TCOOH”) is not a Schedule 1 drug, and therefore, not a violation of MCL 257.625(8).



# THC Drug Analysis

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- When the submitting officer requests only THC, they screen and confirm THC only.
- When all drugs are screened for, and the THC confirms at a level of 3 ng/ml or higher, they do not perform additional analysis of the sample. The laboratory report will have a comment that indicates that further testing was halted due to the high THC result.
- They do this in order to get you your results as quickly as possible!
- If you have a case like one of those described above and you still need the full drug analysis completed, call one of the supervisors and they will send that case on for the full drug analysis for you.

# The Importance of THC Hour 1

- Scientific studies show that a person smoking marijuana often has 50-80 nanograms of THC in their blood after their last puff
- 30 minutes later, that level can drop to 15-16 nanograms-an 80% drop in THC.
- 1 hour later after the last puff, the level likely drops to 5-6 nanograms.
- THC levels can then drop to 2-3 nanograms after 90 minutes, trickling off over a few



# Estimated Duration of Effects of Marijuana

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- Peak: 10 – 30 minutes after last consumption (smoking\*)
- Duration: 2 – 3 hours
- Dissipates: 3 - 4 hours
- Residual Effects: Up to 24 hours (showing as inactive metabolite, 11-carboxy-THC)

\*If consumed in an edible form, the “high” takes longer to reach peak, and duration is longer.

# General Indicators of Marijuana Consumption and Impairment

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- Odor of marijuana
- Relaxed inhibitions
- Marked reddening of the conjunctiva (whites of the eyes)
- Body tremors
- Disorientation
- Eyelid tremors
- Impaired perception of time and distance
- Marijuana debris in or around the mouth
- Raised taste buds

# *People v Hyde*, No. 282782 (Mich. App., September 1, 2009)

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- The Court held that taking the blood sample under the implied consent law was improper due to the defendant's diabetes.
- Therefore, the Court concluded that the defendant's blood was unconstitutionally seized in violation of the 4<sup>th</sup> Amendment, and the test results should be suppressed.



# *People v Arndt*, No. 300301 (Mich App 12/27/11)

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- Defendant did not advise the arresting officer that he was a diabetic, although defendant was asked whether he had any medical conditions and whether he was taking any prescribed medications.
- Therefore, the officer had no reason to advise defendant that the implied consent statute did not apply to him.

*People v Stephens*, 262 Mich App 213 (2004)

*People v Solmonson*, 261 Mich App 657 (2004)

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Even if suspect was not “operating” at moment that police observed conduct (sleeping in a parked car), can still be charged and convicted if can prove circumstantially that suspect was operating vehicle while intoxicated prior to the police approach.

*People v Haggarty*, No. 305646 (Mich. App.,  
September 27, 2012)

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- The Court ruled “That although defendant was not operating a motor vehicle at the time the police found him, there was sufficient circumstantial evidence for the arresting officer to have reasonable cause to believe that the defendant had operated a motor vehicle while intoxicated before the police arrived.”

# *Factors for Circumstantial Evidence*

- The vehicle's engine was running, the vehicle was in park, the headlights were on, and defendant's foot was on the brake pedal
- While defendant did not say he had driven there, the vehicle was registered to him and he did not say that someone else had driven him there
- Defendant smelled of alcohol and was staggering
- He failed four field sobriety tests
- Defendant stated that had been drinking at a bar. Defendant then recanted, saying he had been drinking while at work and that he left at 5:00 P.M
- The citizen who called the police stated that defendant had been there "for some time."
- In conducting an inventory search, the police discovered several small bottles of vodka, but there did not appear to be enough alcohol missing from the bottles to believe defendant had become intoxicated while sitting in the vehicle at the car wash.

# Search Warrant Rule

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- People have a right against unreasonable searches and seizures
- Generally, searches conducted without a search warrant are not presumed to be reasonable.

# Can a police officer order occupants out of a car?

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- Drivers, yes
  - *Pennsylvania v. Mimms*, 434 U.S. 106 (1977).
- Passengers, yes
  - *Maryland v. Wilson*, 519 U.S. 408 (1997).
- Patdown of driver or passenger require reasonable suspicion the person is armed

# Horizontal Gaze Nystagmus

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- Case directly on point.
  - HGN is admissible in the courts of Michigan.
  - The test is considered scientific evidence.
  - Foundation:
    - Officer properly performed the test
    - Officer was qualified to perform it.
      - (Officer was trained right)

*People v Berger*, 217 Mich App 213 (1996)

# Sobriety Tests

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- Can an officer testify about how the defendant did on sobriety tests?
  - “Nevertheless, the evidence was relevant to establish defendant's drunkenness and lay witnesses are qualified to testify about the opinions they form as a result of direct physical observation.”

*People v Hanna*, 223 Mich App 446 (1997)

# Sobriety Tests

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- Erratic Driving can give rise to a reasonable suspicion of driving while intoxicated so as to justify a stop
- Just because no civil infractions are committed is not the issue. The question is in the totality of the circumstances, and the officers experience, does reasonable cause exist?

*People v Helton*, Unpublished, December 18, 2001

# Medical Marijuana

# *People v Nicholson*, No. 306496 (Mich. App., June 26, 2012)

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- The defendant was not immune from arrest because his application paperwork for a registry identification card under the MMMA was “not reasonably accessible at the location of his arrest.”
  - However, because he possessed a registry identification card that had been issued before his arrest when being prosecuted, he was immune from prosecution unless there is evidence showing that his possession of marijuana at the time was not in accordance with "medical use" as defined in the MMMA or otherwise not in accordance with the MMMA.

# Protection from Arrest, April 1, 2013

- Require a qualifying patient or primary caregiver to present both his or her registry identification card *and* a valid driver license or government-issued photo ID card, in order to be protected from arrest.



# *State of Michigan v. McQueen*, No. 143824 (Mich. Sup. Ct., February 8, 2013)

- The Michigan Supreme Court clearly stated on page 10 that: “In contrast to several other states’ medical marihuana provisions, the MMMA does not explicitly provide for businesses that dispense marihuana to patients.”



# Marihuana Strains

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- Durban Poison
- Tangelo Haze
- Mental Haze
- LA Confidential
- Spirit of 76
- Banana Kush
- Hindu Skunk
- Grape Ape
- Bubba Kush
- Purple Cotton
- Razzle Dazzle
- Pink Lady
- Blue Diesel
- Green Crack
- FU Cali
- ESCOBAR



# Marihuana-MCL 333.7106

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- “Marihuana” means all parts of the plant *Cannabis sativa* L., growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin.



# Usable Marihuana-MCL 333.26423(j)

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- The dried leaves and flowers of the Marihuana plant, and any mixture or preparation thereof, but does not include the seeds, stalk, and roots of the plant.  
MCL 333.26423(j).



# *People v Carruthers*, No. 309897 (Mich. App., July 11, 2013)

- The Court held “that edibles made with THC extracted from marihuana resin are not” usable marihuana” under the MMMA.
- The brownies were not a “mixture or preparation” of “dried leaves and flowers of the marihuana plant.” MCL 333.26423(k).
- Therefore, the brownies were not “usable marihuana” under the MMMA, and none of the weight of the brownies should have been counted towards the determination of whether defendant possessed over 12.5 ounces of usable marihuana.”

# Pot Tarts



# Medibles





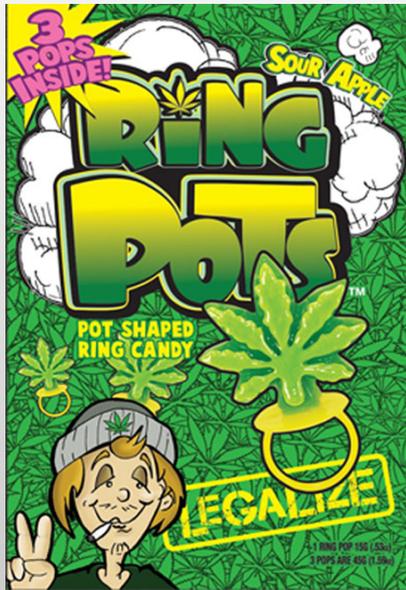
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# Marketing to Children



# Transporting “Usable Marihuana”-in a Motor Vehicle-December 27, 2012

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- Enclosed in a case that is carried in the trunk of a vehicle
- Enclosed in a case that is not readily accessible from the interior of the vehicle, if the vehicle in which the person is traveling does not have a trunk
- Misdemeanor-93 days or a fine of not more than \$500.00, or both.

# *People v. Anthony Brown*, No. 303371 (Mich. App., August 28, 2012)

- The Court held “That to establish probable cause, a search-warrant affidavit need not provide facts from which a magistrate could conclude that a suspect’s marihuana-related activities are specifically not legal under the MMMA.”
- Footnote 5: “While we decline, in light of the pertinent case law, to impose an affirmative duty on the police to obtain information pertaining to a person’s noncompliance with the MMMA before seeking a search warrant for marihuana, if the police do have **clear and uncontroverted** evidence that a person is in full compliance with the MMMA, this evidence must be included as part of the affidavit because such a situation would not justify the use of a warrant.”



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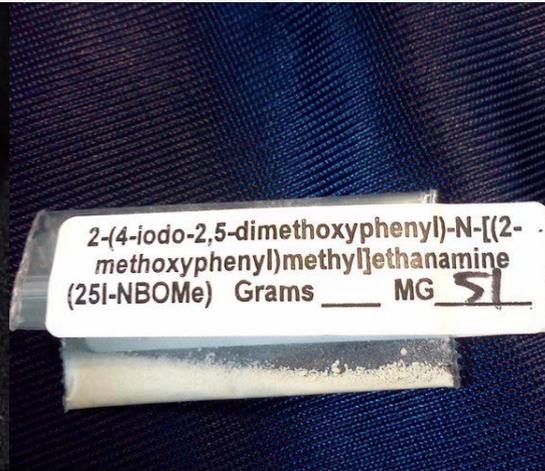


*Other Drugs*

# Phenethylamines: NBOMe



2C-C-NBOMe  
Photo by Photonix. © 2011 Erowid.org



2C-I-NBOMe  
Photo by Treco. © 2012 Erowid.org



2C-C-NBOMe Blotter  
Photo by Risk1. © 2012 Erowid.org



2C-C-NBOMe Blotter  
Photo by W.S. © 2012 Erowid.org



2C-I-NBOMe  
Photo by Anonymous. © 2011 Erowid.org

# MISSING

## HAVE YOU SEEN MOLLY?



OUT

### SHE MAKES ME WANT TO DANCE...

#13



# Cannabinoids

- E-Liquid and Smoke Drops





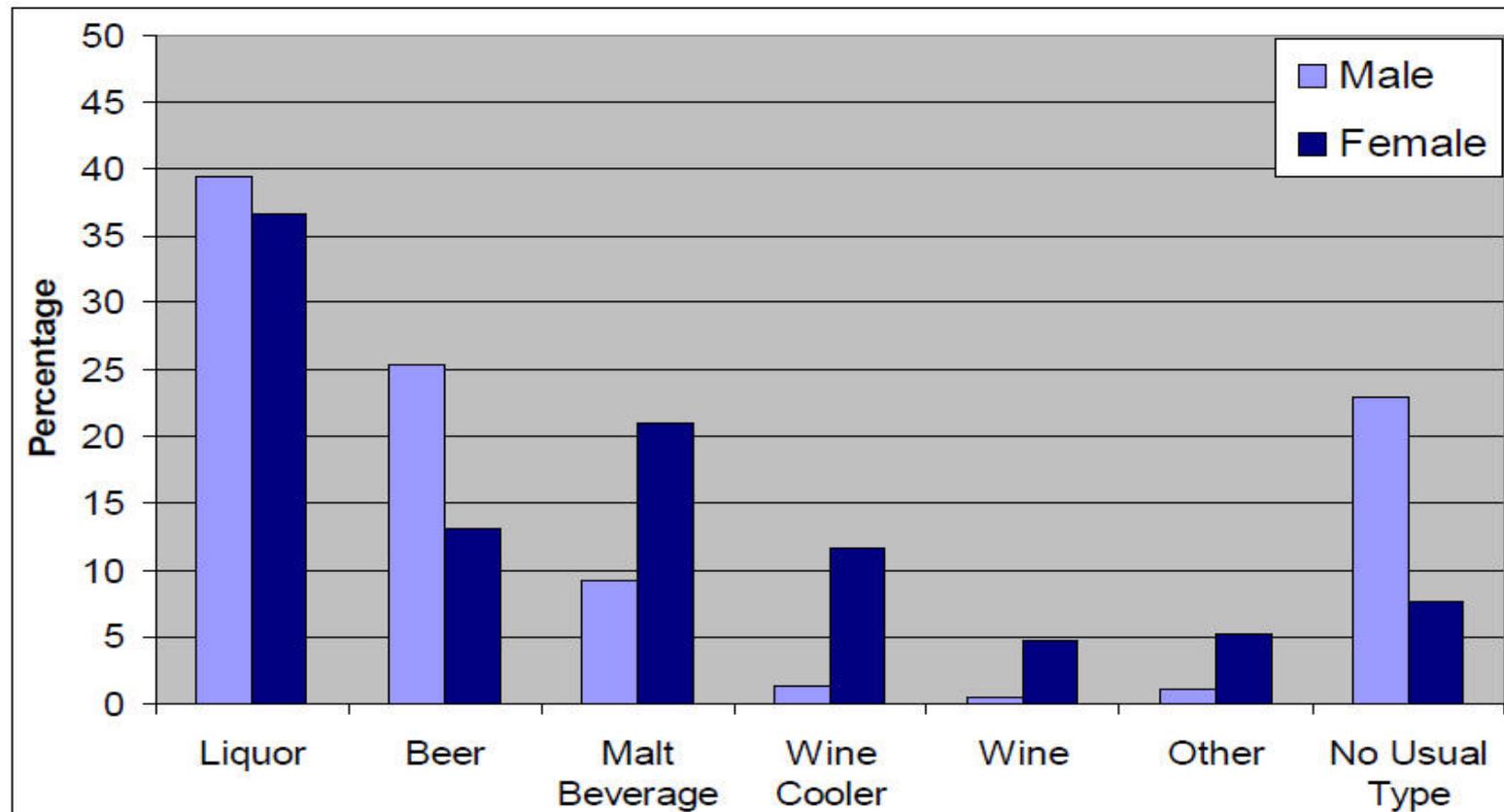
# Sizzurp



*Underage Drinking*

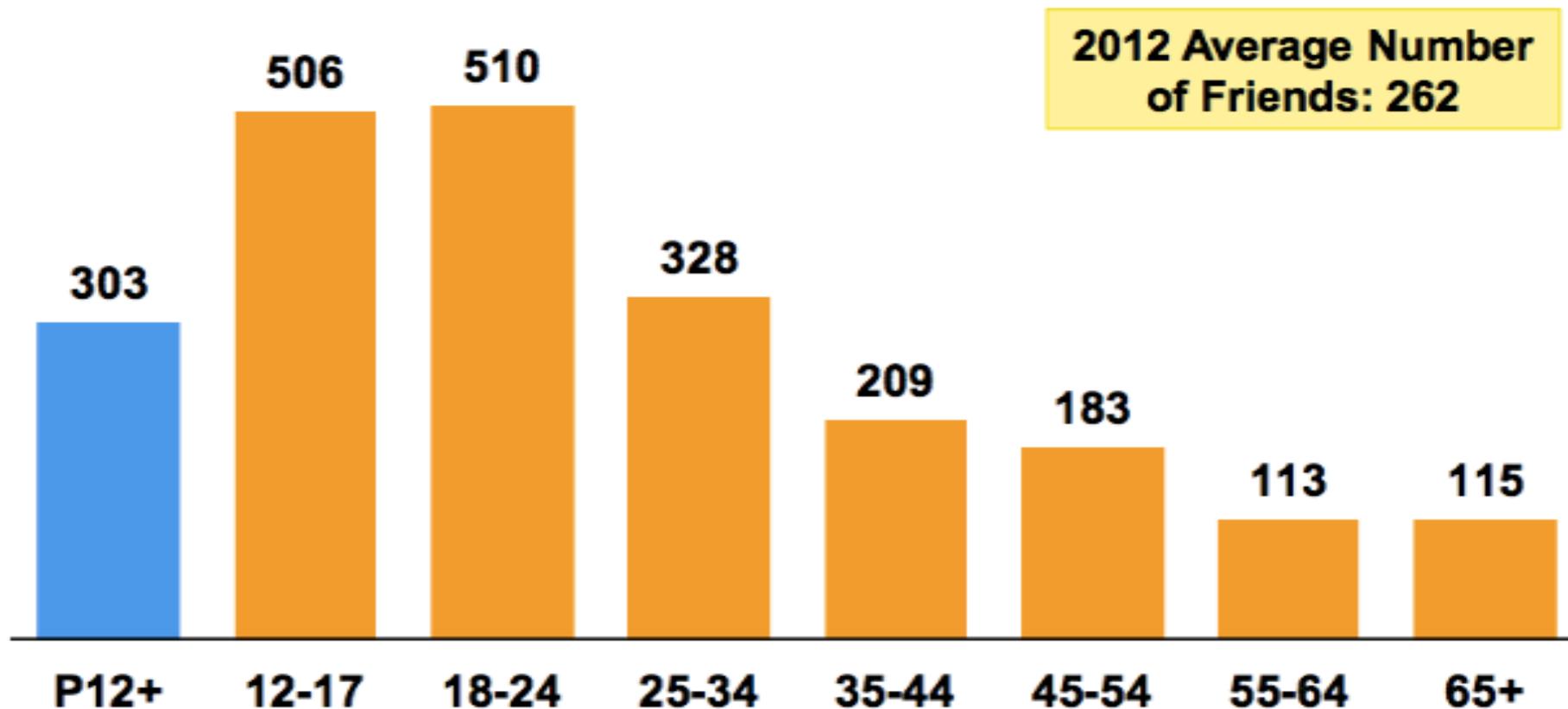
# What type of alcohol do current underage drinkers usually consume?

Figure 1. Type of Alcohol Consumed by Current Drinkers by Sex



# Young Facebook Users Have Lots of "Friends"

Average Number of Facebook Friends by Age Group



# Minor in Possession (MIP)

- The law criminalizes any bodily alcohol content (.02 or any presence of alcohol within body) (misdemeanor).
- Increase Punishment- Second Offense-30 days in jail and/or \$200.00; community service and/or rehabilitative; Third Offense-60 days in jail and/or \$500.00; community service and/or rehabilitative programs.
- SOS to suspend license for second offense (90 days) or third offense (365 days) within 7 years.

# Minor in Possession (MIP)

- Federal District Court ruled that the portion of the MIP statute, compelling a PBT upon finding a reasonable cause, constituted an unreasonable search without a warrant. *Platte, et al v Thomas Township, et al*, 504 F Supp 2d 227 (ED Mich, 2007); *People v. Chowdhury*, No. 288696 (Mich. App., September 10, 2009).
- Police officers may not rely on any authority granted them pursuant to MCL 436.1703(6).
- A 19 or 20 year old person who lawfully consumes alcohol in Canada cannot be convicted with the unlawful consumption of alcohol.

# What Do These Decisions Mean?

- The portion of the PBT statute and any PBT ordinance is unconstitutional.
- Officers should seek consent. Under Michigan law, “A consent to search permits a search and seizure when the consent is unequivocal, specific and freely and intelligently given.”
- Based on officer’s observation, officer can still write ticket for MIP. Law enforcement officers will have to do an investigation using the tools they learned before technology:
  - What is in their hands?
  - How do their eyes look?
  - What do they smell?
  - How do they speak?
  - How do they act?
  - Are there beer bottles around the person?
  - What evidence is there that the minor had been drinking?

# Medical Amnesty to Minors

- A minor who consumes alcohol and who voluntarily presents himself or herself to a health facility or agency for treatment or for observation.
- A minor who accompanies a minor who has consumed alcohol and who voluntarily presents himself or herself to a health facility or agency for treatment or observation.
- A minor who initiates contact with a peace officer or emergency medical services personnel for the purpose of obtaining medical assistance for a legitimate health care concern.

# Can you translate this?

1 w45 50 j4ck3d up |457 n16h7. 1 5c0r3d  
50m3 420 47 7h3 p4r7y 50 1'd h4v3 17 f0r  
70n16h7 4nd 70m0rr0w, 4nd 7h3n J1mmy  
700k 0ff w17h 17, 7h3 455h0|3! 1 4m 4||  
j1773ry 4nd n33d 70 m337 up w17h y0u  
70n16h7 4f73r my p4r3n75 7h1nk 1 4m  
45|33p.

# Here is the Translation

---

I was so jacked up last night. I scored some marijuana at the party so I'd have it for tonight and tomorrow, and then Jimmy took off with it, the [expletive]! I am all jittery and need to meet up with you tonight after my parents think I am asleep.

# Statewide Results-Michigan

- 2012: Refused-4,154; Total Breath/Blood Test Results-36,980 = 11%
- 2011: Refused-4,016; Total Breath/Blood Test Results-37,354 = 10%
- 2010: Refused-4,408; Total Breath/Blood Test Results-41,639 = 11%
- 2009: Refused-4,638; Total Breath/Blood Test Results-45,893 = 11%
- 2008: Refused-5,037; Total Breath/Blood Test Results-47,251 = 10%

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# The Eyes Are The Window to the Soul

Dilated pupil

Constricted pupil



**QUESTIONS?**

**Ken Stecker  
Traffic Safety Resource Prosecutor  
Prosecuting Attorneys Association of Michigan**

**116 West Ottawa  
Lansing MI 48913**

**(517) 334-6060 x 827**



**[SteckerK@Michigan.gov](mailto:SteckerK@Michigan.gov)**

