

Drug Driving – Time for a new fangled device or a sensible review of the law?

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It appears that under the direction of the new government, the police are to give a new device to detect drug drivers. It has been reported that no such device is available at the moment and that there is £300,000 research fund set up to develop it. Dr Malcolm VandenBurg, a specialist in both medical devices and the effect of drugs on driving, believes that the current reports and the statement by Mike Penning is a complete over simplicity.

His view is that it will cost in excess of £300,000 to get any device up to specification, have it CE marked to show it is fit for purpose, and receive appropriate certification of its accuracy and use.

That is not to say that such a device is not needed as at the present time the law which is supposed to keep people under the influence of drugs off the road and to prosecute those who are impaired while driving, falls far short of acceptable standards.

Dr Malcolm VandenBurg has given opinions in many cases involving drugs and impairment to drive and believes that expert witnesses such as himself are put in difficult positions, as at the present time the law clearly says that the offence is '*driving while impaired through drugs*'. Thus it has to be beyond reasonable doubt that not only is the '*driver impaired*' but that this is due to an illegal substance or a prescription medicine obtained illegally.

This is very difficult to show beyond reasonable doubt for many reasons. The first is the time delay between the offence and the taking of any blood or urine sample and the rate the body gets rid of the substances is nowhere near as constant as it is for alcohol, which itself is variable. Thus back calculations have little use.

The second is that any given concentration of substance in the blood has variable effects on everyone, from no impairment at all to obviously impaired. Of course the higher the blood concentration, the more likely the impairment and at high concentrations, there may indeed be impairment beyond reasonable doubt. Dr Malcolm VandenBurg comments that '*this is biological variation*'.

It has not been possible with agreement to produce a per se limit as has been done with alcohol, where because of the greater predictability of the effects of alcohol and its metabolism, a legal limit for alcohol in the breath and blood has been established. This allows a prosecution, even if driving is not shown to be impaired with alcohol. With drug the situation is completely different. People have struggled to agree on a per se limit of cannabis without success.

When one wishes to review the scientific literature as to the effects of any given concentration of drug on driving, it is difficult to know whether one should rely on the effects of the drugs in controlled situations in laboratory, psychological and motor testing, such as reflex times, whether to utilise the drug's effects on driving simulation or test driving on a circuit. Different results are obtained for each situation.

Additionally although drugs are commonly found to be in the body of people who have road traffic accidents, it is never clear if the drug itself impaired or caused the accident.

One has to rely on not only the findings of the police officers and forensic medical examiners and other witnesses to define impairment, but one also has to have a complex knowledge of the effects of many substances. Indeed it has been suggested that at lower concentrations some drugs may even decrease accidents due to the drivers knowing they may be impaired and taking more care, a view disputed by many.

Additional difficulties are that not only are the active substances themselves measured, but often as in the case of cannabis, the preferred test is a metabolite which has no effects whatsoever, and thus to detect it in the blood says nothing about when a drug was taken as it can stay in the body for over a month or the effect that any active substance would have, if indeed it was there.

The time has come for Forensic Science Service, who do an excellent job and give excellent opinions, to measure in each and every case not only inactive cannabinoids, but the two major active substances as well. To be able to detect people who have drugs in their system at an earlier stage to allow a blood test to be taken, is like shutting the stable window, but leaving the stable doors wide open.

Matters would be far simpler if there was an agreed legal limit for all drug substances, however, this would be very hard to define.

Some jurisdictions have imposed a zero tolerance on any drug, so if any illegal substance is found in the body, an offence has been committed. Although it is highly likely this would make our roads safer, if this was to be the case, then surely we should have a zero tolerance on alcohol as well.

This becomes more a social, cultural issue, than a medico legal one, for if there was a zero tolerance on the inactive metabolites of cannabis, the regular, but low dose, infrequent user of cannabis, would never be able to drive.

The world would therefore be divided as to whether this was in the best interests of society or against the freedom of the individual and against their individual rights.

The statement by the Minister for Transport raises far more issues and asks far more questions than the public relations exercise of trying to give machines to the police implies.

Dr Malcolm VandenBurg comments *'currently whatever their own social and cultural views, medical experts called as expert witnesses in cases where there is alleged impairment to drive due to drugs, have to give an impartial view as to indeed whether impairment has been shown and whether there is sufficient drug in the body to cause impairment to drive beyond reasonable doubt. This is often extremely difficult'*.

Dr Malcolm VandenBurg is also a Pharmaceutical Physician and has registered many drugs worldwide including benzodiazepine type hypnotics and comments that *'many people drive with prescription drugs in their body which may cause as much impairment as illegal substances and this matter should probably be addressed as well'*.

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