Detection of Drug Impaired Drivers – Standard Field Sobriety Tests

M.C. Boorman

Traffic Alcohol Section – Technical Unit, Victoria Police, Melbourne, Victoria, Australia

Abstract
On 1st December 2000, new legislation came into force in Victoria to provide a framework for the procedure to be followed by police for the detection of drivers impaired by drugs other than alcohol. An integral part of the process is the use of the tests known as the Standard Field Sobriety Tests (SFST). This paper outlines the new legislative framework and drug impairment detection procedure then presents an evaluation of the first twelve months of operation. The evaluation demonstrates the use of the SFST in the procedure is a practical, effective and valid means for police to detect impairment in drivers caused by drugs other than alcohol, particularly when narcotic analgesics, central nervous system depressants or cannabis are involved.

Introduction
In 1994 the Victorian Parliamentary Road Safety Committee commenced an inquiry into the effects of drugs (other than alcohol) on road safety in Victoria. The committee made 41 recommendations in its 1996 final report (1). Among other matters, the committee recommended that a new offence of driving while impaired by a drug be introduced and a specialist working party chaired by the Victoria Police be formed to determine the procedure for drug impairment testing. The development of specific drug impaired driver detection training for police was also recommended. The Victorian Government responded to the report in 1997 supporting each recommendation in principle (2). A working party was formed recommending in its 1998 report a drug impairment assessment procedure that included the use of the SFST (3). A specific training program for police was implemented and legislative support for the use of the procedure came into force in Victoria on 1 December 2000 (4).

This paper discusses the legislative framework in support of the new offence of drive while impaired by a drug and examines the distinction between the traditional drive under the influence of a drug offence and the new impairment offence. The implemented drug impaired driving assessment procedure and associated police training for the enforcement of the new offence is outlined. The role of the Standard Field Sobriety Tests (SFST) within the procedure and its validity as means to detect drug impairment in comparison to the use of the SFST other programs is also discussed. Finally, the performance of the new legislation and procedure for the first twelve months of operation is examined.

Legislative Framework
Victoria, like many other jurisdictions, has a legislative history of regulating the driving of motor vehicles when the driver’s ability to drive safely is affected by alcohol or other drug use. The impact of alcohol use and driving on road safety was recognised and legislated for in 1909. It was a further forty years before the impact of other drug use on road safety was
recognised. In 1949 legislation was enacted to include drug use and make it an offence to drive a motor vehicle while under the influence of alcohol or drug to such an extent as to be incapable of proper control of the motor vehicle. This drive under the influence (DUI) type offence remains a part of the legislative framework today. However, the past fifty years has seen a move away from enforcement of the DUI alcohol offence in favour of the exceed the prescribed concentration of alcohol (PCA) offence. This move has been brought about by the availability of practical and effective measurement technology supported by legislative authority (5). The same can not be said for the case of the DUI drug offence over the same period.

Securing a DUI drug offence conviction is problematic. The presentation of evidence to establish a DUI drug offence without legislative authority in terms of the creation of legal fictions in the form of presumptive provisions, as is the case now with the alcohol enforcement provisions, is not a simple task. Evidence is required to establish that, a drug was present in the driver at the time of driving, the drug present affected the driver at the time of driving and, the affect of the drug present resulted in the driver being incapable of controlling the vehicle properly.

The presentation of evidence to establish a DUI drug offence relies largely on expert opinion. Expert opinion is required to establish a nexus between the witnessed behaviour and appearance of the suspect and the affect of the drug found present in the suspect. The opinion must also establish the affect of the drug present was to such an extent as to render the suspect incapable of controlling the vehicle properly. The ability for expert opinion to be provided relies on the evidence of the witnessed behaviour and appearance of the suspect and the evidence of the drug present in the suspect. The former requiring recognition of signs and symptoms of drug use and the latter toxicological examination of body samples. Neither defined procedure nor legislative authority exists to facilitate the gathering of such evidence. Moreover, the DUI drug offence addresses only the gross level of drug affected driving and does not address the identified risks to road safety represented by impaired drivers generally. It is these issues that have lead to the new legislative framework for driving while impaired by a drug.

The new legislative framework not only addresses the issue of drug impaired driving but also the road safety issue of impaired driving generally. The consumption of alcohol, the recreational misuse of drugs, the unintentional misuse of prescribed drugs, injury, illness, infirmity, or a combination of these factors can cause driver impairment. Regardless of the cause of the impairment, the fundamental issue is to identify impaired drivers and then remove them from the road until the reason for their impairment is addressed. The new legislative framework provides for the identification of impaired drivers so that appropriate action can be taken. In cases where recreational misuse of drugs is the cause of impairment, a driver is prosecuted for a drive while impaired by a drug offence. In cases where impairment is caused by the unintentional misuse of prescribed drugs, injury, illness, or infirmity, the driver is dealt with by an administrative driver licence suitability procedure. In either case the driver is removed from the road until the reason for their impairment is addressed.

The new legislative framework is based on the creation of a new drive while impaired by a drug offence. The evidence required to establish the new offence is similar in nature to that required for a DUI drug offence but is gathered under legislative authority in a structured manner with mandatory suspect compliance and the creation of legal fictions in the form of
presumptive provisions. A driver is presumed to be driving while impaired by a drug when a drug is found to be present in a driver, the behaviour of the driver is consistent with the behaviour usually associated with a person who has used the drug found and, the behaviour usually associated with a person who has used that drug would result in the person being unable to drive properly. This presumption is the fundamental distinction between a DUI drug offence and the new drive while impaired by a drug offence. The new offence does not require direct connection to be established between the drug affect, behaviour and driving ability, the connection is established through the legislation.

A key element of the new offence is the gathering of evidence relevant to the behaviour of the suspect. The signs and symptoms of impairment and their relationship to the affects of drugs are vital to the scheme of the new legislative framework. The legislation prescribes a structured procedure for the gathering of evidence of impairment then establishing the cause of that impairment.

**Procedure Overview**

The procedure has two phases. The first phase consists of two elements, a Roadside Impairment Assessment (RIA) and a Standard Impairment Assessment (SIA). These two elements provide information relevant to the presence of impairment. The second phase also consists of two elements, the collection of body samples for drug analysis and an information review process to determine the course of action to be taken. The new procedure is closely linked with the existing alcohol impaired driver detection system.

The total system is a progressive evidence gathering process to determine the presence of impairment and the cause of that impairment. The RIA is the first step of the system. The screening of a driver for the presence of alcohol is an intrinsic component of the RIA. The RIA is carried out to enable an investigator to form an opinion as to whether a driver’s behaviour or appearance indicates impairment for a reason other than alcohol alone. In cases where alcohol alone appears as the reason for impairment, the investigator need not carry out a complete RIA and may follow the alcohol impaired enforcement process. In cases where impairment is evident and the investigator does not believe that the impairment is caused by alcohol alone, the RIA is completed. The RIA relies on the basic investigation skills of observing and recording facts for presentation as evidence and forms the basis for the investigator’s opinion. A template document is used by the investigator to record the observations made in a standardised manner. The document provides a word picture of a driver’s behaviour and appearance.

The next stage is to conduct an evidential breath alcohol analysis to establish to what extent if any alcohol is a contributing factor to the impairment. This is followed by the conduct of a SIA. The SIA is a structured and systematic assessment process for identifying the presence of impairment carried out by specifically trained police in a controlled environment such as a police station. The SIA is recorded on videotape to ensure strict compliance with the prescribed assessment process. The SIA consists of four components, interview and observation, physical impairment tests, information review process and, opinion on the presence of impairment.

The interview and observation component consists of a standardised series of questions. The questions examine the circumstances that led to interception of the suspect and the suspect’s recent history of illness, injury, medical treatment, and drug use.
The Physical Impairment Tests (PIT) used in the SIA are based on the SFST validated by the United States of America, Department of Transport, National Highway Traffic Safety Administration (6) (7) (8). The three validated tests, horizontal gaze nystagmus, the walk and turn and, the one leg stand, when used by trained practitioners in a systematic and standardised manner, identify impairment at a level equivalent to impairment at a .05% or above blood alcohol concentration (9). This provides for impairment caused for reasons other than alcohol use to be compared to alcohol impairment levels that are widely understood and accepted. The standardised conduct and performance evaluation of the tests also provides a high degree of objectivity in identifying the presence of impairment.

The information review process is a review by specifically trained police personnel of all the available information, that is, the investigator’s RIA report, the result of the evidential breath alcohol analysis, the information obtained from the observations made and questions asked, and the PIT results. The information reviewed is a collection of observed and subsequently recorded facts relevant to the presence of impairment.

The collected facts are then used as the basis for the formation of an opinion as to whether a suspect is impaired. If a drug or drugs are believed to be the cause of the impairment, body samples are required. If at any time during the SIA process it becomes apparent or it is suspected that injury or illness may be the cause of the impairment, examination by a medical practitioner is immediately arranged.

Where impairment is identified, a blood and/or urine sample is taken from a suspect where, in the opinion of the police assessor conducting the SIA, the impairment may be caused by a drug. The samples are taken by a medical practitioner or an approved health professional. Chemical analysis of body samples takes place to identify the type of drug or drugs present in the sample. The findings of the analysis are reported to the investigator.

The complete investigation file is referred to a specialist police unit for review and determination of what action is to be taken. Consultation with medical and scientific experts takes place as part of that review. In the cases where impairment is established and drugs that can cause impairment are present, a prosecution takes place. In cases where impairment is established but the impairment is present for reasons other than drug use, an administrative driver licence review is carried out.

**Enforcement Personnel Training**

As discussed above the recognition of signs and symptoms of impairment and their relationship to the affects of drugs are vital to the scheme of the new legislative framework. The introduction of the new procedure required a significant level of training for enforcement personnel. A computerised interactive training package was developed for the training of enforcement personnel in the RIA and SIA procedure. The package is in a modular format and is primarily a self-paced learning program but can also be used as an instructional medium. The package material is confined to procedural aspects of drug impaired driver detection. Additional electronic training materials have been developed for training personnel in the specifics of the legislative requirements.

Operational police are trained at two levels. At the first level, all operational police receive training in the RIA procedure. The six hour RIA training program provides information to
train enforcement personnel in recognising, observing and recording evidence of drug impaired driving. At the second level, a selected group of operational police is trained to use the SIA procedure. The SIA training program provides instruction on the conduct and evaluation of the PIT together with electronic training material addressing the associated legislative requirements and video camera operation. The SIA training is a thirty two hour competency based program. The SIA trained personnel are reassessed for competency retention each twelve months. Only a sufficient number of personnel to provide coverage across the State are SIA trained.

Procedure Evaluation
The use of the SFST as a major component of the procedure to identify impairment caused by drugs other than alcohol has been clearly demonstrated. Of the cases where the suspect was assessed as being impaired by a drug and a blood sample was taken, 97.5% of the assessments were confirmed by the detection of a drug or drugs in the blood sample. This level of performance is comparable to the reported 94% performance level of the Drug Evaluation and Classification (DEC) program used in the United States (10).

The use of the SFST to identify impairment caused by the major drug types has also been clearly demonstrated. Central Nervous System (CNS) Depressants (Benzodiazepines) were found to be present in 67% of the cases, Narcotic Analgesics (heroin, methadone) in 48% of the cases, Cannabis (THC) in 40% of the cases and, CNS Stimulants (Amphetamines) in 22% of the cases. Poly drug use was found to be present in 62% of the cases.

The first twelve months of the program operation demonstrates that the enforcement procedure is effective in identifying and removing drug impaired drivers from the road. A total of 227 suspects were detected under the new drive while impaired by a drug procedure, a detection rate of 1 suspect per 1.6 days. Of the 227 suspects, 181 have been charged with offences under the new provisions. Convictions have been obtained in 27 cases with 133 cases remaining in the court system. No cases have been dismissed. The procedure has been vigorously challenged twice in the first twelve months. In both cases the prosecution was successful and convictions obtained. No legal deficiencies have been identified in the procedure.

The procedure has identified 8 cases where impairment was present and not caused by drug use. The suspects in these cases have been the subject of driver licence suspension and referred for administrative driver licence review on medical grounds. A further 4 cases have not been prosecuted as the suspects have died prior to appearance at court. Each of the deaths has been related to drug use.

The procedure is also revealing interesting information concerning particular characteristics relevant to the drug impaired driver. It is clear that drug impaired drivers are at risk of collision involvement, 45% of cases involved a non-injury collision. The suspects are predominantly male, 85%. The average age of the suspects is 27 with 21% of the suspects under the age of 21. Unemployment is significantly represented with 66% of suspects reported as unemployed at the time of detection. A history of suspect drug use other than alcohol was reported in 73% of cases. The misuse of prescription drugs appears to be prominent with the use of illicit drugs reported in only 48% of cases. Alcohol use does not appear to be significant with the presence of alcohol reported in only 10% of cases. A significant number of suspects, 21%, did not hold a valid driver licence when detected with a
further 10% detected driving in breach of a disqualification order. A significant number of suspects have a conviction history, 82% with criminal offences and 67% with traffic offences. Only 25% of suspects have a drink driving offence history. Of the suspects charged with drive while impaired by a drug offence, 33% were also charged with criminal offences. On the basis of this information it would appear that the drug impaired driver is predominantly a subset of the wider drug use population.

In the first twelve months of operation the Victorian procedure has demonstrated that drug impaired driving is a significant road safety issue. It has also demonstrated that the procedure is a practical, effective and valid means for police to detect and remove drug impaired drivers from the road.

References

1. Road Safety Committee, Parliament of Victoria, Inquiry into the Effects of Drugs (Other than Alcohol) on Road Safety in Victoria, Final Report, Melbourne, 1996.


