

UPCOMING TRAININGS & CONFERENCES

- NDAA Office Administration Course**
 Savannah, GA / October 28–November 1, 2019
- NDAA Forensic Evidence Course**
 New Orleans, LA / December 9–12, 2019
- NDAA Capital Conference**
 Washington, DC / January 28–29, 2019
- NDAA The Digital Trial: A Hands-On Lab**
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- NDAA 2020 Evidence for Prosecutors**
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Using Special Operations to Address Commercial Motor Vehicle Drugged Driving

By Tim Plummer and Chuck Hayes¹

Drug involvement by commercial motor vehicle (CMV) operators is an important cause of concern. Psychoactive substance use has a relevant and negative impact on traffic safety as well as the driver's health and safety.

According to the Federal Motor Carrier Safety Administration (FMCSA) and the National Highway Traffic Safety Administration (NHTSA), the number of large trucks and buses involved in fatal crashes increased by 9 percent from 2016 to 2017.² NHTSA also reports that 4,761 people were killed in crashes involving

CMVs in 2017.³ The findings in a recent mega-analysis study indicated an increased prevalence of drug use among truck-drivers, especially central nervous system (CNS) stimulants, compared to the general population; the overall annual prevalence of amphetamine use among truck-drivers was 21.3 percent, compared to the estimated global prevalence of consumption in the general population of 0.7 percent.⁴

Being a CMV driver is a challenging job and can be extremely dangerous when driving while fatigued, after consuming alcohol, or after using drugs, both legal and illegal. To promote

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safety, the federal government established specific regulations governing the length of time a person may operate a CMV at one trip.⁵ A CMV driver is required to keep records of how many hours he drives each day and each week. These regulations also delineate how much time a driver must be off the road between trips.⁶ FMCSA also established that a CMV driver with a blood alcohol concentration of 0.04 g/ml or higher is considered impaired.⁷ While the Federal Motor Carrier Safety Regulations (FMCSRs) prohibit commercial driver's license (CDL) holders from operating a CMV with any measurable amount of any scheduled narcotic,⁸ the use of potentially impairment-causing drugs and psychoactive over-the-counter substances can be a lesser known concern to law enforcement and prosecutors.

A horrific example of a drug-impaired CMV crash occurred in June 2015 on I-75 near Chattanooga, Tennessee. In this crash, a CMV driver operating a tractor-trailer combination collided with multiple vehicles slowed in a construction zone. The crash killed six people, including two children trapped inside a burning vehicle. Police investigators requested a Drug Recognition Expert (DRE⁹) to examine the CMV driver. A DRE from a nearby police department responded and conducted the evaluation. Based on his evaluation, the DRE concluded the driver was under the influence of a Central Nervous System (CNS) depressant and a CNS stimulant. A forensic examination of the driver's blood sample revealed the presence of Alprazolam (Xanax) and methamphetamine. The prosecutor subsequently charged the driver with six counts of vehicular homicide and DUI-Drugs. The driver challenged the DRE evidence and opinion of impairment in pre-trial hearings, but the court allowed the DRE testimony at

trial. This testimony, along with other evidence, proved vital to the State's case. The driver was convicted of all charges and sentenced to 83 years in prison without the possibility of parole for the first 55 years.

CMV drug-impaired driving cases like this, along with others nationwide, demonstrate the value of involving DECP-trained officers in major CMV crash investigations and in CMV enforcement operations. A DECP-trained officer can determine whether drug and/or alcohol impairment is present, but he can also determine whether the impairment is related to other issues, such as medical complications or fatigue. More law enforcement agencies are training of-

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ficers to be DREs specializing in the detection of drug impairment in drivers, including CMV operators. Many DREs also share their knowledge and training with other police officers and CMV enforcement personnel.

One excellent example of this type of collaboration is "Operation Trucker Check" (OTC). This type of special operation began in 1998 in Oregon after an increase in CMV crashes along Interstate 5 in the southern part of the state. In a number of those crashes, drug-involvement was suspected, and numerous drivers tested positive for drugs through the investigations.

Oregon State Police (OSP) partnered with local and state CMV inspectors and Port of Entry enforcement personnel for OTC. In an OTC exercise, a DRE screens CMV operators for fatigue and possible alcohol and/or drug impairment when the driver enters the Port of Entry or weigh station. The DRE focuses his effort on the driver's condition while the truck inspector directs her attention on the vehicle and any possible equipment- and driving-related violations.

To date, Oregon State Police has conducted 18 OTC operations in various locations throughout the state with the most recent operation conducted in August 2018, resulting in 136 CMV inspections in a 42-hour around-the-clock period. As a result of those inspections, 32 CMVs were placed out of service because of various violations and 24 CMV drivers were placed out of service. Of the CMV drivers evaluated by a DRE, four were determined to be impaired by drugs and charged with DUI-Drugs. In several past OTC operations, OSP included other

traffic safety partners in neighboring states and employed the use of drug detection K-9s, local District Attorney's offices, media and trucking industry, as well as forensic laboratories.

A key component to a successful OTC operation is partnering with local prosecutors. Inviting the prosecutor to be present at a portion of the operation provides the prosecutor with first-hand knowledge of the event and the procedures used to conduct an OTC. Advanced notice also provides the prosecutor an opportunity to be aware of the potential increases in a prosecutor's caseload of CMV enforcement citations and arrests. Including a prosecutor also affords a legal viewpoint to guard against future evidentiary issues that may arise when prosecuting any resulting violations. It is also important for law enforcement to include evidence collection staff to handle evidence processing, including toxicological specimens.

By partnering with other states and disciplines, OTC operations impact traffic safety more expansively, including not only CMV equipment safety, driver safety, and impaired driving violations, but also increased the detection of other criminal enterprises including human trafficking, drug smuggling, and stolen property. Additionally, OTC is a way to demonstrate that all vehicles are part of the highway traffic safety universe.

In a report posted to the Journal of Forensic Sciences, researchers concluded "... 'Operation Trucker Check,' was established in order to determine the extent to which commercial tractor-trailer drivers were operating their vehicles while impaired by drugs... The results indicate that in spite of comprehensive drug testing in the trucking industry, some tractor-trailer drivers are continuing to take illicit and other drugs with the potential of having a negative effect on their driving ability."¹⁰ OTC is an effective transportation safety tool and partnership as well as an excellent use of DREs in combating drugged-impaired driving involving commercial vehicles.

Addition information regarding Operation Trucker Check can be obtained from the Oregon State Police at OSPDPRE@osp.oregon.gov.

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² [Large Truck and Bus Crash Facts 2017](#), Federal Motor Carrier Safety Administration, FMCSA-RRA-18-018, May 2019; see also [Traffic Safety Facts—2017 Data, Large Trucks](#), National Highway Traffic Safety Administration, DOT HS 812 663, January 2019.

³ [Traffic Safety Facts—2017 Data, Large Trucks](#), National Highway Traffic Safety Administration, DOT HS 812 663, January 2019.

⁴ Dini G, Bragazzi NL, Montecucco A, Rahmani A, Durando P. Psychoactive drug consumption among truck-drivers: a systematic review of the literature with meta-analysis and meta-regression. *J Prev Med Hyg.* 2019;60(2):E124–E139. Published 2019 Jun 28.

⁵ [49 CFR §395](#) – Hours of Service of Drivers (2019).

⁶ *Id.*

⁷ 49 CFR §382.201; see also [FMCSA BAC Standards](#).

⁸ 49 CFR §392.4 – Drugs and other substances.

⁹ A Drug Recognition Expert is a law enforcement officer who has participated in the necessary training coursework, practical field training exercises, and examinations of the Drug Evaluation and Classification Program (DECP) of the International Chiefs of Police.

¹⁰ Couper, F, Pemberton, M., Jarvis, A., et. al. "Prevalence of drug use in commercial-tractor trailer drivers." *Journal of Forensic Sciences* 47(3):562-7 (June 2002).