DRIVING UNDER THE INFLUENCE

BEST PRACTICES

CHAD G. PARKER

ASSISTANT ATTORNEY GENERAL

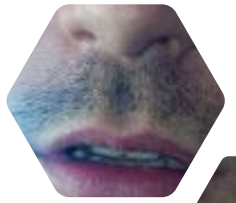
TRAFFIC SAFETY RESOURCE PROSECUTOR

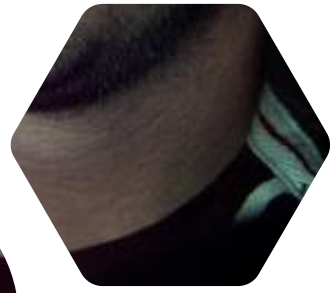
	2011	2012	2013	2014	2015	2016	2017	2018
Total DUI Arrests	7324	7473	7010	7364	7199	7,635	7,729	*
Total DUI Convictions	**	**	**	**	5,702	5,424	5,479	5,327
• **1st Offense Convictions**	**	**	**	**	4,069	3,880	3,889	3,800
• **2nd Offense Convictions**	**	**	**	**	857	777	864	789
• **3rd Offense Convictions**	**	**	**	**	390	410	425	430
• **4th Offense Convictions**	**	**	**	**	386	357	291	308
Total DUI Refusals	2,691	2,031	2,085	2,090	1,998	2,073	2,050	1,956
• **1st Offense Refusals**	2,438	1,809	1,914	1,930	1,865	1,929	1,895	1,822
• **2nd Offense Refusals**	253	222	171	160	133	144	155	134

The Scope of the Problem:

- **Montana DUI Statistics**

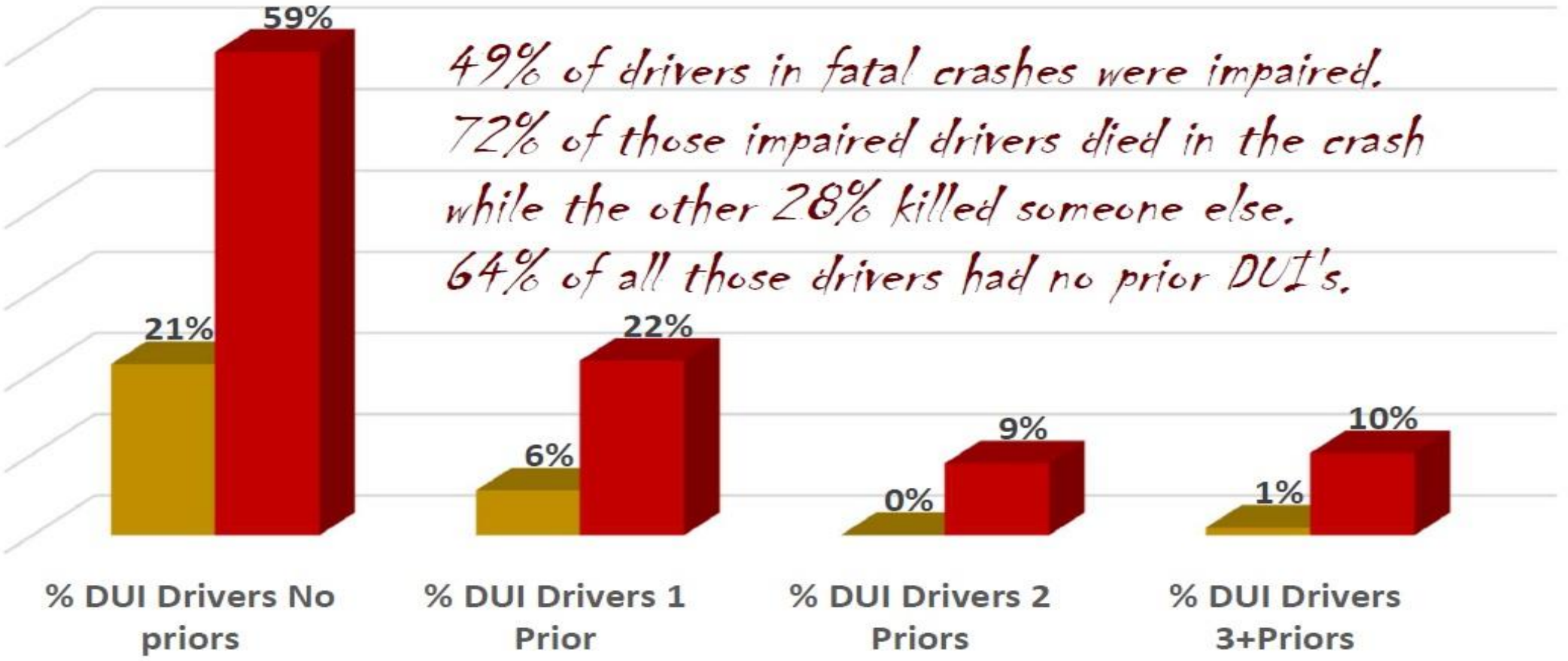
- Highest frequency of fatal crashes caused by an impaired driver in the US at **45%** in 2016
- 10th highest alcohol related fatality rate in US at **32.80%** in 2017
- 6th highest death rate per capita for alcohol related fatalities at **5.33** in 2017
- **.183** average BAC on alcohol related fatalities in 2018
- MADD named Montana as state with nation's "most ineffective drunk driving laws" in 2018





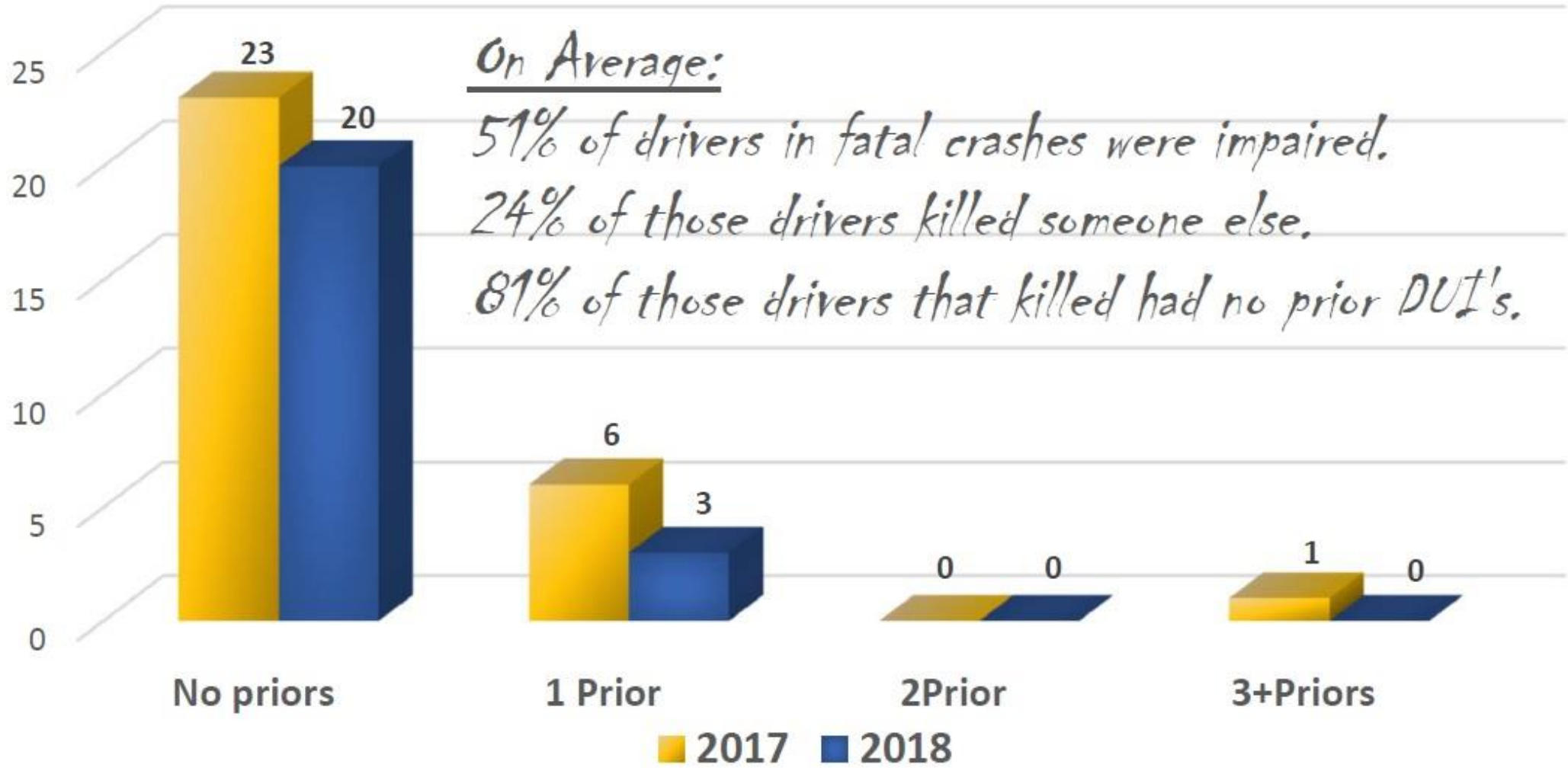
IN TERMS OF CONVICTION NUMBERS, WHO ARE MONTANA'S MOST DANGEROUS DUI DRIVERS?

2017 Fatal Crashes with Impaired Drivers

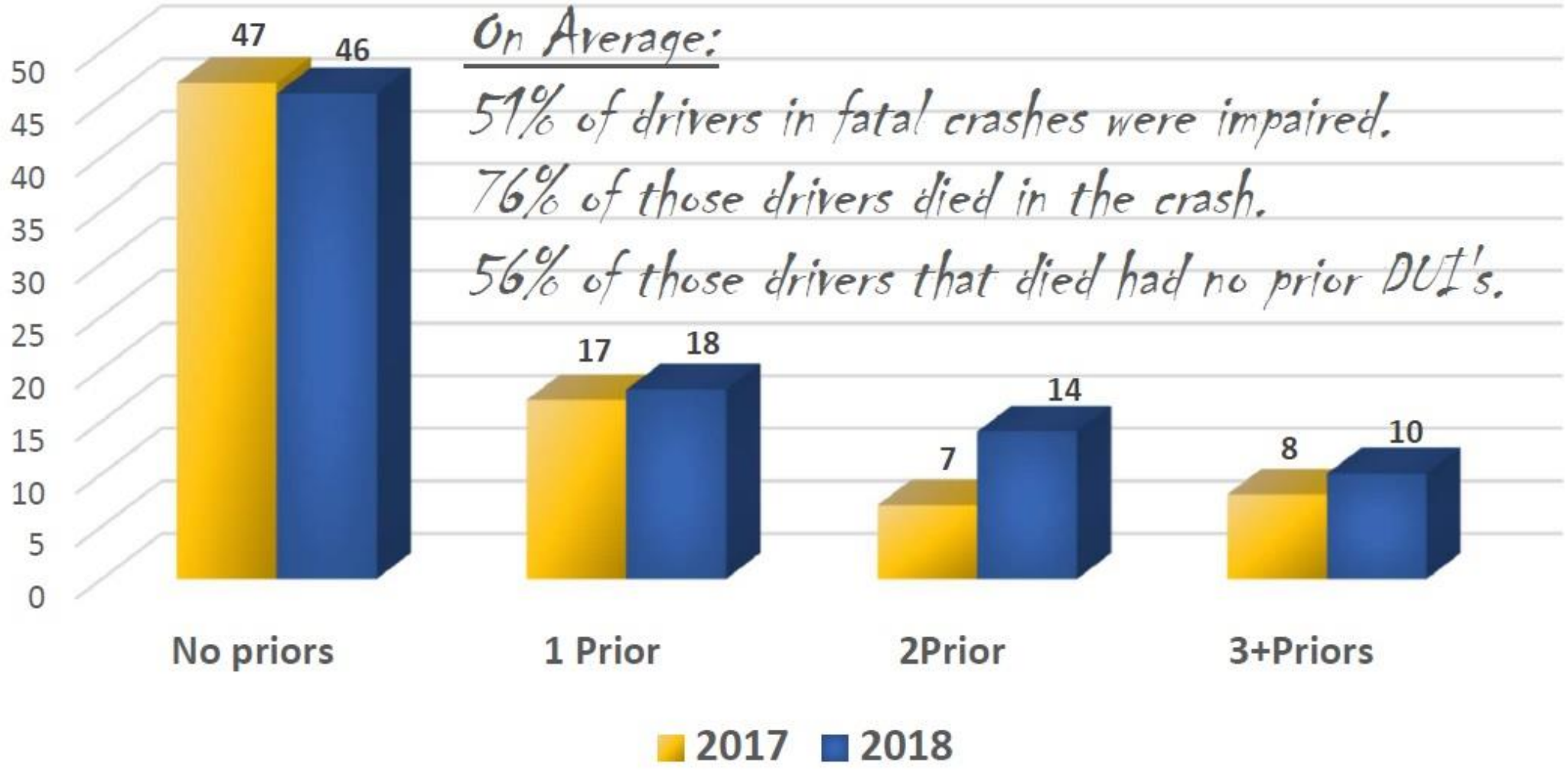


49% of drivers in fatal crashes were impaired.
72% of those impaired drivers died in the crash while the other 28% killed someone else.
64% of all those drivers had no prior DUI's.

DUI Driver's that Kill Someone Else in Fatal Crashes



DUI Drivers that Die in Fatal Crashes



The Effects of Blood Alcohol Concentration

AVERAGE BAC FOR A MONTANA DUI =.18

180-240 LB MAN/HR.

BLOOD ALCOHOL CONCENTRATION (BAC) IN G/DL	TYPICAL EFFECTS	PREDICTABLE EFFECTS ON DRIVING
.02	Some loss of judgment, relaxation, slight body warmth, altered mood	Decline in visual functions (rapid tracking of a moving target), decline in ability to perform two tasks at the same time (divided attention)
.05	Exaggerated behavior, may have loss of small-muscle control (e.g., focusing your eyes), impaired judgment, usually good feeling, lowered alertness, release of inhibition	Reduced coordination, reduced ability to track moving objects, difficulty steering, reduced response to emergency driving situations
.08	Muscle coordination becomes poor (e.g., balance, speech, vision, reaction time, and hearing), harder to detect danger; judgment, self-control, reasoning, and memory are impaired	Concentration, short-term memory loss, speed control, reduced information processing capability (e.g., signal detection, visual search), impaired perception
.10	Clear deterioration of reaction time and control, slurred speech, poor coordination, and slowed thinking	Reduced ability to maintain lane position and brake appropriately
.15	Far less muscle control than normal, vomiting may occur (unless this level is reached slowly or a person has developed a tolerance for alcohol), major loss of balance	Substantial impairment in vehicle control, attention to driving task, and in necessary visual and auditory information processing

2 to 3

3.5 to 5

4 to 6

6 to 9

DUI Traffic Stop to Warrant Request Flow Chart

1

Possible **indicators of impairment** observed while **vehicle in motion**:

- Weaving,
- crossing into oncoming traffic lanes,
- trouble maintaining constant speed, etc.

If indicia of impair. or traffic violation observed LE may **stop vehicle**

2

Possible **indicators of impairment** observed **after** the **vehicle is stopped**:

- Slurred speech,
- bloodshot & watery eyes,
- fumbling with documents,
- inability to answer simple questions,
- odor of drugs or alcohol, etc.

If sufficient indicia observed LE **may request sobriety tests** be performed

3

Possible **indicators of impairment** observed during **standardized field sobriety testing:**

- Involuntary jerking of the eyes during eye tests,
- inability to maintain balance and follow instructions during a Walk and Turn test,
- inability to maintain balance and follow instructions during a One Leg Stand test, etc.

Officer considers Totality of Circumstances to **determine next course of action**

4

Investigation Stops

Option 1:

IF the officer determines the driver **IS NOT IMPAIRED**, the **driver is released**

TRACK 1

4

Investigation Continues

Option 2:

IF the officer determines the driver **IS IMPAIRED**, the **officer will request a breath or blood test**

TRACK 2

T2 a

Driver Option 2- REFUSES:

If the DRIVER REFUSES to provide a test sample AND THEY HAVE A PRIOR DUI CONVICTION OR REFUSAL the officer can apply for a search warrant through a judge.

This is an area of misunderstanding with the Legislature; Courts seem to understand, however. See *State v. Minett, 2014 MT 225*

T2 b

WARRANT PROCEDURE:

Officer calls Judge and **gives a sworn statement** providing **PROBABLE CAUSE**

T2 COURT REVIEW

T2 c

Investigation Stops

COURT REVIEW PROCEDURE – Option 2:

IF Court does not believe PROBABLE CAUSE exists, **no warrant issued. No blood drawn** from driver.

T2 c

Investigation Continues

COURT REVIEW PROCEDURE – Option 1:

IF Court believes PROBABLE CAUSE exists, **warrant for blood is issued, blood drawn** from driver.

T1 Back to TRACK 1 COURT REVIEW

T1 b

Court reviews prosecutor's filing to **verify PROBABLE CAUSE.**

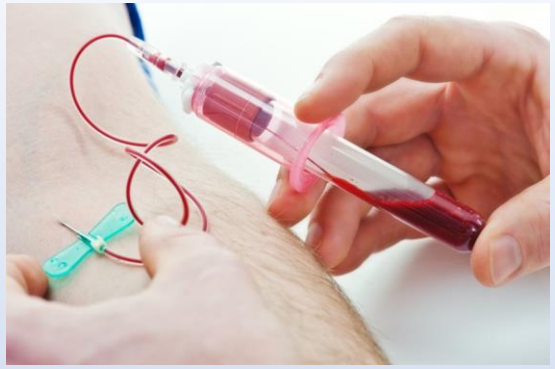
- **If exists, filing of charge(s) allowed.**
- **If not, no filing allowed.**

T1 COURT REVIEW

T1 a

Driver Option 1- PROVIDE TEST SAMPLE:

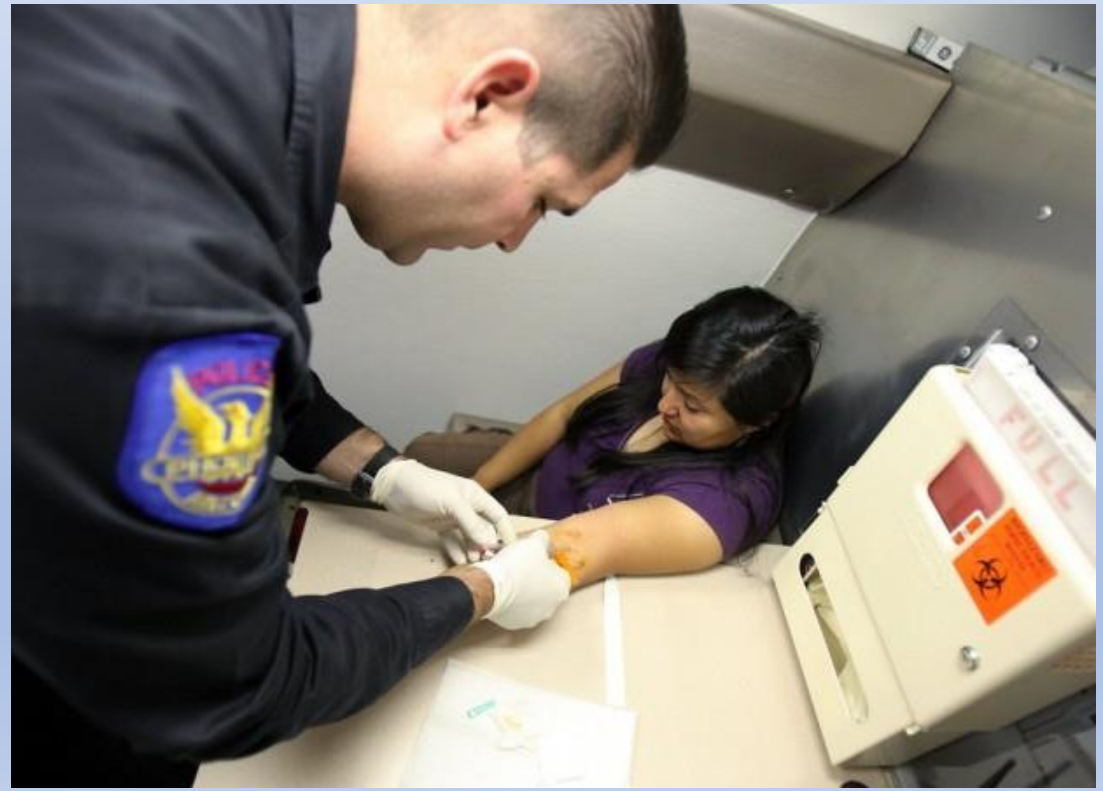
If the DRIVER PROVIDES a test sample the case is given to the City or County Attorney's Office for further evaluation.



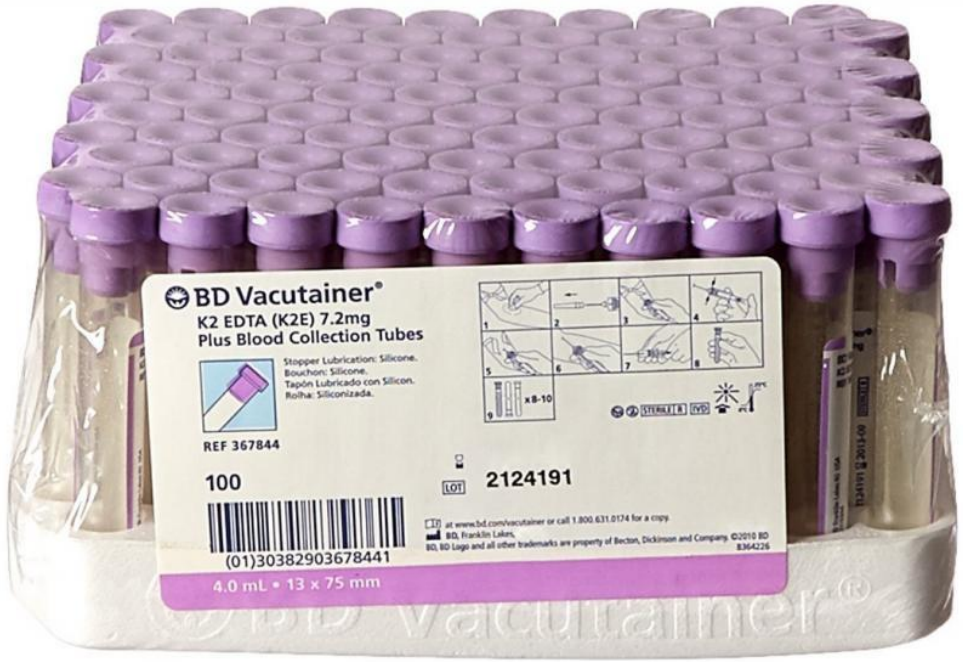
State v. Minett, 2014 MT 225

Overview

HOLDINGS: Court properly denied defendant's motion to suppress the results of a blood alcohol test taken pursuant to a search warrant because defendant did not contest the validity of the warrant under Mont. Const. art. II, § 11, and when the police applied for and obtained the warrant the situation no longer fell under the implied consent statute, Mont. Code Ann. § 61-8-402(1), (2), (4) (2009).



Becton Dickinson Recall Letter



BD
1 Becton Drive
Franklin Lakes, NJ 07417
USA

bd.com

AMENDED URGENT MEDICAL DEVICE RECALL

BD Vacutainer® Fluoride Tubes for Blood Alcohol Determinations

June 12, 2019

Product	Catalog Number	Lot Number	UDI (GTIN, DI + PI)	Exp. Date
BD Vacutainer® Fluoride Tubes for Blood Alcohol Determinations	**367001**	**8187663**	**(01)30382903670018(17)200731 (10)8187663(30)0100**	**2020/7/31**

For the Attention of: Lab Director/Recall Coordinator

Description of the problem and health hazard(s):

You may have received a recall communication from BD on, May 30, 2019, that incorrectly identified the name of the product subject to the recall. Although the catalog and lot number for the one affected lot of product was correct, the product name was incorrect. This notice replaces the initially distributed notice dated May 30, 2019.

BD is conducting a voluntary medical device recall for the catalog and lot number shown above for the BD Vacutainer® Fluoride Tubes for Blood Alcohol Determinations. A small portion of this lot has been confirmed to have no additive within the tube.

As per good clinical practice, in 95% of the cases, missing additive would be detected when a visual inspection of the BD Vacutainer® Fluoride Tubes for Blood Alcohol Determinations prior to blood collection.[1] However, once blood is collected in the tubes, the clinician will be unable to determine if the tube contains additive or not. If no additive is present in the tube the sample may clot and should be rejected and recollected as per good clinical practice.

Based on publicly available scientific literature, in cases where the sample is processed without the preservative (additive) in the tube, testing has yielded reliable results if the samples were stored at room temperature for no longer than two days. If the sample was stored for more than 2 days, the result for blood alcohol determination might not be accurate (either falsely low or falsely high).[2]

The root cause was related to a manufacturing error and has been corrected.

Distribution of the affected lot began on August 31, 2018 and our records indicate you may have received the affected product.

Please Take the Following Actions:

1. Immediately review your inventory for the specific catalog and lot number listed above. Destroy all product subject to the recall in accordance with your institution's process for destruction.
2. Share this Urgent Medical Device Recall notification with all users of the product in your facility to ensure that they are also aware of this recall.
3. Complete the attached Customer Response/Certificate of Destruction Form and return to the BD contact noted on the form regardless of whether you have any affected material or not so that BD may acknowledge your receipt of this notification and process your product replacement, if applicable.

[1] 1CLSI. Collection of Diagnostic Venous Blood Specimens. 7th. Ed. CLSI standard GP41-page15, section 2.9.1 Supplies Are Gathered. Wayne, PA: Clinical and Laboratory Standards Institute; 2017. [2] Wu, A. H. (2006). Tietz clinical guide to laboratory tests. St. Louis, MO: Saunders/Elsevier. Section IV- Therapeutic Drugs and Drugs of Abuse pg 1345

Number of DUI cases that were tested for drugs in 2018: 1341

Number of cases that had THC positive results: 488
Number of cases that had THC positive as well as another class of drugs confirmed: 183

So about 38% of THC positive cases had other drugs confirmed (Rx, OTC, or illicit). Let me know if you would any clarification on these numbers or have any questions.

Drug Prevalence in Driver Blood Samples
Montana Statewide Statistics

(January 1, 2018 – December 31, 2018)

Blood Samples Submitted: 3701

Blood Samples Positive for Alcohol: 75%
Blood Samples Positive for Drug(s) other than Alcohol: 26% Alcohol Detected Only*: 67%
Alcohol + Drug(s)*: 8% Drug(s) Detected Only: 18%
No Drug(s) or Alcohol Detected: 6% BAC Greater than 0.100%*: 67% BAC 0.020% - 0.100%: 9%
Average BAC: 0.184, Range: 0.020 – 0.485 (Highest case is above 0.500, and is excluded from stats)
Most detected Drugs*

1. THC – 13% of all samples (Avg = 9.2 ng/mL, Range: 1.0–160ng/mL)
2. Methamphetamine – 9% of all samples (Avg = 0.366 mg/L, Range: 0.02-3.3mg/L)
3. Alprazolam (Xanax) – 1% of all samples (Avg = 0.074 mg/L, Range: 0.022-0.23 mg/L)
4. Diazepam (Valium) – 1% of all samples (Avg = 0.232 mg/L, Range: 0.022-0.72 mg/L)
5. Zolpidem (Ambien) – 1% of all samples (Avg = 0.331 mg/L, Range: 0.025-1.5 mg/L)
6. Morphine – 1% of all samples (Avg = 0.050 mg/L, Range: 0.02-0.1 mg/L)
7. Clonazepam (Klonopin) – 1% of all samples (Avg = 0.050 mg/L, Range: 0.021-0.15 mg/L)
8. Hydrocodone – 1% of all samples (Avg = 0.055 mg/L, Range: 0.02-0.19 mg/L)
9. Benzoylecgonine (Cocaine Metabolite) – 1% of all samples (Avg = 0.421mg/L, Range: 0.023-2.3mg/L)
10. Lorazepam (Ativan) – 1% of all samples (Avg = 40.9 ng/mL, Range: 4.0–119ng/mL)

DRE Evaluations Performed: 197

*Drug testing is not routinely administered for cases with a BAC above 0.10

"We review jury **instructions** in a criminal case to determine whether the **instructions**, as a whole, fully and fairly instruct the jury on the applicable law. A district court has broad discretion when instructing a jury and we only reverse if the **instructions** prejudicially affect the defendant's substantial rights." *State v. Santiago*, 2018 MT 13, ¶ 7, 390 Mont. 154, 415 P.3d 972 (citations omitted).

State v. Sweet, 2018 MT 263, ¶ 8, 393 Mont. 202, 206, 429 P.3d 912, 914


PROSECUTOR ★ TRAFFIC SAFETY RESOURCE