

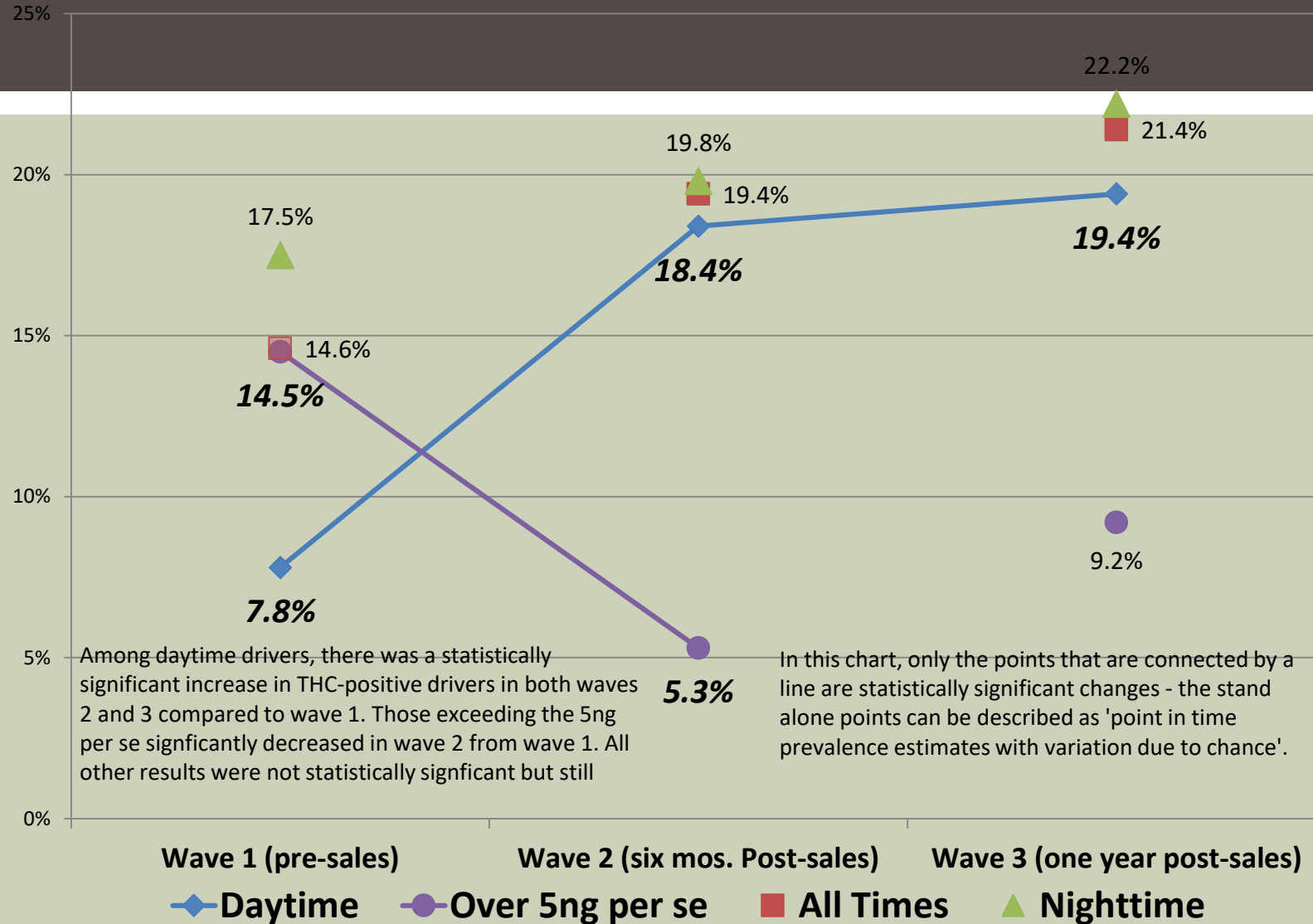
# WA State - CMV's and Marijuana

2021 Western States CMV Safety Summit

# Marijuana legalization in WA

- In 2012, WA legalized cannabis for recreational purposes. THC is the psychoactive compound of marijuana tested for in DUI cases.
- We had an existing DUI law which made it illegal to drive under the influence of alcohol or be at a per se level of .08 alcohol per se level, with a CMV licensing revocation at .04 alcohol per se level.
- We then adopted a per se prong for THC DUI impairment of 5 ng/mL.
- “Defense has consistently argued that this adoption of a per se prong is simply arbitrary and capricious action, a due process violation, etc., that cannot be defended. We’ve won at the Court of Appeals level, but now, it is under direct review (directly to the Supreme Court- skipped the COA) for this very issue. There is concern among prosecutors based on recent rulings from WASC, (e.g., holding our drug possession statute is unconstitutional.) We may lose our per se prong.” – M. Norman TRSP

## Percentage of Washington Drivers THC-positive Before and After Recreational Marijuana Sales



## CMV DRUGS IN SYSTEM OR VEHICLE WA

Year	Total stops	Drivers OOS
2012	14	12
2013	13	12
2014	13	9
2015	21	18
2016	24	24
2017	47	47

\*Due to data limitations cannot separate out

# CMV DRUGS/MARIJUANA WA



Microsoft Excel  
Worksheet

# How basic DUI law changed

## DUI law prior to legalization

- RCW 46.61.502
- (1) A person is guilty of driving while under the influence of intoxicating liquor, marijuana, or any drug if the person drives a vehicle within this state:
- (a) And the person has, within two hours after driving, an alcohol concentration of 0.08 or
- (b) While the person is under the influence of or affected by intoxicating liquor, marijuana, or any drug; or
- (c) While the person is under the combined influence of or affected by intoxicating liquor, marijuana, and any drug.

## DUI law **after** legalization

- RCW 46.61.502
- (1) A person is guilty of driving while under the influence of intoxicating liquor, marijuana, or any drug if the person drives a vehicle within this state:
- (a) And the person has, within two hours after driving, an alcohol concentration of 0.08 or
- (b) The person has, within two hours after driving, a **THC concentration of 5.00 or higher** as shown by analysis of the person's blood or
- (c) While the person is under the influence of or affected by intoxicating liquor, marijuana, or any drug; or
- (d) While the person is under the combined influence of or affected by intoxicating liquor, marijuana, and any drug.

# How CMV law changed

## CMV law before introduction

- RCW 46.25.110 Driving with alcohol in system.
- (1).. a person may not drive, operate, or be in physical control of a commercial motor vehicle while having alcohol in his or her system.
- (2) Law enforcement or appropriate officials shall issue an out-of-service order valid for twenty-four hours against a person who drives, operates, or is in physical control of a commercial motor vehicle while having alcohol in his or her system or who refuses to take a test to determine his or her alcohol content.

## CMV law **after** introduction

- RCW 46.25.110 Driving with alcohol **or THC** in system.
- (1)..a person may not drive, operate, or be in physical control of a commercial motor vehicle while having alcohol or THC in his or her system.
- (2) Law enforcement.. shall issue an out-of-service order valid for twenty-four hours against a person who drives, operates, or is in physical control of a commercial motor vehicle while having alcohol **or THC** in his or her system or who refuses to take a test to determine his or her alcohol content **or THC concentration**

# Licensing consequences

- RCW 46.25.120
  - (1) A person who drives a commercial motor vehicle within this state is deemed to have given consent.. to take a test or tests of that person's breath for the purpose of determining that person's alcohol concentration.
  - (2) A test or tests may be administered at the direction of a law enforcement officer, who after stopping or detaining the commercial motor vehicle driver, has reasonable grounds to believe that driver was driving a commercial motor vehicle while having alcohol in his or her system or while under the influence of any drug.
  - (4) A law enforcement officer who at the time of stopping or detaining a commercial motor vehicle driver **has reasonable grounds to believe that driver was driving a commercial motor vehicle while having alcohol, marijuana, or any drug in his or her system or while under the influence of alcohol, marijuana, or any drug may obtain a blood test pursuant to a search warrant**, a valid waiver of the warrant requirement, when exigent circumstances exist, or under any other authority of law.
  - (5) If the person **refuses** testing, or a test is administered that discloses an **alcohol concentration of 0.04** or more **or any measurable amount of THC concentration**.....
  - (6) Upon receipt of the sworn report of a law enforcement officer under subsection (5) of this section, the department **shall disqualify the driver from driving a commercial motor vehicle**
- 1<sup>st</sup> offence = 1 year disqualification. 2<sup>nd</sup> offence = lifetime disqualification.



# How can officers enforce the law?

- If an officer has probable cause to believe a driver of being under the influence of/affected by THC an arrest for DUI (RCW 46.61.502) would occur.
- If an officer has reasonable grounds to believe a driver of having alcohol or THC in their system an arrest for Driving with alcohol/THC in system (RCW 46.25.110).
- As the test for THC is a blood draw, in WA state a search warrant must be obtained, absent exigent circumstances.

# So which law should be enforced?

## **DUI**

- Gross Misdemeanor
- Results in 1 year disqualification
- Subject to increasing penalties for recidivism (increased fines, longer jail sentences, subject to monitoring e.g. ignition interlock devices/ home sobriety monitoring, required diversion/treatment classes)
- 4<sup>th</sup> DUI = Felony

## **Driving with alcohol/THC in system**

- Gross Misdemeanor
- Results in 1 year disqualification

# ROAD SIDE STRATEGIES



- Electronic DUI packet
- Electronic Search Warrants
- LE Phlebotomy Program
  - Lakewood PD/Pierce County



WASHINGTON STATE  
**REPORT OF BREATH / BLOOD TEST FOR ALCOHOL AND/OR THE OR  
 REFUSAL TO SUBMIT TO BREATH TEST FOR ALCOHOL**

STATE OF WASHINGTON, COUNTY \_\_\_\_\_ COURT \_\_\_\_\_

STATE OF WASHINGTON, NO. \_\_\_\_\_

Plaintiff, \_\_\_\_\_

v. \_\_\_\_\_

Defendant, \_\_\_\_\_

SEARCH WARRANT FOR EVIDENCE OF A CRIME, TO WIT:

VEHICULAR HOMICIDE, RCW 46.61.520

VEHICULAR ASSAULT, RCW 46.61.522

DRIVING WHILE UNDER THE INFLUENCE, RCW 46.61.502

DRIVER UNDER TWENTY-ONE CONSUMING ALCOHOL OR MARIJUANA, RCW 46.61.503

PHYSICAL CONTROL OF VEHICLE WHILE UNDER THE INFLUENCE, RCW 46.61.504

\_\_\_\_\_

TO ANY PEACE OFFICER IN THE STATE OF WASHINGTON:

WHEREAS, upon the sworn complaint heretofore made and filed and/or the testimonial evidence given in the above-entitled Court and incorporated herein by this reference, it appears to the undersigned Judge of the above-entitled Court that there is probable cause to believe that, evidence of intoxicating liquor, marijuana, or any drug as defined by RCW 46.61.540, in violation of the laws of the State of Washington, evidence of the crime(s) of:

Vehicular Homicide, RCW 46.61.520

Reckless Manner  Under the Influence of Liquor or Drugs

Disregard for the Safety of Others

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