

VIRGINIA ASSOCIATION OF COMMONWEALTH'S ATTORNEYS

DUI/DUID AREAS OF CONCERN

Marijuana Impaired Driving

- Establish a per se level
- Safeguard the ability to investigate those offenses

Blood Withdrawals

- Lack of adequate/appropriate resources
 - Medical and legal consent are different
 - Hospitals have concerns re: liability, staff safety, expense, staffing, and must take patients first
- Will be an increasing problem with the rise of marijuana-impaired drivers

Implied Consent

- Should apply to all drivers involved in crashes that result in a fatality or serious bodily injury
 - It's often impossible to do FSTs at a scene due to injury severity
 - Some drugs are not as obvious upon first impression – marijuana, particularly, as alcohol
 - The evidence is dissipating

Statutory Presumptions

- Should apply to breath tests of suspects arrested on private property
- They are a search incident to arrest
- They are performed on the same instrument, in the same manner

Refusal

- Should be admissible in the prosecution's case-in-chief as substantive evidence
 - Would alleviate the need for separate trials
- Procedures throughout the code need to be conformed
- Motions to suppress an arrest related to a refusal should specifically fall within the provisions of § 19.2-266.2(B).

Out-of-State Priors

- Proof of “substantial similarity” is often difficult, due to changing laws and minor differences
- This results in repeat offenders from out of state being punished less severely than our own citizenry

More Investment in Training

- Judges
- Local law enforcement
- Virginia State Police, especially with regard to serious crashes that will be prosecuted criminally

Crash Reconstruction Evidence

- Is not admissible in criminal cases in Virginia

EDR Data

- “EDR” – Event data recorder, also known as a crash data recorder or colloquially as a “black box”
- Generally located within the airbag control module of passenger vehicles
- Has been used as evidence a number of times and has been scientifically relied upon for decades
- Has not been litigated in Virginia, and there is no statute governing admissibility

Criminally Negligent Vehicular Maiming

- Does not exist in Virginia unless the driver is also in violation of driving under the influence code sections
- Criminal negligence is the same high standard required for manslaughter and child neglect
- Victims of this crime are left without real recourse
- Perpetrators can currently drive again after six months, if they are convicted of Reckless Driving