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Drivers on Prescription Drugs Are Hard to Convict

By **ABBY GOODNOUGH** and **KATIE ZEZIMA**

The accident that killed Kathryn Underdown had all the markings of a drunken-driving case. The car that hit her as she rode her bicycle one May evening in Miller Place, N.Y., did not stop, the police said, until it crashed into another vehicle farther down the road.

The driver could not keep her eyes open during an interview with investigators, according to the complaint against her, and her speech was slow and slurred. But the driver told the police that she had not been drinking; instead, the complaint said, she had taken several prescription medications, including a sedative and a muscle relaxant.

She was charged with vehicular manslaughter and driving under the influence of drugs — an increasingly common offense, law enforcement officials say, at a time when drunken-driving deaths are dropping and when prescriptions for narcotic painkillers, anti-anxiety medications, sleep aids and other powerful drugs are rampant.

The issue is vexing police officials because, unlike with alcohol, there is no agreement on what level of drugs in the blood impairs driving.

The behavioral effects of prescription medication vary widely, depending not just on the drug but on the person taking it. Some, like anti-anxiety drugs, can dull alertness and slow reaction time; others, like stimulants, can encourage risk-taking and hurt the ability to judge distances. Mixing prescriptions, or taking them with alcohol or illicit drugs, can exacerbate impairment and sharply increase the risk of crashing, researchers say.

“In the past it was cocaine, it was PCP, it was [marijuana](#),” said Chuck Hayes of the International Association of Chiefs of Police. “Now we’re into this prescription drug era that is giving us a whole new challenge.”

The police also struggle with the challenge of prosecuting someone who was taking valid prescriptions.

“How do we balance between people who legitimately need their prescriptions and protecting the public?” said Mark Neil, senior lawyer at the National Traffic Law Center, which works with prosecutors. “It becomes a very delicate balance.”

Some states have made it illegal to drive with any detectable level of prohibited drugs in the blood. But setting any kind of limit for prescription medications is far more complicated, partly because the complex chemistry of drugs makes their effects more difficult to predict than alcohol's. And determining whether a driver took drugs soon before getting on the road can be tricky, since some linger in the body for days or weeks.

Many states are confronting the problem as part of a broader effort to keep so-called drugged drivers, including those under the influence of marijuana and other illegal drugs, off the road.

“We have a pretty clear message in this country that you don't drink and drive,” said [R. Gil Kerlikowske](#), President Obama's top drug policy adviser, who wants to reduce drugged-driving accidents by 10 percent over the next five years. “We need very much to have a similar message when it comes to drugs.”

There is no reliable data on how many drivers are impaired by prescription drugs, but law enforcement officials say the problem is growing so quickly that states are putting hundreds of police officers through special training to spot signs of drug impairment and clamoring for better technology to detect it.

Even the prevalence of drug-impaired driving is unknown, since many states combine the arrest data with that for drunken driving. Mr. Kerlikowske points to [a 2007 survey](#) by the [National Highway Traffic Safety Administration](#), which screened 5,900 nighttime drivers around the country and found that 16.3 percent tested positive for legal or illegal drugs.

The tests could not determine which drivers were impaired by drugs, but Mr. Kerlikowske said the results suggested a problem that had “flown below the radar” for too long.

“You don't want to scare people,” he said, “but you certainly want to make them aware of the dangerousness. You can be as deadly behind the wheel with prescription drugs as you can with over-the-limit alcohol, and you are responsible for your own actions.”

In interviews, law enforcement officials around the country said anyone who drives while taking prescription drugs is at risk of arrest, not only those who drive recklessly. In one recent case near Bangor, Me., a pickup truck on a rural road was not swerving, speeding or otherwise hinting that its driver was impaired. A police officer stopped the truck because of its noisy muffler, then saw that the driver's eyes were bloodshot and his speech slurred.

A Breathalyzer test found that the driver, Chester Annance, had not been drinking. Yet he was arrested based on the officer's suspicion that he was on drugs, and a blood test later found opiate painkillers in his system.

Mr. Annance was convicted this month of driving under the influence of drugs. He received seven days in jail, a three-year license suspension and a fine. He is appealing the conviction.

"You don't need to wait for a crash to happen before you charge someone," said R. Christopher Almy, the district attorney in Bangor.

Defense lawyers say that in their zeal to make a statement about drug-impaired driving, the police are casting too wide a net and unfairly punishing people who are taking prescriptions as directed.

Tara Jenswold-Schipper, an assistant attorney general in Wisconsin, said she usually stuck to cases where drivers had mixed drugs, exceeded the proper dose or taken controlled medications without a prescription.

In one such case in that state, a former physician slammed his S.U.V. into a Honda Accord in April 2008, killing the pregnant driver and her 10-year-old daughter. Prosecutors said the physician, Mark Benson, had high levels of the sleep aid Ambien in his system, as well as Xanax, an anti-anxiety drug, and oxycodone, an opiate painkiller. Mr. Benson was sentenced to 30 years in prison.

Defendants can try to prove that they did not realize their medication would affect their driving, prosecutors said, but that argument may not hold up if the bottle had a warning label.

"Would you go home and start a chain saw and cut down a tree?" said Lt. Col. Thomas C. Hejl, the assistant sheriff in Calvert County, Md. "Why should you get behind the wheel of a vehicle when the same medication has the same side effects?"

Unable to prove impairment with blood tests, prosecutors in drugged-driving cases rely heavily on the testimony of "drug recognition experts," law enforcement officers trained to spot signs of impairment in drivers. But there are only about 7,000 such officers nationwide, Mr. Hayes said, not nearly enough to respond to every traffic stop that may involve drugs.

"When they are involved," he said of the experts, "our chances of convicting people are much higher."

But persuading a jury to convict someone of impaired driving due to prescription drugs remains difficult except for the most egregious cases, said Douglas F. Gansler, the attorney general in

Maryland.

“Because most people on the jury will also likely be taking prescription drugs for some ailment,” Mr. Gansler said, “whether it’s **Lipitor** or allergy pills or whatever it might be, they might think, ‘I don’t want that to become criminal.’ ”