

Missoulian

Driving under influence of marijuana a growing problem

By GWEN FLORIO of the Missoulian | Posted: Sunday, January 16, 2011 7:00 am

When Patrick Sayers received a 30-year sentence for killing Michael Mickelson, it was held up as proof that the system is finally taking driving under the influence seriously.

Thirty years is the maximum sentence for vehicular homicide while under the influence. In seeking it, Deputy Missoula County Attorney Kirsten Pabst LaCroix reviewed the facts:

The Hamilton man put his three toddlers in the back seat of his 1-ton Chevy pickup and then partied with a friend as he drove north along U.S. Highway 93 in 2007. The truck was going 50 mph when it swerved into Mickelson's car near Miller Creek Road.

"A lethal, loaded weapon," LaCroix called Sayers' truck.

Sayers, too, was loaded that day. But not with booze.

He was stoned.

Sayers, who smoked two bowls of pot in the truck with his friend that day, is among an increasing number of drivers nationwide who had drugs in their system when they were involved in fatal wrecks, according to federal statistics. A study released a few weeks ago by the National Highway Traffic Safety Administration shows the number going up every year since 2005.

Those statistics showed that in 2009, Montana ranked second in the nation, after Alaska, for marijuana involvement in fatal crashes, according to the report "Killer on the Highway," compiled by Rebecca Sturdevant, who became an anti-DUI activist after a drunken driver killed her son, Highway Patrol Trooper Evan Schneider, in 2008. Some 13 percent of the Montana motorists in the deadly crashes had used marijuana, compared to

4 percent nationwide.

Both the highway agency and Sturdevant cautioned that record-keeping varies widely among states. Nor do those statistics mean that marijuana use caused the crashes.

Still, the study confirmed what Kurt Sager sees on the highways.

While the number of fatal crashes involving booze still ranks high - Montana routinely stands among the worst in the nation - "the rate of increase of drugs is climbing more steadily than alcohol," said Sager, traffic safety resource officer for the Montana Highway Patrol. "Alcohol-impaired fatalities were down in 2010, but the drug-related fatalities were up.

"So we're winning one battle but losing another."

DUI has become so synonymous with drunken driving that it's easy to forget that "under the influence" covers a multitude of substances. (Conditions, too. New Jersey has a law against driving drowsy.)

But even as reports increase, courts and law enforcement struggle with the issue of how to judge impairment when a driver has been using something other than - or, as is frequently the case, along with - alcohol.

Travis Vandersloot, who killed Montana Highway Patrol Trooper Michael Haynes in a head-on crash in 2009, had a blood-alcohol level of 0.18 and also had been smoking marijuana.

David Bugni, the Butte man convicted in the 2009 crash that killed Missoula prosecutor Judy Wang, had been drinking and smoking dope, although his blood alcohol concentration was 0.04 percent, below the legal cutoff of 0.08 percent.

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And Daniel Alvin Prindle, a Billings man who pulled his vehicle into the path of an oncoming car in 2008, seriously injuring two people and hurting a third, had marijuana, cocaine and barbiturates in his system. Last week, a judge ordered him to pay \$700,000 in restitution.

But only Vandersloot, who'd downed 13 drinks in the hours before he killed Haynes, was charged with being under the influence. That's because there's nothing comparable to the 0.08 blood alcohol level when it comes to pot, prescription drugs, cocaine, meth or other drugs.

"You can get a level in their system, but there's nothing to relate that to that proves they're impaired," said Missoula County Sheriff's Capt. Brad Giffin. "The only way is a circumstantial case that proves they are impaired to a point where they can't function properly."

The Highway Patrol's Sager trains law enforcement around the state as drug recognition experts, applying standardized field sobriety tests as a way to check for impairment, no matter the cause. By spring, he said, some 70 law enforcement officers around the state - there are 12 among the 100 members of the Missoula police force - will be trained.

The demand for their services is great.

Missoula Police Sgt. Ed McLean said police have made DUI arrests "strictly for cannabis, strictly for meth ... for combinations of alcohol and narcotics, for analgesics combined with depressants. We have made arrests on every drug for DUI."

Rebecca Sturdevant said she's seen good progress on raising awareness of the problem of drunken driving. Now she wants to see that same awareness of all types of impaired driving.

She supports a bill sponsored by state Rep. Ken Peterson, R-Billings, that would tweak the drug provisions of the state's DUI law.

Peterson's proposal specifies that "driving with any amount of a dangerous drug or its metabolite in a person's body is a violation," although it exempts prescription drugs.

"The basic concept," said Sturdevant, "is that we need to be able to keep people who are smoking and driving off the highway."

But some substances can be detected in a person's system long after their effect is gone. That's true of THC, the main ingredient in marijuana.

"It's absurd to test for marijuana metabolites that might be present for marijuana usage days ago or weeks ago," said John Masterson, head of Montana NORML (National Organization for the Legalization of Marijuana Laws). "People shouldn't be charged for DUI for something that they did weeks ago."

NORML stresses that "people should not be under the influence of anything while they are driving a motor vehicle," Masterson said.

He favors the system of drug recognition experts, saying that "when you test for impairment, rather than chemical quantity, so long as it's a qualified expert you can test for alcohol, potentially marijuana, potentially prescription painkillers, potentially sleep deprivation ... all of the sorts of reasons people should not be on the highway endangering our friends and families."

The voter initiative that legalized medical marijuana in Montana in 2004 specifically states that the law doesn't permit "any person to operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marijuana."

The number of people legally smoking marijuana in Montana has nearly tripled in the 15 months since the declaration by the U.S. Department of Justice that it would no longer raid medical marijuana distributors. Some 27,292 Montanans held "green cards" as of December.

McLean said officers making traffic stops "tend to get the greatest resistance from people who think that, 'OK, because I have a medical marijuana card, it's legal for me to smoke.' Or, their doctor is prescribing pain medication and then they get behind the wheel of a car and become a danger to themselves and others."

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"That's the education curve we need to overcome."

No matter what the substance, said Deputy Missoula County Attorney Jen Clark, the key word is impaired.

"It's kind of analogous to alcohol," said Clark. "You can have it, but it doesn't make it OK to drive if you're impaired."

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