

Case No. 20160173-SC

IN THE
UTAH SUPREME COURT

STATE OF UTAH,
Plaintiff/Petitioner,

v.

THOMAS RANDALL AINSWORTH,
Defendant/Respondent.

Brief of Petitioner

On Writ of Certiorari to the Utah Court of Appeals

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STATEMENT OF JURISDICTION

This case is before the Court on a writ of certiorari to the Utah Court of Appeals in *State v. Ainsworth*, 2016 UT App 2, 365 P.3d 1227 (Addendum B). The Supreme Court has jurisdiction under Utah Code Ann. § 78A-3-102(5) (West 2009).

INTRODUCTION

Under section 41-6a-502(1)—the general DUI statute—a person is guilty of a class B misdemeanor if he operates a vehicle while “under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle.” Section 41-6a-503 makes it a class A misdemeanor if the person inflicts “bodily injury upon another” by driving negligently. Section 41-6a-503

then makes it a third degree felony to drive while impaired by alcohol or drugs and negligently cause serious bodily injury of another. And section 76-5-207 makes it a third degree felony to drive while impaired by alcohol or drugs and negligently cause death of another. None of these general DUI statutes differentiate between legal and illegal drugs.

The Code also has provisions specific to drivers using illegal drugs. Section 41-6a-517(2) provides that in “cases not amounting to a violation of Section 41-6a-502,” a person commits a class B misdemeanor if he operates a motor vehicle and “has any measurable [illegal] controlled substance” in his body (the general “DWI” statute).¹ And Section 58-37-8(2) enhances DWI for drivers who use illegal drugs and negligently cause serious bodily injury or death. Specifically, section 58-37-8(2) provides that “in an offense not amounting to a violation of Section 76-5-207,” the person commits a class A misdemeanor if he has in his body “any measurable amount” of a Schedule III, IV, or V controlled substance; he commits a third degree felony if the illegal substance is marijuana, THC, or their equivalents or analogs; and he commits a second degree felony if the illegal substance is a Schedule I or Schedule II controlled substance (other than marijuana, THC, their equivalents or analogs).

¹ DWI is shorthand for Driving With Illegal drugs in the body.

STATEMENT OF THE ISSUE

Did the court of appeals err in holding that the DWI's second-degree-felony provision violates the Uniform Operation of Laws provision of the Utah Constitution, where the court's holding was based on its conclusion that impaired drivers using illegal drugs could only be charged with a third degree felony under the general DUI statutes?

Standard of Review. Whether a statute violates Utah's uniform-operation-of-laws provision is a question of law reviewed for correctness. *State v. Drej*, 2010 UT 35, ¶9, 233 P.3d 476.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

The following constitutional provisions and statutes are reproduced in Addendum A:

- Utah Const. art. I, § 24 (*uniform operation of laws*)
- Utah Code Ann. § 41-6a-502 (West 2013) (*DUI*)
- Utah Code Ann. § 41-6a-503(2) (West 2013) (*DUI w/serious injury*)
- Utah Code Ann. § 41-6a-517 (West 2013) (*DWI*)
- Utah Code Ann. § 58-37-8(2) (West Supp. 2016) (*DWI w/serious injury or death*)
- Utah Code Ann. § 76-5-207(2) (West 2015) (*DUI automobile homicide*)

STATEMENT OF THE CASE

A. Factual background.

On Christmas Eve 2011, Defendant veered over a raised center median in his Suburban into oncoming traffic, clipped the back end of an eastbound car, and crashed head-on into another eastbound car, a Subaru Outback. R2. The head-on collision seriously injured the Subaru's driver, Ryan Pack, and its front-seat passenger, Raquel Pack, and killed the couple's 18-month-old son, C.P., who was strapped in a car seat in the back of the car. R2,396. The couple's three-year-old son, who was also in a car seat in the back, escaped serious injury. R2,396. Defendant told police that he lost control of his car when he reached for his cell phone on the floorboard of the car. R339. A subsequent blood test revealed that Defendant had a methamphetamine level of 0.2 mg/L. R396.

B. Summary proceedings.

1. Trial court proceedings.

As relevant here, the State charged Defendant under the DWI statute with three counts of driving with a measurable amount of a Schedule II controlled substance in his body without a prescription and negligently causing death or serious bodily injury, all second degree felonies. R1-3,33-35. Defendant moved to amend the counts to one count of DUI automobile homicide and two counts of DUI with serious injury, all third degree felonies,

arguing that the second-degree-felony provision in the DWI statute violates the Utah Constitution's Uniform Operation of Laws provision. R56-64. After the trial court denied the motion, R125,133, Defendant moved to reconsider and to declare the second-degree-felony provision unconstitutional. R146-54. The court denied those motions as well. R171,229,232-39; R453.

Defendant petitioned for permission to appeal the interlocutory orders denying his motions, but the petition was denied. R241-51,325-26. Defendant thereafter pled guilty to all three DWI counts, reserving the right to appeal the trial court's denials of his motions to amend and to declare the DWI statute's second-degree-felony provision unconstitutional. R335-36,340-46.. The trial court sentenced Defendant to consecutive prison terms of one-to-fifteen years on all three counts and ordered the payment of some \$24,000 in restitution. R437-38,496. Defendant timely appealed. R442.

2. Direct appeal.

On appeal, Defendant argued that the DWI statute's second-degree-felony provision violates the Uniform Operation of Laws provision of the Utah Constitution in two ways: (1) "by distinguishing between those who have a prescription for a controlled substance and those who do not," and (2) "by classifying a violation of the Measurable Amount Statute by use of a Schedule I or II controlled substance as a second-degree felony, while classi-

fying the more culpable offenses of [DUI] Automobile Homicide and DUI With Serious Injury as third degree felonies.” *Ainsworth*, 2016 UT App 2, ¶9.

The court of appeals rejected Defendant’s first claim. In doing so, the court recognized that “[t]hose who have a prescription for a controlled substance may be charged only under the [DUI] Automobile Homicide Statute or the DUI With Serious Injury Statute, not the [DWI] Statute.” *Id.* at ¶11. Thus, “unlike nonprescription users, prescription users can be charged with no more than a third-degree felony and can be convicted only if the State demonstrates that they were intoxicated to a degree that rendered them incapable of safely operating a motor vehicle.” *Id.* “However, [this] classification does not violate the uniform operation of laws provision,” because “the legislature has an interest in deterring the illegal use of controlled substances.” *Id.* at ¶12.

But the court of appeals agreed with Defendant’s second claim. In reaching that conclusion, the court first noted that both the DUI automobile homicide statute and the DUI with serious injury statute “apply to individuals under the influence of ‘any drug’” and thus do not differentiate between drugs “used in accordance with a valid prescription and drugs used illegally.” *Id.* at ¶15. The court further noted that the DWI statute “implicitly identifies the [DUI] Automobile Homicide Statute as defining an offense

that could apply to users of illegal drugs by specifically distinguishing it from the [DWI] Statute, stating that ‘[a] person is subject to the penalties’ of the [DWI] Statute when the person violates the statute ‘in an offense not amounting to a violation of [the Automobile Homicide Statute].’” *Id.* at ¶15 (citation omitted).

But then, instead of recognizing the “not amounting to” language in the DWI statute as giving prosecutors discretion to determine which provision to charge under – which is the usual meaning given that language – the court of appeals held that the statute’s “not amounting to” language actually limited the prosecutor’s discretion. Specifically, the court held that because of the “not amounting to” language, those “intoxicated by . . . illegal substances to a degree that they are incapable of safely operating a vehicle” *must* “be prosecuted under the [DUI] Automobile Homicide State or the DUI With Serious Injury Statute”; meanwhile, “those who have consumed illegal substances to a lesser degree” *must* “be prosecuted under the Measurable Amount Statute.” *Id.* at ¶16.

Thus, the court concluded, “a conviction under the [DWI] Statute is a second-degree felony when the individual has a measureable amount of a Schedule I or II controlled substance in his or her body” – but is not yet impaired – but if a person using that same substance is impaired, he can only

be found guilty of a third degree felony under the DUI two statutes. *Id.* at ¶16. This disparate treatment violated the Uniform Operation of Laws provision, the court held, because there is no rational basis “for punishing individuals who have ‘any measurable amount’ of controlled substance in their body more harshly than individuals who have an incapacitating amount of substance in their bodies.” *Id.* at ¶¶9,13-17. The Court thus vacated Defendant’s second degree felony sentences and remanded with instructions that the trial court re-enter Defendant’s convictions as third degree felonies. *Id.* at ¶18.

Defendant also challenged the trial court’s imposition of consecutive sentences. Although the court of appeals’s decision striking the second-degree-felony designation required re-sentencing, the court of appeals addressed the issue because it had “been fully briefed and is likely to arise on remand.” *Id.* at ¶19. The court then rejected Defendant’s challenge to consecutive sentences, holding that although the mitigating factors identified by Defendant “could have supported a decision to impose concurrent sentences, they do not mandate such an outcome” and that nothing in the record indicates that the trial court did not consider those factors. *Id.* at ¶21.

SUMMARY OF ARGUMENT

The court of appeals held that the DWI second-degree-felony enhancement (for driving with a measurable Schedule I or II controlled substance in the body and causing serious bodily injury or death) violates the Uniform Operation of Laws provision because it imposes a punishment harsher than the DUI automobile homicide and DUI with serious injury offenses, which are both third degree felonies. The court based this holding on its interpretation that the DWI enhancement statute applies only to offenders who have a measurable amount of a controlled substance in their bodies, but not an impairing amount. That interpretation is wrong. By its plain language, the DWI statute applies to those with “any” measurable amount of a controlled substance in their bodies, whether or not factually, that amount impairs the driver’s ability to drive safely. Thus, the court of appeals erred in holding that the DWI statute classifies drivers based on their degree of intoxication. It does not. To the contrary, and as the legislative history demonstrates, the Legislature adopted a zero-tolerance philosophy with respect to illegal drugs, creating a conclusive presumption of impairment whenever any measurable amount of an illegal controlled substance is found in the body.

ARGUMENT

THE DWI STATUTE'S SECOND-DEGREE-FELONY PROVISION CRIMINALIZING DRIVING WITH AN ILLEGAL SCHEDULE I OR II CONTROLLED SUBSTANCE IN THE BODY DOES NOT VIOLATE THE UNIFORM OPERATION OF LAWS PROVISION OF THE UTAH CONSTITUTION.

The court of appeals erred when it interpreted the “not amounting to” language in the DWI statute to preclude prosecution of an impaired driver using illegal drugs for a second degree felony under the DWI statute. It also erred when, based on that interpretation, it held that the second-degree-felony provision in the statute was unconstitutional. This Court should reverse.

The Utah Legislature has targeted both driving under the influence of drugs (“DUI”) and driving while using illegal drugs (“DWI”). Utah’s DUI statute makes it a class B misdemeanor to drive while “under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle.” Utah Code Ann. § 41-6a-502(1)(b) (West 2013). Utah’s DWI statute makes it a class B misdemeanor to drive while using a controlled substance—shown by having “any measurable controlled substance . . . in the person’s body”—without a valid prescription. Utah Code Ann. § 41-6a-517(2) (West 2013). The Legislature treats the two offenses as equally serious. DUI is a class B

misdemeanor—whether or not the impairing drug is being legally used. DWI is a class B misdemeanor—whether or not there is a factual showing of impairment.

In a patchwork of statutes scattered throughout the Code, the Legislature has enhanced the penalties for both DUI and DWI when the offender negligently drives and causes serious bodily injury or death of another.

The DUI enhancements for serious bodily injury or death are found in two statutes: one under the Traffic Code and the other under the Criminal Code. Under section 41-6a-503, impaired drivers who negligently cause serious bodily injury are guilty of a third degree felony. Utah Code Ann. § 41-6a-503(2)(a) (West 2013). Under section 76-5-207—the DUI automobile homicide statute—impaired drivers who negligently cause death are likewise guilty of a third degree felony. Utah Code Ann. § 76-5-207(2)(a)(ii) (West 2015).

The DWI enhancements for serious bodily injury or death are found in a different statute: section 58-37-8(2) of the Utah Controlled Substance Act. Under that section, a driver having any measurable amount of illegal drugs in his body who negligently causes serious bodily injury or death faces enhancements ranging from a class A misdemeanor to a second degree felony, depending on the type of drug in the driver's body:

- It is a “class A misdemeanor” if the controlled substance is “classified under Schedules III, IV, or V”;
- It is a “third degree felony” if the controlled substance is marijuana, THC, or their equivalents or analogs; and
- It is a “second degree felony” if the controlled substance is “classified under Schedule I,” (other than marijuana, THC, their equivalents, or analogs) or “under Schedule II.”

Utah Code Ann. § 58-37-8(2)(g)-(h) (West 2012). At issue in this case is the DWI second-degree-felony enhancement.

The court of appeals struck the provision as unconstitutional because it imposes a harsher penalty than the DUI enhancements in sections 41-6a-503 and 76-5-207. The court interpreted the DWI enhancement statute as implicating those who “have a measurable amount in their bodies,” but only if they have a “lesser degree” of drugs in their system than those who have an amount that renders them impaired, i.e. “incapable of safely operating a vehicle.” *State v. Ainsworth*, 2016 UT App 2, ¶16, 365 P.3d 1227. It then held that there was no “rational basis for punishing individuals who have ‘any measurable amount’ of controlled substance in their bodies more harshly than individuals who have an incapacitating amount of the substance in their bodies.” *Id.* at ¶9.

The court of appeals’ interpretation of the DWI enhancement as not applying to drivers impaired by an illegal controlled substance was wrong, and that misinterpretation led to an erroneous conclusion that the en-

hancement violates the uniform-operation-of-laws provision of the Utah Constitution. This Court should reverse.

* * *

Article I, section 24 of the Utah Constitution provides that “[a]ll laws of a general nature shall have uniform operation.” To comply with this provision, “it is not enough that [the law] be uniform on its face. *Lee v. Gaufin*, 867 P.2d 572, 577 (Utah 1993). The law must be uniform in its operation as well. *Id.* To have uniform operation, then, a law must meet two requirements. “‘First, a law must apply equally to all persons within a class. Second, the statutory classifications and the different treatment given the classes must be based on differences that have a reasonable tendency to further the objectives of the statute.’” *State v. Mohi*, 901 P.2d 991, 997 (Utah 1995) (quoting *Malan v. Lewis*, 693 P.3d 661, 670 (Utah 1984)).

Accordingly, when examining the constitutionality of a law under the Uniform Operation of Laws provision, the Court must first determine what classification is created under the challenged statute and whether that classification imposes disparate treatment on similarly situated persons. *Drej*, 2010 UT 35, ¶34. If the statute does not treat similarly situated persons differently, “Article I, section 24 is not violated,” and the inquiry ends. *State v. Honie*, 2002 UT 4, ¶35, 57 P.3d 977. But if the statute does treat similarly sit-

uated persons differently, the Court must then “analyze the scheme to determine if ‘the legislature had any reasonable objective that warrants the disparity.’” *Drej*, 2010 UT 35, ¶34 (quoting *State v. Schofield*, 2002 UT 132, ¶12, 63 P.3d 667). As explained below, the DWI second-degree-felony enhancement satisfies the constitutional guarantee of the uniform operation of laws.

A. Contrary to the court of appeals’ holding, the DWI enhancement statute does not create a classification that distinguishes between those with and without impairing amounts of a controlled substance—even when read in conjunction with the DUI enhancement statutes.

The threshold question for the Court is “what, if any, classification is created under the [DWI] statute.” *Id.* This question turns on the statutory interpretation of the DWI enhancement provision. It is here that the court of appeals erred.

When interpreting a statute, this Court’s objective is “to give effect to the intent of the legislature in light of the purpose the act was meant to achieve.” *Gutierrez v. Medley*, 972 P.2d 913, 915 (Utah 1998). In discerning that intent, the Court looks first to the statute’s plain language—with a presumption that “the Legislature chose its words carefully, using each term advisedly” and “according to its ordinary meaning.” *State v. LeBeau*, 2014 UT 39, ¶26, 337 P.3d 254. If the statute’s “plain meaning . . . can be discerned

from its language,” the Court need look no further. *LPI Services v. McGee*, 2009 UT 41, ¶12, 240 P.3d 780. But if the statute’s plain language “is susceptible to two or more reasonable interpretations,” the Court may then seek guidance from the legislative history and policy considerations that animated the legislation. *LeBeau*, 2014 UT 39, ¶26.

The Court must also interpret a statute through a prism reflective of a legislative intent that the law be in harmony with common sense, with related statutory provisions, and with the constitution. *S & F Supply Co. v. Hunter*, 527 P.2d 217, 221 (Utah 1974). Thus, the Court assumes that the Legislature intends to avoid absurd results. *State v. Jeffries*, 2009 UT 57, ¶8, 217 P.3d 265. It assumes that the Legislature intends consistency among related provisions and statutes. *LeBeau*, 2014 UT 39, ¶20. And it assumes that “the Legislature intends to complement, not contradict, constitutional protections.” *Smith v. United States*, 2015 UT 68, ¶21, 356 P.3d 1249. The Court is duty bound to interpret a statute with these presumptions in mind. See *S & F Supply Co. v. Hunter*, 527 P.2d 217, 221 (Utah 1974). The court of appeals failed to apply these presumptions here.

1. The DWI enhancement statute governs all drivers who illegally use drugs and negligently cause serious bodily injury or death.

The DWI enhancement statute, Utah Code Ann. § 58-37-8(2)(g), creates a classification among drug users based on two characteristics. The statute applies to all persons who (1) negligently drive a vehicle and cause serious bodily injury or death of another (“negligent driver” as shorthand), and (2) “knowingly and intentionally” have in their body “any measurable amount of a controlled substance” without a valid prescription (“illegal drug users” as shorthand). Utah Code Ann. § 58-37-8(2)(a),(g). Thus, within the class of illegal drug users who negligently drive and cause serious bodily injury or death, the statute has uniform application—all are subject to the statute’s enhanced penalties.

Although the DWI enhancement statute has uniform application among the broad class of illegal drug users who negligently drive, it creates three sub-classes that are subject to different penalties based on the type of drug present in the body: (1) a second degree felony if the drug is a Schedule I or II controlled substance, other than marijuana, THC, or their analogs or equivalents; (2) a third degree felony if the drug is marijuana, THC, or their analogs or equivalents; and (3) a class A misdemeanor if the substance

is a Schedule III, IV, or V controlled substance. Utah Code Ann. § 58-37-8(2)(h).

The court of appeals, however, held that the DWI enhancement statute creates yet another classification when read in conjunction with the enhancement statutes of DUI automobile homicide and DUI with serious injury. *Ainsworth*, 2016 UT App 2, ¶16. The court held that when read together, the three statutes create two classes of offenders “based on their *degree of intoxication*.” *Id.* (emphasis added). The court identified the two classes as (1) “[t]hose who are intoxicated by legal *or* illegal substances to a degree that they are incapable of safely operating a vehicle” —*i.e.*, DUI automobile homicide and DUI with serious injury offenders; and (2) “those who have consumed illegal substances *to a lesser degree*, but still have a measurable amount in their bodies” —*i.e.*, DWI enhancement offenders. *Id.* (emphasis added). No such classification exists.

The enhancements of DUI automobile homicide and DUI with serious injury undoubtedly classify negligent drivers based on their degree of intoxication. Negligent drivers who are “under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders [them] incapable of safely operating a vehicle” are guilty of a third degree felony under both statutes; those less impaired are not. Utah Code

Ann. § 41-6a-502(1)(b); Utah Code Ann. § 41-6a-503(2)(a); Utah Code Ann. § 76-5-207(2)(a)(ii).

Contrary to the court of appeals' holding, however, the plain language of the DWI enhancement statute does not classify offenders according to their degree of intoxication. Rather, the statute classifies negligent drivers based on whether or not they "knowingly and intentionally" have in their body "*any* measurable amount of a controlled substance" without a prescription. Utah Code Ann. § 58-37-8(2)(a),(g)(i) (emphasis added). Those with a measurable amount of a controlled substance are subject to the enhanced penalties of the statute; those without a measurable amount are not.

The word "any" is commonly understood as meaning "in whatever quantity or number, *great or small*." Webster's Encyclopedic Unabridged Dictionary of the English Language 96 (1996) (emphasis added). Thus, those with great amounts of an illegal controlled substance, as well as those with small amounts of an illegal controlled substance, are subject to the enhanced penalties of the statute, so long as the amount is large enough to be measurable. By its plain language, then, the DWI enhancement statute necessarily reaches those who are factually impaired because they have greater quantities of a controlled substance in their bodies.

Thus, the DWI enhancement statute is not limited to those “who have consumed illegal substances to a lesser degree, but still have a measurable amount in their bodies,” as held by the court of appeals. *Ainsworth*, 2016 UT App 2, ¶16. It reaches all those with “any” measurable amount. Simply put, the degree of intoxication is not an element of the DWI enhancement statute, as it is with the DUI enhancement statutes.

In support of its holding that the DWI enhancement statute is limited to those with a “lesser degree” of intoxication, the court of appeals relied on the statute’s qualifying language: “A person is subject to the penalties under Subsection (2)(h) who, *in an offense not amounting to a violation of [the Automobile Homicide statute]*” Utah Code Ann. § 58-37-8(g) (emphasis added). The court concluded this qualifying language “indicates that the legislature anticipated that the automobile homicide statute would apply to nonprescription users of controlled substances under certain circumstances.” *Ainsworth*, 2016 UT App 2, ¶15. But even if true, that does *not* mean—as the court of appeals held—that the DWI enhancement statute covers only

measurable amounts that do not impair a user's ability to drive safely.² As noted, by its plain and unambiguous terms, the DWI enhancement statute includes "any" measurable amount—which again, necessarily includes impairing amounts. Utah Code Ann. § 58-37-8(2)(g)(i).

Many criminal statutes found in our Code are prefaced with similar "not amounting to" language, and they typically refer to offenses that are equal or greater in degree. *See, e.g.*, Utah Code Ann. § 58-37c-19 (West Supp. 2016) (describing possession or sale of crystal iodine, a class B misdemeanor, as not amounting to greater offense of possessing or selling controlled substance precursor); Utah Code Ann. § 76-5-401.2 (West 2015) (describing unlawful sexual conduct with 16- or 17-year old, a third degree felony, as not amounting to greater offenses of rape, object rape, forcible sodomy, forcible sexual abuse, aggravated sexual abuse, or their attempts); Utah Code Ann. § 76-5-404.1 (West 2015) (describing sexual abuse of a child, a second

² The State maintains that the DUI enhancement statutes may include both legal drug use and illegal drug use. But if such an interpretation were to render the statutory scheme unconstitutional, this Court should reconcile the three statutes by interpreting the DUI statutes as covering only legal drug use. Where the DWI statute specifically governs illegal drug use, the more general description of drug impairment can reasonably be interpreted as addressing legal drug use only. This would be in keeping with the Court's "'duty to construe a statute whenever possible so as to . . . save it from constitutional conflicts or infirmities'" *State v. Morrison*, 2001 UT 73, ¶12, 31 P.3d 547 (citation omitted).

degree felony, as not amounting to the greater offenses of rape of a child, object rape of a child, sodomy on a child, or their attempts); Utah Code Ann. § 76-6-106 (West 2016) (describing criminal mischief, a third degree felony, as not amount to greater offense of arson); Utah Code Ann. § 76-7-102 (West 2015) (describing incest, a third degree felony, as not amounting to greater offenses of rape, rape of a child, or aggravated assault); Utah Code Ann. § 76-9-702 (West 2015) (describing lewdness, a class B misdemeanor, as not amounting to greater offenses of rape, object rape, forcible sodomy, forcible sexual abuse, aggravated sexual assault, or their attempts).

And Utah courts have never interpreted the “not amounting to” language as limiting a prosecutor’s ability to prosecute under that statute. Rather, our courts have consistently held that “[t]he primary purpose of the “under the circumstances not amounting to” language” is “to *encourage criminal punishment under those greater crimes when the evidence in a particular case warrants it.*” *State v. Reed*, 2000 UT 68, ¶33, 8 P.3d 1025 (quoting *State v. Montoya*, 910 P.2d 441, 445 (Utah App.), *cert. denied*, 919 P.2d 1208 (Utah 1996)) (emphasis added). And, indeed, that this is the purpose here becomes clear when the “not amounting to” language in the DWI statute is applied to the statute as a whole and not, as the court of appeals applied it, to only the second-degree-felony enhancement.

In fact, the “not amounting to” language is prefatory language to subsection (2)(g)’s articulation of the enhancement elements:

A person is subject to the penalties under Subsection (2)(h) who, *in an offense not amounting to a violation of Section 76-5-207*:

(i) violates Subsection (2)(a)(i) by knowingly and intentionally having in the person’s body any measurable amount of a controlled substance; and

(ii) operates a motor vehicle . . . in a negligent manner, causing serious bodily injury . . . or the death of another.

Utah Code Ann. § 58-37-8(2)(g) (emphasis added). The prefatory language, therefore, does not specifically refer to the second-degree-felony enhancement, or any other enhancement for that matter. Indeed, the most reasonable interpretation of the “not amounting to” language is that it means what this Court has taken that same language to mean in other statutes—to encourage prosecution and punishment for whatever offense is highest in degree when the evidence in a particular case warrants it.

Here, DUI automobile homicide is not equal to or greater than the second-degree-felony enhancement, the first of the three enhancement provisions. But it is equal in degree to the marijuana enhancement, also a third degree felony, and it is greater in degree than the schedule III, IV, or V enhancement, a class A misdemeanor. Like other statutes containing the “not amounting to” language, the “not amounting to” language in the DWI enhancement statute “was likely to encourage criminal punishment” for the

greatest offense where the evidence in the particular case warrants it. Thus, the statute encourages punishment for third degree felony DUI automobile homicide if the evidence supports that charge, even if a defendant could be punished for the class A misdemeanor enhancement for a schedule III, IV, or V controlled substance. Where marijuana is the controlled substance in the body, the statute assures punishment as a third degree felony – whether or not there is a factual showing of impairment. And the statute encourages punishment as a second degree felony where the drug is a schedule I or II controlled substance – again, whether or not there is a factual showing of impairment.

This reading of the statute is consistent with the holding in *Reed*. And this Court “presume[s] the Legislature is aware of [its] case law.” *Olseth v. Larson*, 2007 UT 29, ¶39, 158 P.3d 532. Thus, where the Legislature enacted the DWI enhancement statute three years after *Reed*, see 2003 Utah Laws c. 10, p. 203, 204, the Court must presume the Legislature intended the “not amounting to” language in the statute be interpreted consistent with *Reed*.

2. The legislative history and policy considerations that animate the DWI enhancement statute demonstrate that the Legislature intended to create a legal presumption of impairment whenever drug use is unlawful.

The enhancement provisions were part of the “Automobile Homicide Amendments” of Senate Bill 7, which modified both the Utah Controlled

Substances Act and the automobile homicide statute. 2003 Utah Laws c.10, at 203-05. The bill explained that its amendments provided that “a person who operates a motor vehicle in a negligent manner and causes death or serious bodily injury, while having a measurable amount of controlled substance in his body, is subject to one degree greater penalty under the controlled substance laws.” *Id.* at 203. At that time, possession or use of a Schedule I or II controlled substance was a third degree felony. Utah Code Ann. § 58-37-8(2)(b)(ii) (Supp. 2003). But under the 2003 amendments, illegal users were made subject to a “one degree more” enhancement under subsection (4)(c) when they drove during use and negligently caused serious bodily injury or death. *Id.* at 204-05. In doing so, the Legislature kept in place the third degree felony designation for automobile homicide. *See id.* at 205. This was no mistake.

The bill’s sponsor, Senator Carlene M. Walker, explained that the bill was in response to “difficulties in linking a particular level of impairment to a drug, like is done for alcohol,” and was thus “modeled after a zero-tolerance philosophy.” 2003 S.F.D. Day 8, at 58:14-40 & 59:40-45, located at http://utahlegislature.granicus.com/MediaPlayer.php?clip_id=8443&meta_id=412710 (last visited Oct. 3, 2016). Referring to the DWI enhancement provisions as another form of “automobile homicide,” Senator Walker ex-

plained that “if an illegal substance is taken into the body and a death occurs as a result of a car accident, that driver may be prosecuted for automobile homicide” under the enhancement provisions. *Id.* at 59:40-45. But “if a person is given a drug without their knowledge or if they have a prescription for the drug and they are properly taking it, this law would not apply.” *Id.* at 59:45 – 1:00:04. In that case, the State would be required to turn to the DUI enhancement statutes.

The difficulties of determining drug impairment are real. “[W]hile the impairing effects of alcohol are well-understood, there is limited research and data on the crash risk of specific drugs, impairment, *and how drugs affect driving-related skills.*” A. Berning & D. Smither, *Understanding the Limitations of Drug Test Information, Reporting, and Testing Practices in Fatal Crashes*, Behavioral Safety Research (NHTSA, November 2014) (emphasis added). State alcohol laws “are based on evidence concerning the decreased ability of drivers across the population to function safely” at specified blood alcohol levels. *Id.* But “[s]uch evidence is not currently available for concentrations of other drugs.” *Id.* The National Highway Traffic Safety Administration has thus concluded that “[c]urrent knowledge about the effects of drugs other than alcohol on driving performance is insufficient to make [scientific]

judgments about connections between drug use, driving performance, and crash risk.” *Id.*

In short, the research has been unable to determine precisely how and when drug use affects driving-related performance. That said, epidemiology studies of methamphetamine—the drug found in Defendant’s body—have reported the very effects on driving found in this case—“*drive-off-the-road type accidents, high speed, failing to stop, diminished divided attention, inattentive driving, impatience, and high risk driving*” by those using methamphetamine. *Drugs and Human Performance Fact Sheets: Methamphetamine (Amphetamine)*, 64 (NHTSA, April 2014), located at <http://www.nhtsa.gov/people/injury/research/job185drugs/index.htm> (last visited Oct. 3, 2016) (emphasis added). *Id.* “Significant impairment of driving performance would also be expected during drug withdrawal.” *Id.* For example, in a review of 101 driving under the influence cases where only methamphetamine was detected, “[i]mpairment was attributed to distraction, disorientation, motor excitation, hyperactive reflexes, general cognitive impairment, or withdrawal, fatigue and hypersomnolence.” *Id.*

Given the danger illegal drug use poses and the difficulties associated with showing drug impairment, the Legislature instead adopted a “zero-tolerance philosophy”—creating, in essence, a legal presumption of im-

pairment for those who illegally use drugs, drive, and negligently cause serious bodily injury or death. The Legislature's zero-tolerance policy with respect to illegal drug use is no different than its .08 BAC policy with respect to alcohol use. In both cases, no separate showing of driving impairment is required. Like the .08 DUI provision, the zero-tolerance provision for illegal drug use is a conclusive, legislative presumption that the driver is under the influence to a degree that renders him incapable of safely operating a vehicle. *Cf. Murray City v. Hall*, 663 P.2d 1314, 1319 (Utah 1983) (holding that former DUI law "gives rise to a conclusive presumption of being under the influence"). And the Legislature does not offend the Constitution by adopting such a presumption. *See State v. Kelson*, 2014 UT 50, ¶ 20, 345 P.3d 1136 ("The legislature has the discretion to define the elements of a crime as it sees fit. In so doing, it is not at all foreclosed from employing the terminology or concept of a *presumption*.").

Read in this light, the premise of the court of appeals' holding collapses entirely. *See Morrison*, 2001 UT 73, ¶12 (holding that courts have "a 'duty to construe a statute whenever possible so as to . . . save it from constitutional conflicts or infirmities'") (citation omitted). The legislative history and the policy considerations animating the DWI enhancement statute do not support the view that the Legislature intended to impose harsher penal-

ties on those who have non-impairing amounts of illegal drugs in their bodies than those who have impairing amounts of illegal drugs in their bodies. It instead supports the plain language of the statute that negligent drivers with “any” measurable amount of an illegal drug are subject to the statute’s enhancements.

* * *

In sum, this Court should reject the court of appeals’ holding that the DWI enhancement statute creates a classification of offenders “based on their degree of intoxication.” *Ainsworth*, 2016 UT App 2, ¶ 16. Doing so is contrary to the plain language of the statute, as well as the legislative history and policies animating the DWI enhancement statute. And doing so violates the canons of statutory construction requiring appellate courts to consider a statute “in its relationship to the total fabric of the law,” and to interpret its provisions “as to be consistent with common sense, and with elemental principles of justice.” *S&F Supply Co.*, 527 P.2d at 221.

B. The sub-classifications created by the DWI enhancement statute are warranted by reasonable legislative objectives.

As explained, the only classifications created by the DWI enhancement statute are the three sub-classes of drivers illegally using drugs who negligently cause serious bodily injury or death of another. Those classifications are based on the type of controlled substance in the body: (1) negligent

drivers with a Schedule I or II controlled substance in their bodies are guilty of a second degree felony; (2) negligent drivers with marijuana, THC, their equivalents or analogs in their bodies are guilty of a third degree felony; and (3) negligent drivers with a Schedule III, IV, or V controlled substance in their bodies are guilty of a class A misdemeanor. Utah Code Ann. § 58-37-8(2)(h).

The question under the Uniform Operation of Laws provision, then, is whether the Legislature “ ‘had any reasonable objective that warrants’ ” the disparate treatment based on the type of drug. *See Drej*, 2010 UT 35, ¶34 (quoting *Schofield*, 2002 UT 132, ¶12). This Court has already answered that question in the affirmative.

In *State v. Robinson*, this Court addressed a challenge to the disparate treatment of defendants in cases involving simple possession or use of illegal drugs based on the type of drug—use of marijuana as a class B misdemeanor and use of methamphetamine, heroin, cocaine, and other Schedule I or II drugs as a third degree felony. 2011 UT 30, ¶21, 254 P.3d 183. The Court explained that determining whether the Legislature had reasonable objectives to warrant such disparate treatment requires a three-part inquiry: “(1) whether the classification is reasonable, (2) whether the objectives of the legislative action are legitimate, and (3) whether there is a reasonable rela-

tionship between the classification and the legislative purpose.” 2011 UT 30, ¶22, 254 P.3d 183. After conducting that inquiry, the Court in *Robinson* concluded that the disparate treatment was indeed warranted by reasonable legislative objectives. The same rationale applies to the DWI enhancements.

First, *Robinson* held that the classification based on drug type “is reasonable,” observing that “it is widely accepted that the use of marijuana is less dangerous and addictive than the use of methamphetamine, cocaine, or heroin.” *Id.* at ¶23. *Robinson* observed that “the legislative guidelines for scheduling controlled substances reflect this understanding by requiring the advisory committee to classify each substance according to (1) its potential for abuse, (2) whether an accepted standard has been established for safe use in treatment for medical purposes, (3) the level of psychological or physiological dependence resulting from abuse of the substance, and (4) how the substance is classified under federal law.” *Id.*

Second, *Robinson* held that the objectives of the legislative action are legitimate. *Id.* at ¶24. The Court observed that “the legislature determined, or could have reasonably determined, that compared to marijuana,” and in this case, Schedule III, IV, and V controlled substances, “methamphetamine, heroin, and cocaine have more potential for abuse, are less likely to be used safely in treatment for medical purposes, and are more addictive, either

psychologically or physiologically.” *Id.* The Court concluded that it was thus legitimate for the Legislature “to punish the use of marijuana as a class B misdemeanor, while punishing the use of heroin, cocaine, and methamphetamine as third degree felonies.” *Id.* The same holds true for the negligent driving enhancements. The Legislature’s decision to punish Schedule I or II use as a second degree felony, while punishing marijuana use as a third degree felony, is legitimate where these users drive and negligently cause serious bodily injury or death.

Finally, *Robinson* held that a reasonable relationship exists between the classification and the legislative purposes. *Id.* at ¶25. “The legislature has a legitimate interest in preventing individuals from using or being under the influence of controlled substances while in Utah.” *Id.* And in this case, the Legislature also has a legitimate interest in preventing people from driving while illegally using controlled substances. In both cases, “[t]hat interest increases as the relative harm that a controlled substance presents to society increases.” *Id.* The Legislature has concluded that the risk of harm presented by marijuana use is less than that presented by the use of other Schedule I and II controlled substances. *See id.* “The different criminal penalties reflect these relative harms.” *Id.*

In sum, as in Robinson, the DWI enhancement statute's disparate treatment based on the type of drug is warranted by reasonable legislative objectives. Accordingly, the DWI enhancement statute does not violate the Utah Constitution's guarantee to the uniform operation of laws.

CONCLUSION

For the foregoing reasons, the Court should reverse the judgment of the Court of Appeals.

Respectfully submitted on October 4, 2016.

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CERTIFICATE OF COMPLIANCE

I certify that in compliance with rule 24(f)(1), Utah R. App. P., this brief contains 6,684 words, excluding the table of contents, table of authorities, and addenda. I further certify that in compliance with rule 27(b), Utah R. App. P., this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Book Antiqua 13 point.

JEFFREY S. GRAY
Assistant Solicitor General

CERTIFICATE OF SERVICE

I certify that on October 5, 2016, two copies of the Brief of Petitioner were ☒ mailed ☐ hand-delivered to:

Lori J. Seppi
David P.S. Mack
Salt Lake Legal Defender Ass'n
424 East 500 South, Ste. 300
Salt Lake City, UT 84111

Also, in accordance with Utah Supreme Court Standing Order No. 8, a courtesy brief on CD in searchable portable document format (pdf):

- ☐ was filed with the Court and served on appellant.
- ☒ will be filed and served within 14 days.

ADDENDA

ADDENDUM A

Relevant Constitutional Provisions and Statutes

- Utah Const. art. I, § 24..... A-1
- Utah Code Ann. § 41-6a-502 (West 2013)..... A-1
- Utah Code Ann. § 41-6a-503(2) (West 2013)..... A-1
- Utah Code Ann. § 41-6a-517 (West 2013)..... A-1
- Utah Code Ann. § 58-37-8(2) (West Supp. 2016)..... A-2
- Utah Code Ann. § 76-5-207(2) (West 2015)..... A-4

Utah Const. art. I, § 24

All laws of a general nature shall have uniform operation.

Utah Code Ann. § 41-6a-502 (West 2013) [DUI]

(1) A person may not operate or be in actual physical control of a vehicle within this state if the person:

(a) has sufficient alcohol in the person's body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of .08 grams or greater at the time of the test;

(b) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle; or

(c) has a blood or breath alcohol concentration of .08 grams or greater at the time of operation or actual physical control.

(2) Alcohol concentration in the blood shall be based upon grams of alcohol per 100 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of alcohol per 210 liters of breath.

(3) A violation of this section includes a violation under a local ordinance similar to this section adopted in compliance with Section 41-6a-510.

* * *

Utah Code Ann. § 41-6a-503(2) (West 2013) [DUI with Serious Injury]

A person who violates Section 41-6a-502 is guilty of a third degree felony if:

(a) the person has also inflicted serious bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner;

* * *

Utah Code Ann. § 41-6a-517 (West 2013) [DWID – Driving With Illegal Drugs in the body]

(1) As used in this section:

(a) "Controlled substance" has the same meaning as in Section 58-37-2.

(b) "Practitioner" has the same meaning as in Section 58-37-2.

(c) "Prescribe" has the same meaning as in Section 58-37-2.

(d) "Prescription" has the same meaning as in Section 58-37-2.

(2) In cases not amounting to a violation of Section 41-6a-502, a person may not operate or be in actual physical control of a motor vehicle within this state if the person has any measurable controlled substance or metabolite of a controlled substance in the person's body.

(3) It is an affirmative defense to prosecution under this section that the controlled substance was:

- (a) involuntarily ingested by the accused;
- (b) prescribed by a practitioner for use by the accused; or
- (c) otherwise legally ingested.

(4) (a) A person convicted of a violation of Subsection (2) is guilty of a class B misdemeanor.

(b) A person who violates this section is subject to conviction and sentencing under both this section and any applicable offense under Section 58-37-8.

* * *

Utah Code Ann. §58-37-8(2) (West Supp. 2016) [Measurable Amount Statute]

(2) Prohibited acts B--Penalties and reporting:

(a) It is unlawful:

(i) for any person knowingly and intentionally to possess or use a controlled substance analog or a controlled substance, unless it was obtained under a valid prescription or order, directly from a practitioner while acting in the course of the person's professional practice, or as otherwise authorized by this chapter;

* * *

(g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not amounting to a violation of Section 76-5-207:

(i) violates Subsection (2)(a)(i) by knowingly and intentionally having in the person's body any measurable amount of a controlled substance; and

(ii) operates a motor vehicle as defined in Section 76-5-207 in a negligent manner, causing serious bodily injury as defined in Section 76-1-601 or the death of another.

(h) A person who violates Subsection (2)(g) by having in the person's body:

(i) a controlled substance classified under Schedule I, other than those described in Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second degree felony;

(ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection 58-37-4(2)(a)(iii)(S) or (AA), or a substance listed in Section 58-37-4.2 is guilty of a third degree felony; or

(iii) any controlled substance classified under Schedules III, IV, or V is guilty of a class A misdemeanor.

(i) A person is guilty of a separate offense for each victim suffering serious bodily injury or death as a result of the person's negligent driving in violation of Subsection 58-37-8(2)(g) whether or not the injuries arise from the same episode of driving.

* * *

(i) for any person knowingly and intentionally to possess or use a controlled substance analog or a controlled substance, unless it was obtained under a valid prescription or order, directly from a practitioner while acting in the course of the person's professional practice, or as otherwise authorized by this chapter;

* * *

(g) A person is subject to the penalties under Subsection (2)(h) who, in an offense not amounting to a violation of Section 76-5-207:

(i) violates Subsection (2)(a)(i) by knowingly and intentionally having in the person's body any measurable amount of a controlled substance; and

(ii) operates a motor vehicle as defined in Section 76-5-207 in a negligent manner, causing serious bodily injury as defined in Section 76-1-601 or the death of another.

(h) A person who violates Subsection (2)(g) by having in the person's body:

(i) a controlled substance classified under Schedule I, other than those described in Subsection (2)(h)(ii), or a controlled substance classified under Schedule II is guilty of a second degree felony;

(ii) marijuana, tetrahydrocannabinols, or equivalents described in Subsection 58-37-4 (2)(a)(iii)(S) or (AA), or a substance listed in Section 58-37-4.2 is guilty of a third degree felony; or

(iii) any controlled substance classified under Schedules III, IV, or V is guilty of a class A misdemeanor.

Utah Code Ann. § 76-5-207(2) (West 2009) [Automobile Homicide]

(2) (a) Criminal homicide is automobile homicide, a third degree felony, if the person operates a motor vehicle in a negligent manner causing the death of another and:

(i) has sufficient alcohol in his body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of .08 grams or greater at the time of the test;

(ii) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle; or

(iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of operation.

(b) A conviction for a violation of this Subsection (2) is a second degree felony if it is subsequent to a conviction as defined in Subsection 41-6a-501(2).

(c) As used in this Subsection (2), “negligent” means simple negligence, the failure to exercise that degree of care that reasonable and prudent persons exercise under like or similar circumstances.

ADDENDUM B

State v. Ainsworth, 2016 UT App 2, 365 P.3d 1227

JAN 07 2016

2016 UT App 2

THE UTAH COURT OF APPEALS

STATE OF UTAH,
Appellee,

v.

THOMAS RANDALL AINSWORTH,
Appellant.

Opinion
No. 20130924-CA
Filed January 7, 2016

Third District Court, Salt Lake Department
The Honorable Deno G. Himonas
No. 121902706

David P.S. Mack, Caleb J. Cunningham, and Lori J.
Seppi, Attorneys for Appellant

Sean D. Reyes and Jeffrey S. Gray, Attorneys
for Appellee

SENIOR JUDGE RUSSELL W. BENCH authored this Opinion, in which
JUDGES J. FREDERIC VOROS JR. and STEPHEN L. ROTH concurred.¹

BENCH, Senior Judge:

¶1 Thomas Randall Ainsworth appeals his convictions and sentences for three counts of driving with a measurable amount of a controlled substance in his body and negligently causing death or serious bodily injury, second-degree felonies. *See* Utah Code Ann. § 58-37-8(2)(g)–(h) (LexisNexis Supp. 2015). We vacate Ainsworth’s second-degree felony convictions and remand for the district court to enter a judgment of conviction

1. The Honorable Russell W. Bench, Senior Judge, sat by special assignment as authorized by law. *See generally* Utah R. Jud. Admin. 11-201(6).

for three third-degree felonies and to resentence him accordingly.

BACKGROUND

¶2 Ainsworth's actions led to a great tragedy. On December 24, 2011, Ainsworth drove over a median into oncoming traffic and crashed head-on into another vehicle. The driver and front passenger sustained serious injury as a result of the crash, and their eighteen-month-old child was killed. Ainsworth informed police that he had dropped his cell phone on the floor of his vehicle and was reaching for it when he lost control of the vehicle. Following the accident, Ainsworth's blood tested positive for methamphetamine.

¶3 Ainsworth was charged with three counts of driving with a measurable amount of a controlled substance in the body and negligently causing death or serious bodily injury, each a second-degree felony. Ainsworth moved to amend one of these counts to automobile homicide, a third-degree felony, and the other two to driving under the influence of alcohol or drugs and causing serious bodily injury (DUI With Serious Injury), also a third-degree felony, on the ground that section 58-37-8(2)(g) and (h) of the Utah Code (the Measurable Amount Statute), under which he was charged, violate the Utah Constitution's uniform operation of laws provision. In the alternative, he moved the court to reduce all three of his charges to third-degree felonies. The district court denied Ainsworth's motion. Ainsworth then moved the court to declare the Measurable Amount Statute unconstitutional as applied and to reconsider the motion to amend. The district court again denied Ainsworth's motion.

¶4 Ainsworth pleaded guilty to all three charges under the Measurable Amount Statute but reserved his right to appeal the constitutionality of the statute. Ainsworth requested concurrent sentencing, but the district court ordered that Ainsworth serve

three consecutive prison terms of one to fifteen years each. Ainsworth now appeals.

ISSUES AND STANDARDS OF REVIEW

¶5 Ainsworth first asserts that the district court erred in concluding that the Measurable Amount Statute was constitutional. “Constitutional challenges to statutes present questions of law, which we review for correctness.” *State v. Robinson*, 2011 UT 30, ¶ 7, 254 P.3d 183 (citation and internal quotation marks omitted).

¶6 Ainsworth also asserts that the district court exceeded its discretion by imposing consecutive sentences. “Because trial courts are afforded wide latitude in sentencing, a court’s sentencing decision is reviewed for an abuse of discretion.” *State v. Epling*, 2011 UT App 229, ¶ 8, 262 P.3d 440 (citation and internal quotation marks omitted).

ANALYSIS

I. Constitutionality of the Measurable Amount Statute

¶7 Ainsworth asserts that the Measurable Amount Statute violates Article I, Section 24 of the Utah Constitution, known as the uniform operation of laws provision, by making impermissible distinctions between those who may be charged under the Automobile Homicide Statute and the DUI With Serious Injury Statute and those who may be charged under the Measurable Amount Statute.

¶8 Under the Automobile Homicide Statute, a person who, while “under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle,” “operates a

motor vehicle in a negligent manner causing the death of another” commits a third-degree felony. Utah Code Ann. § 76-5-207(2)(a) (LexisNexis 2012). Under the DUI With Serious Injury Statute, a person who, while “under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle,” “inflicted serious bodily injury upon another as a proximate result of having operated the vehicle in a negligent manner” also commits a third-degree felony. *Id.* §§ 41-6a-502(1)(b), -503(2)(a) (2014). But under the Measurable Amount Statute, a person who, “in an offense not amounting to a violation of [the Automobile Homicide Statute],” “knowingly and intentionally [has] in the person’s body any measurable amount” of a Schedule I or II controlled substance (such as methamphetamine) without a valid prescription, “operates a motor vehicle . . . in a negligent manner,” and causes either death or serious bodily injury to another commits a second-degree felony. *Id.* § 58-37-8(2)(a)(i), (g), (h)(i) (Supp. 2015).

¶9 Ainsworth asserts that the Measurable Amount Statute violates the uniform operation of laws provision in two ways: first, by distinguishing between those who have a prescription for a controlled substance and those who do not and, second, by classifying a violation of the Measurable Amount Statute by use of a Schedule I or II controlled substance as a second-degree felony, while classifying the more culpable offenses of Automobile Homicide and DUI With Serious Injury as third-degree felonies. We agree with the State that the legislature has a reasonable objective for distinguishing between prescription and nonprescription users of controlled substances. However, there does not appear to be any rational basis for punishing individuals who have “any measurable amount” of controlled substance in their bodies more harshly than individuals who have an incapacitating amount of the substance in their bodies.

¶10 The uniform operation of laws provision mandates that “[a]ll laws of a general nature shall have uniform operation.” Utah Const. art. I, § 24. This provision is an “analogue to the federal due process guarantee,” *Wood v. University of Utah Med. Ctr.*, 2002 UT 134, ¶ 33, 67 P.3d 436, but may, “in some circumstances, [be] more rigorous than the standard applied under the federal constitution,” *Gallivan v. Walker*, 2002 UT 89, ¶ 33, 54 P.3d 1069 (citation and internal quotation marks omitted).

In analyzing the constitutionality of a statutory scheme under the uniform operation of laws provision[] we engage in a three-part inquiry. First, we determine what, if any, classification is created under the statute. Second, we inquire into whether the classification imposes on similarly situated persons disparate treatment. Finally, we analyze the scheme to determine if the legislature had any reasonable objective that warrants the disparity.

State v. Drej, 2010 UT 35, ¶ 34, 233 P.3d 476 (citations and internal quotation marks omitted). To determine whether the legislature had a reasonable objective to warrant a disparity, we must consider “(1) whether the classification is reasonable, (2) whether the objectives of the legislative action are legitimate, and (3) whether there is a reasonable relationship between the classification and the legislative purpose.” *State v. Robinson*, 2011 UT 30, ¶ 22, 254 P.3d 183. “Broad deference is given to the legislature when assessing the reasonableness of its classifications and their relationship to legitimate legislative purposes.” *Id.* ¶ 23 (citation and internal quotation marks omitted).

¶11 Ainsworth first challenges the Measurable Amount Statute’s distinction between those who use controlled substances without a prescription and those who use them with

a prescription. Those who have a prescription for a controlled substance may be charged only under the Automobile Homicide Statute or the DUI With Serious Injury Statute, not the Measurable Amount Statute. *See* Utah Code Ann. § 58-37-8(2)(a)(i), (g)(i) (exempting from the Measurable Amount Statute those who have a valid prescription). In other words, unlike nonprescription users, prescription users can be charged with no more than a third-degree felony² and can be convicted only if the State demonstrates that they were intoxicated to a degree that rendered them incapable of safely operating a motor vehicle. *See id.* § 41-6a-503(2)(a) (2014); *id.* § 76-5-207(2)(a) (2012). Thus, the Measurable Amount Statute creates a classification. Because the same drugs may be used by both types of users and the existence of a prescription presumably does not alter the effect of the drug, we conclude that prescription and nonprescription users of controlled substances are similarly situated.

¶12 However, the classification does not violate the uniform operation of laws provision, because the legislature had a reasonable basis for making the classification. Ainsworth asserts that the distinction between prescription and nonprescription users of methamphetamine is not supported by a reasonable legislative objective “because the harm presented by a person driving with methamphetamine in his system is the same regardless of whether he has a prescription.” Ainsworth’s assertion rests on the mistaken assumption that the only rational objective the legislature could have in distinguishing between prescription and nonprescription users of controlled substances

2. Automobile homicide may be a second-degree felony if the defendant was criminally negligent or had a previous DUI-related conviction, *see* Utah Code Ann. § 76-5-207(2)(b), (3) (LexisNexis 2012), but Ainsworth was not charged with either of those variations of automobile homicide, and they are not at issue in this case.

is the relative danger they pose when driving. But the legislature also has a legitimate interest in regulating the use of controlled substances due to their high potential for abuse. Those who use such substances pursuant to a valid prescription are subject to controls and safeguards, including, among other things, limits on their dosages and regulation of manufacturing consistency and quality, while those who obtain controlled substances illegally are not subject to any such constraints. Thus, the legislature has an interest in deterring the illegal use of controlled substances. The legislature has no concomitant interest in deterring the legal use of prescribed medications so long as that use does not render the patient incapable of safely operating a motor vehicle. Charging nonprescription controlled-substance users that have “any measurable amount” of such substances in their bodies, while charging prescription users only when they are demonstrably unsafe to drive, is rationally related to the reasonable objectives of the legislature.

¶13 Ainsworth next challenges the Measurable Amount Statute’s distinction between those whose bodies contain “any measurable amount of a controlled substance,” Utah Code Ann. § 58-37-8(g)(i) (LexisNexis Supp. 2015), and those who are under the influence of any controlled substance “to a degree that renders the person incapable of safely operating a vehicle,” *see id.* § 41-6a-502(1)(b) (2014); *id.* § 76-5-207(2)(a)(ii) (2012). He asserts that, as applied to users of Schedule I and II controlled substances,³ this distinction is not related to a reasonable

3. Although users of other types of controlled substances are also subject to this classification, the degree of crime they can be charged with is lesser or equal to what they would be charged with under the Automobile Homicide Statute or the DUI With Serious Injury Statute. Because Ainsworth’s argument concerning this classification is premised on the fact that the Measurable Amount Statute imposes a greater penalty for a
(continued...)

legislative objective, because it punishes less culpable offenders with a significantly higher level of punishment.

¶14 The State asserts that no classification is created by this provision of the Measurable Amount Statute because the Automobile Homicide Statute and the DUI With Serious Injury Statute govern only drivers who are under the influence of legal intoxicants (alcohol or prescription drugs), not those who are under the influence of illegal intoxicants (nonprescribed controlled substances). Thus, according to the State, regardless of the degree of intoxication, negligently causing injury or death of another while driving with any measurable amount of a controlled substance for which the user does not have a prescription should be prosecuted under the Measurable Amount Statute, not the Automobile Homicide Statute or the DUI With Serious Injury Statute.

¶15 However, the plain language of the Measurable Amount, Automobile Homicide, and DUI With Serious Injury Statutes belies the State's interpretation. Both the Automobile Homicide Statute and the DUI With Serious Injury Statute apply to individuals under the influence of "any drug." *See* Utah Code Ann. § 41-6a-502(1)(b) (LexisNexis 2014); *id.* § 76-5-207(2)(a)(ii) (2012). Both statutes include controlled substances within the definition of "drug." *Id.* § 41-6a-501(1)(c)(i) (2014) (defining

(...continued)

lesser crime, it challenges the constitutionality of the statute only as applied to Schedule I and II users. In requesting that his charges be reduced to third-degree felonies, Ainsworth's argument presumes that a charge equal to what a defendant could have been charged with under the Automobile Homicide Statute or the DUI With Serious Injury Statute would not violate the uniform operation of laws provision, so we assume, without deciding, that this is the case.

“drug” for purposes of the DUI With Serious Injury Statute to include controlled substances); *id.* § 76-5-207(1)(a)(i) (2012) (defining “drug” for purposes of the Automobile Homicide Statute to include controlled substances); *id.* § 58-37-2(1)(f) (Supp. 2015) (defining “controlled substance” to include substances listed in Schedules I, II, III, IV, or V of the Utah Controlled Substances Act and the federal Controlled Substances Act). Neither statute distinguishes between drugs used in accordance with a valid prescription and drugs used illegally. Thus, by their plain language, these statutes apply to the use of both prescription and nonprescription controlled substances. Furthermore, the Measurable Amount Statute implicitly identifies the Automobile Homicide Statute as defining an offense that could apply to users of illegal drugs by specifically distinguishing it from the Measurable Amount Statute, stating that “[a] person is subject to the penalties” of the Measurable Amount Statute when the person violates the statute “*in an offense not amounting to a violation of [the Automobile Homicide Statute].*” *Id.* § 58-37-8(g) (Supp. 2015) (emphasis added). This indicates that the legislature anticipated that the Automobile Homicide Statute would apply to nonprescription users of controlled substances under certain circumstances.

¶16 Thus, we agree with Ainsworth that the three statutes create a classification distinguishing between similarly situated persons—users of nonprescribed controlled substances who cause serious injury or death by negligently operating a motor vehicle—based on their degree of intoxication: Those who are intoxicated by legal *or* illegal substances to a degree that they are incapable of safely operating a vehicle are to be prosecuted under the Automobile Homicide Statute or the DUI With Serious Injury Statute. On the other hand, those who have consumed illegal substances to a lesser degree, but still have a measurable amount in their bodies, are to be prosecuted under the Measurable Amount Statute. Because a conviction under the Measurable Amount Statute is a second-degree felony when the

individual has a measurable amount of a Schedule I or II controlled substance in his or her body, while convictions under the other two statutes are third-degree felonies regardless of the type of controlled substance used, unimpaired users of Schedule I and II controlled substances are ultimately subject to a greater charge for what is otherwise defined to be a lesser crime.

¶17 There does not appear to be any rational basis for charging users of nonprescribed Schedule I or II controlled substances who have a measurable amount of controlled substance in their body, but not enough to render them incapable of safely operating a motor vehicle, with a higher-degree crime than users of nonprescribed Schedule I or II controlled substances who have so much controlled substance in their body that they are demonstrably unsafe to operate a vehicle. Thus, we agree with Ainsworth that the second-degree designation in subsection (2)(h)(i) in the Measurable Amount Statute violates the uniform operation of laws provision of the Utah Constitution.

¶18 When a statutory provision is determined to be unconstitutional, the remainder of the statute will nevertheless be allowed to stand if it “is operable and still furthers the intended legislative purpose.” *State v. Lopes*, 1999 UT 24, ¶ 19, 980 P.2d 191. The legislature has determined that “[i]f any provision of [the Measurable Amount Statute], or the application of any provision to any person or circumstances, is held invalid, the remainder of [the Measurable Amount Statute] shall be given effect without the invalid provision or application.” Utah Code Ann. § 58-37-8(17) (LexisNexis Supp. 2015). Thus, striking the second-degree designation in subsection (2)(h)(i) of the Measurable Amount Statute does not undermine the legislative purpose of the statute. The only question remaining, then, is whether subsection (2)(h)(i) can remain operable without its second-degree designation. “An offense designated as a felony either in [the criminal code] or in another law, without

specification as to punishment or category, is a felony of the third degree.” *Id.* § 76-3-103 (2012). Therefore, subsection (2)(h)(i) can remain operable as a third-degree felony. Accordingly, we vacate Ainsworth’s convictions and remand with instructions for the district court to re-enter them as third-degree felonies.

II. Consecutive Sentencing

¶19 Because we must vacate Ainsworth’s convictions and remand for the district court to adjust the degree of the convictions, which will require that the district court also resentence him, we need not address Ainsworth’s argument that the district court erred in imposing consecutive sentences. Nevertheless, as this issue has been fully briefed and is likely to arise on remand, we elect to address it. *See State v. James*, 819 P.2d 781, 795 (Utah 1991).

¶20 Ainsworth asserts that the district court exceeded its discretion in imposing consecutive sentences because it failed to adequately consider his history, character, and rehabilitative needs. *See* Utah Code Ann. § 76-3-401(2) (LexisNexis 2012). Although “[a] court exceeds its discretion if it . . . fails to consider all legally relevant factors,” *State v. Epling*, 2011 UT App 229, ¶ 8, 262 P.3d 440, “[i]t is the defendant’s burden to demonstrate that the trial court failed to properly consider legally relevant factors,” *State v. Bunker*, 2015 UT App 255, ¶ 3, 361 P.3d 155. A defendant cannot meet this burden by merely pointing to . . . the existence of mitigating circumstances.” *Id.* “If the record shows that the trial court has reviewed information regarding the relevant legal factors, we can infer that the trial court adequately considered those factors.” *Id.*

¶21 Ainsworth argues that the court failed to adequately consider the fact that his offenses arose out of a single criminal episode resulting from negligent rather than intentional behavior; that despite not having been amenable to rehabilitation in the past, he had expressed genuine remorse and

a desire to accept responsibility for his actions; that he has participated in substance-abuse classes while in jail and has a newfound desire to participate in substance-abuse treatment; that he is employed; and that he has strong emotional health and family connections. While these factors could have supported a decision to impose concurrent sentences, they do not mandate such an outcome and we see no indication that the district court failed to consider them. On the contrary, the district court indicated that it had “carefully considered [Ainsworth’s] history and rehabilitative needs in reaching [its] decision” but concluded that the “nature, circumstances and gravity of the offense[,] . . . as well [as] the number of victims” made consecutive sentencing appropriate. “The fact that the trial court assessed the relevant factors differently than [Ainsworth] would have liked does not indicate that it exceeded its discretion.” *See Epling*, 2011 UT App 229, ¶ 22.

CONCLUSION

¶22 We agree with Ainsworth that subsection (2)(h)(i) of the Measurable Amount Statute violates the uniform operation of laws provision of the Utah Constitution. Thus, we vacate Ainsworth’s convictions and remand with instructions for the district court to enter his convictions as third-degree felonies and to resentence him accordingly.⁴

4. In reducing the degree of Ainsworth’s convictions, as we believe the law requires, we by no means wish to discount the tragic losses suffered by the victims of Ainsworth’s crimes.

ADDENDUM C

Conclusions of Law Regarding Defendant's Motion to Declare
Sections 58-37-8(2)(g) and (2)(h) Unconstitutional and
corresponding order (R236-38)

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ORIGINAL

FILED DISTRICT COURT
Third Judicial District

MAY 10 2013

SALT LAKE COUNTY
By _____ Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE DEPARTMENT
IN AND FOR THE COUNTY OF SALT LAKE, STATE OF UTAH

THE STATE OF UTAH,

Plaintiff,

-vs-

THOMAS AINSWORTH,

Defendant.

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW REGARDING
DEFENDANT'S REQUEST TO RENEW
MOTION TO AMEND**

Case No. 121902706

Judge Himonas

The Defendant's Motion to Renew Motion to Amend, having come before this Court for hearing in the above entitled manner on April 26, 2013, in which the Defendant was represented by counsel, David Mack and Caleb Cunningham, and the State was represented by counsel, Sandi Johnson. The Court having considered the written motion, and the arguments made by counsel, the Court now enters its Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On July 12, 2012 the defendant submitted a "Motion to Amend Information" in this case.

On August 7, 2012 the State filed a response to the motion. On September 5, 2012 the defendant filed his reply.

2. Oral argument was held before Judge Stone on September 7, 2012. David Mack and Caleb Cunningham were counsel for the defendant. Sandi Johnson was counsel for the

State. Counsel argued the motion and Judge Stone ruled on the matter, denying the defendant's Motion to Amend.

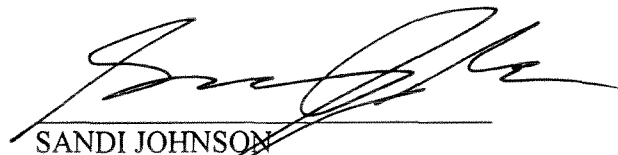
3. On October 15, 2012 Judge Stone signed an Order denying the defendant's Motion to Amend.
4. The defendant has not alleged a change of facts or case law since Judge Stone entered his ruling.

CONCLUSIONS OF LAW

1. The Court finds there is no good cause to depart from the law of the case as determined by Judge Stone on October 15, 2012.

Dated this 10 day of May, 2013.

SIM GILL
District Attorney


SANDI JOHNSON
Deputy District Attorney



Approved as to Form

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ORIGINAL
FILED DISTRICT COURT
Third Judicial District

MAY 10 2013

SALT LAKE COUNTY
By _____ *KL*
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE DEPARTMENT
IN AND FOR THE COUNTY OF SALT LAKE, STATE OF UTAH

THE STATE OF UTAH,

Plaintiff,

-vs-

THOMAS AINSWORTH,

Defendant.

**CONCLUSIONS OF LAW REGARDING
DEFENDANT'S MOTION TO DECLARE
SECTIONS 58-37-8(2)(g) AND (2)(h)
UNCONSTITUTIONAL**

Case No. 121902706

Judge Himonas

The Defendant's Motion to Declare Sections 58-37-8(2)(g) and (2)(h) Unconstitutional, having come before this Court for hearing in the above entitled manner on February 8, 2013 and April 26, 2013, in which the Defendant was represented by counsel, David Mack and Caleb Cunningham, and the State was represented by counsel, Sandi Johnson. The Court having considered the testimony of Dr. Glen Hanson, the written motions, and the arguments made by counsel, the Court now enters its Conclusions of Law.

CONCLUSIONS OF LAW


1. The three-step analysis employed by the courts in a Uniform Operations of Clause Challenge is: "(1) whether the statute creates any classifications; (2) whether the classifications impose any disparate treatment on persons similarly situated; and (3) if

there is disparate treatment, whether the legislature had any reasonable objective that warrants the disparity.” State v. Robinson, 2011 UT 30, ¶ 17.

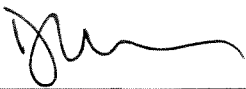
2. In this case, the statute creates a classification of lawful drug users versus unlawful drug users.
3. Similar to State v. Robinson, the statute does not impose any disparate treatment on persons similarly situated.
4. Because the defendant has not met the first two steps of the analysis, the Court does not address the third step.

Dated this 10 day of May, 2013.

SIM GILL
District Attorney



SANDI JOHNSON
Deputy District Attorney



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FILED DISTRICT COURT
Third Judicial District

MAY 10 2013

SALT LAKE COUNTY
By KL
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE DEPARTMENT

IN AND FOR THE COUNTY OF SALT LAKE, STATE OF UTAH

THE STATE OF UTAH,

Plaintiff,

-vs-

THOMAS AINSWORTH,

Defendant.

**ORDER REGARDING DEFENDANT'S
MOTION TO DECLARE SECTIONS 58-
37-8(2)(G) AND (2)(H)
UNCONSTITUTIONAL**

Case No. 121902706

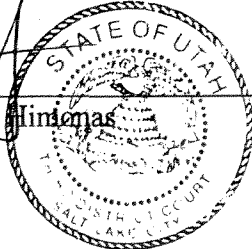
Judge Himonas

Based upon the foregoing CONCLUSIONS OF LAW, the Defendant's Motion to
Declare Sections 58-37-8(2)(g) and (2)(h) Unconstitutional is denied.

Dated this 10 day of May, 2013.

BY THE COURT:

[Signature]
Honorable Himonas



ADDENDUM D

Drugs and Human Performance Fact Sheets: Methamphetamine (and Amphetamine), pp. 61-65 (National Highway Traffic Safety Administration, Apr. 2014 revised)

located at

<http://www.nhtsa.gov/people/injury/research/job185drugs/index.htm> (last visited Sept. 29, 2016)

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Drugs and Human Performance Fact Sheets



U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**

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Technical Report Documentation Page

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15. Supplementary Notes The following toxicologists made significant contributions to both the drafting and review of the Fact Sheets: Michael Corbett Ph.D., Laurel Farrell MS., Marilyn Huestis Ph.D., Wayne Jeffrey MS, and Jan Raemakers, Ph.D. James F.Frank Ph.D. served as the NHTSA Contracting Officer's Technical Representative.			
16. Abstract A panel of international experts on drug-impaired driving met in Seattle during August 2000 to review developments in the field of drugs and human performance over the last 10 years; to identify the specific effects that both illicit and prescription drugs have on driving; and to develop guidance for others when dealing with drug-impaired driving problems. Delegates represented the fields of psychopharmacology, behavioral psychology, drug chemistry, forensic toxicology, medicine, and law enforcement experts trained in the recognition of drug effects on drivers in the field. These Fact Sheets represent the conclusions of the Panel and include the state of current scientific knowledge in the area of drugs and human performance for the 16 drugs selected for evaluation. The selected drugs include over-the-counter medications such as dextromethorphan and diphenhydramine; prescription medications such as carisoprodol, diazepam and zolpidem; and abused and/or illegal drugs such as cocaine, GHB, ketamine, LSD, marijuana, methadone, methamphetamine, MDMA, morphine, PCP and toluene. Keyword continuation: illicit and licit drugs and traffic safety, drugs and driving, drug-impaired driving.			
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Introduction

The use of psychoactive drugs followed by driving has been an issue of continual concern to law enforcement officers, physicians, attorneys, forensic toxicologists and traffic safety professionals in the U.S. and throughout the world. At issue are methods for identifying the impaired driver on the road, the assessment and documentation of the impairment they display, the availability of appropriate chemical tests, and the interpretation of the subsequent results. A panel of international experts on drug-related driving issues met to review developments in the field of drugs and human performance over the last 10 years; to identify the specific effects that both illicit and prescription drugs have on driving; and to develop guidance for others when dealing with drug-impaired driving problems.

This publication is based on the deliberations of the International Consultative Panel on Drugs and Driving Impairment held in Seattle, WA in August 2000. This meeting was sponsored by the National Safety Council, Committee on Alcohol and other Drugs; the State of Washington Traffic Safety Commission; and the National Highway Traffic Safety Administration. Delegates represented the fields of psychopharmacology, behavioral psychology, drug chemistry, forensic toxicology, medicine, and law enforcement experts trained in the recognition of drug effects on drivers in the field. The Fact Sheets reflect the conclusions of the Panel and have been designed to provide practical guidance to toxicologists, pharmacologists, law enforcement officers, attorneys and the general public on issues related to drug impaired driving.

Sixteen drugs were selected for review and include over-the-counter medications, prescription drugs, and illicit and/or abused drugs. The selected drugs are cannabis/marijuana, carisoprodol, cocaine, dextromethorphan, diazepam, diphenhydramine, gamma-hydroxybutyrate, ketamine, lysergic acid diethylamide, methadone, methamphetamine/amphetamine, methylenedioxymethamphetamine, morphine/heroin, phencyclidine, toluene, and zolpidem.

The Fact Sheets are based on the state of current scientific knowledge and represent the conclusions of the panel. They have been designed to provide practical guidance to toxicologists, pharmacologists, law enforcement officers, attorneys and the general public to use in the evaluation of future cases. Each individual drug Fact Sheet covers information regarding drug chemistry, usage and dosage information, pharmacology, drug effects, effects on driving, drug evaluation and classification (DEC), and the panel's assessment of driving risks. A list of key references and recommended reading is also provided for each drug. Readers are encouraged to use the Fact Sheets in connection with the other cited impaired driving-related texts.

The information provided is uniform for all the Fact Sheets and provides details on the physical description of the drug, synonyms, and pharmaceutical or illicit sources; medical and recreational uses, recommended and abused doses, typical routes of administration, and potency and purity; mechanism of drug action and major receptor sites; drug absorption, distribution, metabolism and elimination data; blood and urine concentrations; psychological and physiological effects, and drug interactions; drug

effects on psychomotor performance effects; driving simulator and epidemiology studies; and drug recognition evaluation profiles. Each Fact Sheet concludes with general statements about the drugs' ability to impair driving performance. The authors strongly believe that all the above information needs to be taken into account when evaluating a drug.

Case interpretation can be complicated by a number of factors and one of the main limitations of the Fact Sheets is that they primarily relate to single drug use. Other factors which influence the risk of effects on driving for any drug include the dose, the dosage frequency, acute and residual effects, chronic administration, route of administration, the concentration of the drug at the site of action, idiosyncrasies of metabolism, drug tolerance or hypersensitivity, and the combined effects of the drug with other drugs or alcohol, to name but a few.

Individual Fact Sheets

Cannabis/Marijuana
Carisoprodol (and Meprobamate)
Cocaine
Dextromethorphan
Diazepam
Diphenhydramine
Gamma-Hydroxybutyrate (GHB, GBL, and 1,4-BD)
Ketamine
Lysergic acid diethylamide (LSD)
Methadone
Methamphetamine (and Amphetamine)
Methylenedioxymethamphetamine (MDMA, Ecstasy)
Morphine (and Heroin)
Phencyclidine (PCP)
Toluene
Zolpidem (and Zaleplon, Zopiclone)

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Disclaimer

The information contained in the Drugs and Human Performance Fact Sheets represents the views of the contributors and not necessarily those of their place of employment or the National Highway Traffic Safety Administration.

Methamphetamine (and Amphetamine)

Methamphetamine hydrochloride is a white to light brown crystalline powder, or clear chunky crystals resembling ice. Methamphetamine base is a liquid.

Synonyms: *Methamphetamine*: chalk, chrissy, crank, crystal, glass, go, hydro, ice, meth, rock candy, speed, whiz; Desoxyn®; *Amphetamine*: dextroamphetamine; Dexedrine®, Adderall®, Benzedrine®, DextroStat®, Biphetamine®, Gradumet®.

Source: The majority of street methamphetamine is produced in clandestine laboratories (e.g. reduction of *l*-ephedrine or *d*-pseudoephedrine over red phosphorus with hydroiodic acid, or reduction with sodium or lithium in condensed liquid ammonia).

Methamphetamine remains concentrated in western U. S. states and some rural areas elsewhere. *d*-Methamphetamine is a schedule II controlled substance (Desoxyn®) available in 5 mg white, 10 mg pink, and 15 mg yellow strength tablets. Amphetamine is also a Schedule II controlled substance and is usually supplied as the sulfate salt of the *d*-isomer (Dexedrine®), or as the racemic mixture (Benzedrine®), or a mixture of the two (Adderall®). Dexedrine® is available in 5, 10, and 15 mg strength, orange/black capsules, or 5 mg tablets. Adderall® is available in 5, 7.5, 10, 12.5, 20, and 30 mg strength, blue or orange tablets.

Drug Class: CNS stimulant, sympathomimetic, appetite suppressant.

Medical and Recreational Uses: Medicinally, methamphetamine is used in the treatment of narcolepsy, attention deficit disorder (ADD), and attention deficit hyperactivity disorder (ADHD). Typical doses are 10 mg/day or up to 40 mg daily, and a course of greater than six weeks is not recommended. Methamphetamine is infrequently used in the treatment of obesity, overeating disorders, and weight loss due to its abuse potential. Amphetamine is also used in ADD, narcolepsy, and weight control. Recreationally, methamphetamine is abused to increase alertness, relieve fatigue, control weight, treat mild depression, and for its intense euphoric effects.

Potency, Purity and Dose: Purity of methamphetamine is currently very high, at 60-90%, and is predominantly *d*-methamphetamine which has greater CNS potency than the *l*-isomer or the racemic mixture. Common abused doses are 100-1000 mg/day, and up to 5000 mg/day in chronic binge use. Therapeutic doses of Desoxyn® are 2.5-10 mg daily, with dosing not exceed 60 mg/day. To treat narcolepsy, 5-60 mg/day of amphetamine is ingested in divided doses; and in ADD and ADHD doses of 2.5-10 mg/day is administered, depending on age.

Route of Administration: Methamphetamine users often begin with intranasal or oral use and progress to intravenous use, and occasionally smoking. In contrast to cocaine, the hydrochloride salt of methamphetamine can itself be smoked. Methamphetamine is used sometimes with alcohol or marijuana, particularly during the withdrawal phase.

Pharmacodynamics: Methamphetamine increases synaptic levels of the neurotransmitters dopamine, serotonin (5-HT) and norepinephrine, and has α and β

adrenergic agonist effects. Norepinephrine is responsible for methamphetamine's alerting, anorectic, locomotor and sympathomimetic effects; dopamine stimulates locomotor effects, psychosis, and perception disturbances; and 5HT is responsible for delusions and psychosis. Methamphetamine's effects are similar to cocaine but its onset is slower and the duration is longer. Racemic amphetamine and d-amphetamine have similar chemical properties and actions to methamphetamine but are less potent.

Pharmacokinetics: Following oral administration, peak methamphetamine concentrations are seen in 2.6-3.6 hours and the mean elimination half-life is 10.1 hours (range 6.4-15 hours). The amphetamine metabolite peaks at 12 hours. Following intravenous injection, the mean elimination half-life is slightly longer (12.2 hours). Methamphetamine is metabolized to amphetamine (active), p-OH-amphetamine and norephedrine (both inactive). Several other drugs are metabolized to amphetamine and methamphetamine and include benzphetamine, selegeline, and famprofazone.

Molecular Interactions / Receptor Chemistry: Methamphetamine is metabolized to amphetamine via cytochrome P450 2D6. Potential inhibitors of the 2D6 isoenzyme could decrease the rate of methamphetamine elimination if administered concurrently, while potential inducers could increase the rate of elimination.

Blood to Plasma Concentration Ratio: 0.65 (N=1).

Interpretation of Blood Concentrations: Blood concentrations can generally be used to distinguish therapeutic use from abuse. Concentrations of 0.02-0.05 mg/L are typical for therapeutic use, and up to 0.2 mg/L have been documented. Concentrations greater than this represent abuse. Concentrations do not disclose phase of use. Normal concentrations in recreational use are 0.01 to 2.5 mg/L (median 0.6 mg/L). Concentrations above this range will likely be associated with severe, possibly life threatening, toxicity. There is no evidence for improved performance in any task or test following use of doses greater than 40 mg (or concentrations greater than 0.2 mg/L).

Peak blood methamphetamine concentrations occur shortly after injection, a few minutes after smoking, and around 3 hours after oral dosing. Peak plasma amphetamine concentrations occur around 10 hours after methamphetamine use.

Interpretation of Urine Test Results: Positive results generally indicate use within 1-4 days but could be up to a week following heavy chronic use. Rate of excretion into the urine is heavily influenced by urinary pH. Between 30-54% of an oral dose is excreted in urine as unchanged methamphetamine and 10-23% as unchanged amphetamine. Following an intravenous dose, 45% is excreted as unchanged parent drug and 7% amphetamine.

Effects: Methamphetamine effects are less intense after oral ingestion than following smoked or intravenous use.

Early phase – Psychological: Euphoria, excitement, exhilaration, rapid flight of ideas, increased libido, rapid speech, motor restlessness, hallucinations, delusions, psychosis, insomnia, reduced fatigue or drowsiness, increased alertness, heightened sense of well

being, stereotypes behavior, feelings of increased physical strength, and poor impulse control.

Early phase – Physiological: Increased heart rate, increased blood pressure, increased respiration rate, elevated temperature, palpitations, irregular heartbeat, dry mouth, abdominal cramps, appetite suppressed, twitching, pallor, dilated pupils, HGN at high doses, faster reaction time, increased strength, and more efficient glucose utilization.

Late phase – Psychological: Dysphoria, residual stimulation, restlessness, agitation, nervousness, paranoia, violence, aggression, lack of coordination, pseudo-hallucinations, delusions, psychosis, and drug craving.

Late phase – Physiological: Fatigue, sleepiness with sudden starts, itching/picking/scratching, normal heart rate, and normal to small pupils which are reactive to light.

Binge use of methamphetamine can be broken down into the following phases: Rush – (5 minutes) intense euphoria, rapid flight of ideas, sexual stimulation, high energy, obsessive/compulsive activity, thought blending, dilated pupils; Shoulder – (1 hour) less intense euphoria, hyperactivity, rapid flight of ideas, obsessive/compulsive activity, thought blending, dilated pupils; Binge use – (1-5 days) the drug is frequently readministered in an attempt to regain or maintain euphoria; Tweaking – (4-24 hours) dysphoria, scattered and disorganized thought, intense craving, paranoia, anxiety and irritability, hypervigilance, auditory and tactile hallucinations, delusions, and normal pupils; Crash – (1-3 days) intense fatigue, uncontrollable sleepiness and catnapping, continuing stimulation, drug craving; Normal – (2-7 days) apparent return to “normalcy” although drug craving may appear; Withdrawal – anergia, anhedonia, waves of intense craving, depression, hypersomnolence, exhaustion, extreme fatigue.

Side Effect Profile: Light sensitivity, irritability, insomnia, nervousness, headache, tremors, anxiety, suspiciousness, paranoia, aggressiveness, delusions, hallucinations, irrational behavior, and violence. In overdose, symptoms may include hyperthermia, tachycardia, severe hypertension, convulsions, chest pains, stroke, cardiovascular collapse, and possible death. Other common side effects following abuse of amphetamines include viral hepatitis, Sexually Transmitted Diseases (STDs), HIV, septicemia, abscesses, collapsed blood vessels, and malnutrition. Chronic abuse generally produces a psychosis that resembles schizophrenia and is characterized by paranoia, picking at the skin, preoccupation with one’s own thoughts, and auditory and visual hallucinations. Violent and erratic behavior is frequently seen among chronic abusers. Over time, methamphetamine appears to cause reduced levels of dopamine, which can result in symptoms like those of Parkinson’s disease.

Duration of Effects: Onset of effects is rapid following intravenous use and smoking, while effects onset more slowly following oral use. Overall effects typically last 4-8 hours; residual effects can last up to 12 hours.

Tolerance, Dependence and Withdrawal Effect: Methamphetamine has a high potential for abuse and dependence. Tolerance may develop and users may quickly become addicted and use it with increasing frequency and in increasing doses. Abrupt

discontinuation of use can produce extreme fatigue, mental depression, apathy, long periods of sleep, irritability, and disorientation.

Drug Interactions: Phenobarbital, propoxyphene, phenytoin and MAOI's slow the metabolism of amphetamines and increases their effect on the release of norepinephrine and other monoamines from adrenergic nerve endings. Amphetamines may counteract sedative effects of antihistamines. Methamphetamine may restore ethanol induced impairment in simple repetitive tasks of short duration, however, there is no restoration of ethanol-induced deficits of balance and steadiness. In general, high doses of amphetamines are likely to increase the impairing effects of alcohol. Chlorpromazine and haloperidol block dopamine and norepinephrine reuptake, thus inhibiting the central stimulant effects of amphetamines. Amphetamine potentiates the analgesic effect of meperidine.

Performance Effects: Laboratory studies have been limited to much lower doses than those used by methamphetamine abusers. Doses of 10-30 mg methamphetamine have shown to improve reaction time, relieve fatigue, improve cognitive function testing, increase subjective feelings of alertness, increase time estimation, and increase euphoria. However, subjects were willing to make more high-risk choices. The majority of laboratory tests were administered 1 hour post dose. Expected performance effects following higher doses may include agitation, inability to focus attention on divided attention tasks, inattention, restlessness, motor excitation, increased reaction time, and time distortion, depressed reflexes, poor balance and coordination, and inability to follow directions.

Effects on Driving: The drug manufacturer states that patients should be informed that methamphetamine and amphetamine may impair the ability to engage in potentially hazardous activities such as driving a motor vehicle. In epidemiology studies drive-off-the-road type accidents, high speed, failing to stop, diminished divided attention, inattentive driving, impatience, and high risk driving have been reported. Significant impairment of driving performance would also be expected during drug withdrawal. In a recent review of 101 driving under the influence cases, where methamphetamine was the only drug detected, blood concentrations ranged from <0.05-2.36 mg/L (mean 0.35 mg/L, median 0.23 mg/L). Driving and driver behaviors included speeding, lane travel, erratic driving, accidents, nervousness, rapid and non-stop speech, unintelligible speech, disorientation, agitation, staggering and awkward movements, irrational or violent behavior, and unconsciousness. Impairment was attributed to distraction, disorientation, motor excitation, hyperactive reflexes, general cognitive impairment, or withdrawal, fatigue and hypersomnolence.

DEC Category: CNS stimulant.

DEC Profile: Horizontal gaze nystagmus not present; vertical gaze nystagmus not present; lack of convergence not present; pupil size dilated; reaction to light slow; pulse rate elevated; blood pressure elevated; body temperature normal to down. Other

characteristic indicators may include restlessness, body tremors, talkativeness, exaggerated reflexes, anxiety, and track marks or recent injection sites.

Panel's Assessment of Driving Risks: At lower dose, amphetamines have few effects on cognitive functioning and may result in an enhancement of some psychomotor tasks, but risk-taking increases at higher doses and responses become inappropriate. Drug withdrawal could also lead to the impairment of psychomotor skills required for safe driving.

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