Drug-Impaired Driving: A Guide for What States Can Do

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DRUG-IMPAIRED DRIVING

A GUIDE FOR WHAT STATES CAN DO

GHSA
Governors Highway Safety Association
The States' Voice on Highway Safety

FOUNDATION FOR ADVANCING ALCOHOL RESPONSIBILITY
Drug-Impaired Driving: A Guide for What States Can Do

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- Available at www.GHSA.org
What’s in the Report

- **Definition:** what drugs can impair
- **Data:** problem size and characteristics
- **Science:** drug levels, impairment, and crash risk
- **Laws:** different types, what states have in place now
- **Enforcement:** SFST, DEC, oral fluid, blood testing
- **Prosecution and adjudication:** challenges and strategies
- **Training:** what’s available and useful
- **Sanctions and treatment:** what’s effective
- **Education:** what are states doing now
- **Recommendations for states**
Definition: What Drugs Can Impair

- **Illegal drugs**
  - Narcotics, stimulants, depressants, hallucinogens
- **Legal, non-medicinal**
- **Prescription medications**
- **OTC medications**

**Hundreds of different drugs with more created constantly**

- FARS has codes for 430 specific drugs or metabolites
- Marijuana is illegal, legal, or medicinal in different states
- Designer and synthetic drugs (e.g., synthetic cannibinoids/cathinones)

Report concentrates on **illegal drugs and marijuana**
Data: Problem Size and Characteristics

- **FARS 2013, dead drivers, known test results**
  - 40% with drugs; 1/3 of these were marijuana
  - 40% with alcohol (any BAC)

- **NHTSA roadside survey 2013-14**
  - 22.5% with drugs, both weekday days and weekend nights
  - 13% with marijuana on weekend nights
  - 8% with alcohol on weekend nights; 1.5% with BAC .08 or above

- **Survey (NSDUH)**
  - About 20% of young adults age 18-25 and about 6% of adults age 26+ use illegal drugs or marijuana at least monthly.
Science: Drug Levels, Impairment, Crash Risk

- Any drug can impair – experimental studies
  - Impairment can increase if drugs are used in combination or together with alcohol.
- Any drug can increase crash risk
  - Good crash risk studies are difficult; lots of not-so-good studies
Science: Marijuana as an Example

Marijuana and impairment
- Marijuana impairs motor skills and cognitive functions including vigilance, distance perception, coordination, divided attention, and reaction time – in experimental studies.

Marijuana and crash risk
- Studies show increase in crash risk anywhere from 0% to 200%.
- No scientific consensus.

Measuring marijuana in the body
- THC concentrations drop to 20% of peak 30 minutes after smoking, while impairment lasts for hours.
- Marijuana metabolites can be detected weeks after smoking.
- Contrast with alcohol: BAC ≈ impairment ≈ crash risk.
Challenge: Presence vs. Impairment

- Relationship between a drug’s presence in the body and its impairing effects is complex and not well understood.
- Presence of a drug ≠ impairment
  - Some drugs/metabolites may remain in the body for days or weeks after initial impairment has dissipated.
  - Individuals differ considerably in the rate of absorption, distribution, action, and elimination of drugs.
  - Some people are more sensitive to the effects of drugs, particularly first-time or infrequent users.
  - Wide ranges of drug concentrations in different individuals produce similar levels of impairment in experimental situations.
Challenge: Perceptions of Risk

- There are many common misperceptions about drugged driving, specifically marijuana-impaired driving. Some people think that:
  - Drugged driving is not a serious problem.
  - Drug use does not adversely affect driving and may improve it (due to compensation strategies).
  - There are no laws prohibiting drugged driving (i.e., it is not illegal).
  - The likelihood of detection and apprehension for drugged driving is low.
Laws: Types, Current Status

- **Impairment laws (driving under the influence of drugs-DUID)**
  - Illegal to drive while abilities impaired
  - All states
  - To enforce: observe behavior, link to evidence of a drug

- **Per se laws**
  - Illegal to drive with amounts over the *per se* limit
  - 6 states, for some drugs
  - To enforce: chemical evidence of drug

- **Zero tolerance laws**
  - Illegal to drive with any measureable amount (could include metabolites)
  - 15 states, for some drugs
  - To enforce: chemical evidence of drug
SUMMARY OF CURRENT LAWS FOR MARIJUANA IMPAIRED DRIVING

18 states have zero tolerance or non-zero per se laws for marijuana.

- 9 states: zero tolerance for THC or a metabolite (AZ, DE, GA, IL, IN, OK, RI, SD, UT).
- 3 states: zero tolerance for THC but no restriction on metabolites (IA, MI, WI).
- 5 states: per se limits for THC of 1 ng (PA), 2 ng (NV and OH), or 5 ng (MT and WA); NV, OH, and PA also have non-zero per se limits for metabolites.
- 1 state: reasonable inference law for THC with a 5 ng limit (CO).

STATE BY STATE: Marijuana Drug-Impaired Driving Laws
AS OF AUGUST 2015

1. South Dakota is a zero tolerance state only for drivers under the age of 21.
2. Pennsylvania is often classified as both a zero tolerance and per se state. A minimum threshold of 1 ng is needed for a chemical test to be admitted into evidence for prosecution purposes.
3. Illinois is currently classified as a zero tolerance state. However, legislation has been passed and is awaiting the Governor's signature that would create a 15 ng per se limit.

Legend:
- Orange: Zero tolerance for THC and metabolites
- Purple: Zero tolerance for THC only
- Yellow: THC per se
- Blue: Reasonable inference THC Law
- Gray: No zero tolerance or per se laws for marijuana
STATE BY STATE:
DUID ZT or Per se for Some Drugs
AS OF AUGUST 2015

1 Pennsylvania has both a zero tolerance law for some drugs and a 1 ng per se law for THC. Pennsylvania's 1 ng per se law is in effect a zero tolerance law.

Click on a color to highlight the states in that category
- Per se limit greater than zero for some drugs
- Zero tolerance for some drugs
- Reasonable inference law with a limit greater than zero for THC

SHOW FULL MAP

NCSL 2015c
STATE BY STATE:
Marijuana Possession and Use Laws
AS OF AUGUST 2015

Click on a color to highlight the states in that category:
- Decriminalized (not medical or recreational)
- Medical (not decriminalized or recreational)
- Decriminalized and medical but not recreational
- Everything—recreational, decriminalized, and medical

SHOW FULL MAP

NCSL 2015a, 2015b.
Laws: Types, Current Status

There are several emerging trends in DUID laws (2015 legislative session):

- **Increased nanogram limits**
  - Proposed limit of 25ng (oral)/15ng (blood) in Illinois

- **Oral fluid/saliva testing**
  - Bills in California, New York, Vermont, and Virginia

- **Open container laws**
  - Bills in Alaska and Washington
Enforcement: SFST, DEC, Blood, Oral Fluid

- **At the roadside**
  - Stop driver for traffic violation, observe impairment
  - Screening: SFSTs can screen for some drugs
  - Oral fluid screening kits: 5 minutes, $20

- **At the station**
  - DEC: need trained DRE, exam takes 90 minutes
  - Chemical evidence, usually blood: must draw quickly

- **At the lab**
  - Drug analysis can cost $150-300; labs often backed up

- **Training**
  - Advanced Roadside Impaired Driving Enforcement (ARIDE)
  - Drug Evaluation and Classification (DEC) Program
Prosecution and Adjudication

- **Prosecutors and judges**
  - Often not familiar with DUID cases; different from DUI
  - If both alcohol and drug charges, often drop drug charge
    - Alcohol is simpler, easier to convict

- **Training**
  - **National:**
    - National Traffic Law Center (NTLC)
    - National Center for DWI Courts (NCDC)
    - National Judicial College (NJC)
  - **State:**
    - Traffic Safety Resource Prosecutors (TSRP)
    - Judicial Outreach Liaisons (JOL)
Sanctions and Treatment

- **Drug and alcohol screening**
  - New assessment tools:
    - **CARS**: Computerized Assessment and Referral System
      Cambridge Health Alliance
    - **IDA**: Impaired Driving Assessment
      American Probation and Parole Association
    - **NHTSA briefing on these Oct. 14, 10:00am EDT**

- **Drug treatment**: used in most states

- **Intensive supervision**: used in many states

- **DWI and Drug Courts**
  - 448 combined DWI/drug (hybrid) courts concentrating on DUID offenders
  - 2,800 drug courts
Education: Examples from the States

- **Prescription medications**
  - Arkansas: Arkansas Take Back (disposed of unused meds)
  - New York: Drugged Driving is Impaired Driving
  - Oklahoma: incorporated into End DUI campaign

- **Marijuana**
  - Colorado and Washington: Drive High, Get a DUI

- **Young drivers**
  - Ohio: Drugged Driving = Done Driving

*Links to programs/campaigns in report*
Recommendations for States

1. Planning
   ◦ Assess your state’s drugged driving issues
   ◦ Build broad partnerships
   ◦ Create a drugged driving strategic plan

2. Education
   ◦ Develop and implement a campaign

3. Laws and sanctions
   ◦ Zero tolerance for illegal drugs
   ◦ Zero tolerance for drivers under 21 for all drugs
   ◦ Per se law for marijuana if recreational use is legal
   ◦ Examine your DUID laws and revise as needed
     • Screening tests, implied consent, separate DUI and DUID charges, etc.
Recommendations for States

4. Training
   ◦ Law enforcement: ARIDE and DEC
   ◦ Prosecutors and judges: through NTLC, TSRPs, NJC, JOLs

5. Testing
   ◦ Test all fatally-injured drivers for drugs
   ◦ Test all DUID arrestees for drugs
   ◦ Ensure that labs will provide timely drug test results

6. Prosecution and adjudication
   ◦ Screen and assess all DUID and DUI offenders
   ◦ Use drug courts, intensive supervision, and drug treatment

7. Data
   ◦ Track DUID and DUI separately in crash, arrest, court data
   ◦ Use surveys to track public knowledge and attitudes
National Needs

- **Education**
  - A national drug-impaired driving campaign
  - Materials for prosecutors, judges, legislators

- **Enforcement**
  - Accurate, cheap, convenient roadside oral fluid kits
  - Evaluate SFST usefulness for drugs

- **Data**
  - Drug testing best practices: which drugs, what thresholds
  - Improved drug reporting in FARS

- **Research**
  - Evaluate drug law and program effects
  - Study impairing effects of most common drugs
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