

Drug-impaired Driving Enforcement

Less is known about the magnitude and characteristics of the drugged driving problem than the DUI problem. Responsibility.org believes that in order to better address this issue, there must be improvement in laws, data collection, and enforcement practices.

Policy. Drugged driving legislation is not as straightforward as other established impaired driving laws. There are a few reasons why this is the case. First and foremost, existing technology is limited in determining drug levels and resulting impairment. With alcohol, the legal BAC limit is set at .08; with drugs, there is no agreed upon limit for which impairment can be reliably demonstrated. Second, while alcohol is eliminated from the body fairly quickly, some drugs can be detected for days or even weeks after initial consumption further complicating the issue of proving impairment. Finally, there is an ever-expanding number of substances (synthetic and designer drugs) being manufactured that could potentially impair driving ability. To be able to include new substances, drugged driving legislation cannot be overly prescriptive and be limited to current drug classifications. All this is to say that drugged driving policy is not as straightforward as that for drunk driving.

There are three main policy typologies in which drugged driving statutes can be categorized:

- **Per se laws:** A law that specifies a legal limit for controlled substances; a person commits an offense if they have a detectable amount of the substance that exceeds the legal limit. This type of law is the equivalent of the .08 BAC limit. These laws make it easier to prosecute as it reduces the burden on law enforcement to prove impairment. The challenge with per se laws is that there is yet to be a widely accepted relationship between a specific substance concentration amount, the extent of impairment, and collision risk.
- **Zero tolerance (ZT) per se laws:** A specific type of per se statute whereby the legal limit is set at zero. Driving with any measurable amount of a drug is classified as an offense – individual states determine whether this includes both the parent drug and its metabolites. Many jurisdictions create a hybrid framework that has ZT for illicit substances and impairment-based statutes for prescription/legal substances.
- **Impairment laws:** Policy that requires law enforcement to prove impairment of the driver (i.e., diminished capacity to operate a vehicle safely as a result of the consumption of a psychoactive substance) through the gathering and documentation of evidence. In order for these cases to be successfully prosecuted, linkages must be made to the documented behavioral evidence and recent drug use. Most jurisdictions have impairment laws in place due to a lack of consensus on a drug per se limit.

With respect to DUID policy, Responsibility.org is in support of the following:

- State laws that provide separate and distinct sanctions for DUI and DUID.
- Enhanced penalties for poly-drug or drug use and alcohol consumption while driving impaired.
- Adoption of legal limits for marijuana-impaired and other drug-impaired driving based on a consensus of scientific evidence.
- Zero tolerance per se laws for people under 21 for marijuana and other drugs.

In regards to young drivers, a zero tolerance approach is the ideal. Much like youth are not permitted to drive with a BAC, even if it is below the legal limit, they should not be permitted to drive with any

detectable amount of drugs in their system. If such a law were put in place, it would be important to publicize both its existence and the associated consequences of drugged driving. Youth could be informed in school, through graduated driver licensing programs, and media efforts. This combined with effective enforcement could serve as a drugged driving deterrent.

Detection. A variety of different detection strategies are available to law enforcement to identify drug-impaired drivers. These methods include roadside testing, sobriety checkpoints, saturation patrols, and specialized programs such as the [Drug Evaluation and Classification Program](#) (DEC) and the [Advanced Roadside Impaired Driving Enforcement](#) (ARIDE) program. These programs facilitate the detection of drugged drivers by providing officers with the opportunity to perform high-visibility enforcement and the training necessary to complete a behavioral assessment of impairment.

The drug recognition programs go beyond the [Standardized Field Sobriety Test \(SFST\) training](#) that most officers receive; they become experts on how to recognize impairment induced by substances other than alcohol or a combination of alcohol and drugs. Officers are required to document evidence of observed impairment and collect a sample of bodily fluid to be tested at a laboratory for the presence of drugs (blood, urine, or oral fluid).

Unfortunately, the perceived likelihood of detection for drugged driving is historically low. Current testing protocols in many jurisdictions further reduce the number of potential DUID charges because as soon as a BAC of .08 is detected, testing for additional substances is not performed. One of the primary reasons why this is the case is due to the time required to obtain a warrant for a blood draw. In fact, DUI is the only crime where police stop investigating once minimal evidence is obtained.

Responsibility.org supports a number of measures to increase the identification of drug-impaired drivers on our roadways including:

- Increased testing for drug impairment and mandatory testing for drugs and alcohol in fatal and serious injury crashes.
- Improved drug testing protocols.
- Improved data and record systems which differentiate between arrests for alcohol-impaired driving and drug-impaired driving.
- Expanded DUID law enforcement training, including courtroom testimony training.
- Expanded DUID training for prosecutors and judges.