

Drug-Impaired Driving Laws

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Issue

Describe drug-impaired driving laws, with emphasis on states that have legalized recreational marijuana. Also, describe the tests or techniques used to identify drug-impaired driving.

Summary

All 50 states and the District of Columbia (D.C.) have drug-impaired driving laws. A majority of states, including Connecticut, have driving under the influence of drugs (DUID) laws, meaning it is illegal to drive while impaired by any drug. The remaining states have per se laws that prohibit driving with a detectable amount of a specified drug in the body. Some of these states have zero tolerance per se laws that prohibit driving with any detectable amount of a specified drug in the body. Colorado has a permissible inference law by which a driver's marijuana impairment may be inferred from the state's established legal limit.

As of [2019](#), 10 states, and D.C., have legalized marijuana for adult recreational use. Of these, six states (Alaska, California, Maine, Massachusetts, Oregon, and Vermont) and D.C. have DUID laws; two states (Nevada and Washington) have per se laws; Michigan has a zero tolerance per se law; and only Colorado has a permissible inference law. For more information about states that have legalized recreational marijuana, see [2018-R-0315](#).

Evidence of drug-impaired driving is obtained through blood and urine tests as well as law enforcement officers' observations and advanced training. There is no nationally recognized level of drug-impairment.

Drug-Impaired Driving Laws

Connecticut

Connecticut law prohibits anyone from driving a motor vehicle under the influence of alcohol or drugs. Arrests made for driving under the influence (DUI), either of alcohol or drugs, are similar in most respects. When arresting someone for DUI, a law enforcement officer generally pulls over a

driver for a motor vehicle violation. The officer then speaks with the driver, observes and assesses the driver's behavior, and may administer a field sobriety test. The officer may then arrest the driver and ask him or her to take a blood, breath, or urine test. Under the law, anyone who drives in Connecticut is deemed to have consented ("implied consent") to such chemical tests ([CGS § 14-227b](#)).

While drivers over age 21 have an elevated blood alcohol content (BAC) if it is found to be .08% or higher, there is no such threshold for drugs, including marijuana ([CGS § 14-227a\(a\)](#)). Additionally, while the presence of drugs in a chemical test does not allow a court to directly infer a driver's impairment, it may provide an explanation of the impaired driving observed by an arresting officer. State courts have held that a prosecutor does not have to prove the quantity of drugs in a driver's blood to obtain a conviction, but only that, among other relevant factors, there was a quantity of drugs in the driver's blood (*State v. Weisenberg*, 79 Conn. App. 657, 663 (2003)).

Other States

Driving Under the Influence of Drugs (DUID). DUID laws prohibit driving while impaired by any drug. Including Connecticut, 33 states and D.C. have DUID laws. These laws require law enforcement officers to observe impaired behavior (e.g. erratic or reckless driving) and evidence of specified drug use. Officers then must try to obtain chemical evidence of the drug, generally through a blood or urine test.

Per Se and Zero Tolerance. Under per se laws, it is illegal for a driver to operate a motor vehicle with certain amounts of a specified drug in his or her body regardless of detectable impairment. Of the 17 states that have per se laws, five states (Illinois, Montana, Nevada, Ohio, and Washington) specify limits for marijuana. These limits prohibit driving with certain amounts of tetrahydrocannabinol (THC) in the body. (THC is the primary psychoactive substance in marijuana and is discoverable through blood or urine tests.) Generally, the established THC limits are different for each type of chemical analysis test. For example, under Ohio law a blood sample showing at least two nanograms (ng) of THC and a urine sample showing at least 10ng of THC both indicate marijuana impairment ([OHIO REV. CODE ANN. § 4511.19\(A\)\(1\)\(j\)\(vii\)](#)).

The other 12 states (Arizona, Delaware, Georgia, Indiana, Iowa, Michigan, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Utah, and Wisconsin) have zero tolerance per se laws that prohibit driving with any detectable amount of a specified drug, including marijuana, in the body regardless of observed impairment.

South Dakota has DUID and zero tolerance per se laws. Drivers 21 and older are subject to a DUID law while drivers under the age of 21 are subject to a zero tolerance per se law ([S.D. CODIFIED LAWS §§ 32-23-1 & 32-23-21](#)).

Permissible Inference. Colorado is the only state with a permissible inference law. If at the time of impaired driving a driver's blood contains at least five nanograms of THC it creates a "permissible inference" that the driver may have been under the influence of marijuana ([COLO. REV. STAT. § 42-4-1301](#)). The permissible inference law differs from per se laws in that a blood or urine test above the legal limit does not by itself mean marijuana impairment. Instead, it allows a jury to

determine, based on the totality of the circumstances, whether a driver was under the influence of marijuana at the time of arrest.

For more information on drug-impaired driving laws, see the March 2019 National Conference of State Legislatures (NCSL) [report](#).

Drug-Impaired Driving Enforcement

Drug Recognition Expert (DRE)

Among other things, to help law enforcement officers recognize marijuana impairment the International Association of Chiefs of Police (IACP) and National Highway Traffic Safety Administration (NHTSA) developed the Drug Evaluation and Classification Program (DEC). This training involves 72 hours of classroom instruction and about 50 hours of practical field training. Generally, completion of this program qualifies a law enforcement officer, certified as a [DRE](#), to determine whether an impaired driver is under the influence of drugs. NHTSA routinely awards states highway safety [grants](#) to increase the nationwide number of DREs.

Similar to alcohol-impaired field sobriety tests, the DRE process is systematic, standardized, and intended to assess whether (1) an individual is impaired, (2) the impairment is related to drugs, and (3) the type of drug that led to the impairment. To make a determination, the DRE utilizes a 12-step process that, among other things, notes a driver’s appearance, behavior, and vital signs. Additionally, the DRE process must be performed in a controlled environment like a police station house or department headquarters. Table 1 below describes each step in the process. If at the conclusion of the process drug-impaired driving is suspected, a blood or urine test is administered and submitted for chemical analysis.

DREs must continue taking impaired driving education courses, complete recertification every two years, and meet any other requirements set by national, state and local law enforcement agencies.

Table 1: DRE 12-Step Process

Step Name	Brief Description
1. Breath Alcohol Test	If the driver provides a breath sample measuring below .08 and the impairment is not explained by the breath analysis the initial officer should request a DRE.
2. Interview of the Arresting Officer	The DRE reviews the breath test results and discusses circumstances of the incident and any other relevant evidence (e.g., signs of drug use) with the initial officer.
3. Preliminary Examination and First Pulse	The DRE asks the driver about his or her general health, recent ingestion of food, alcohol and drugs, including prescribed medications. The DRE notes the driver’s behavior, attitude, coordination, speech, breath, and face. The DRE also checks the driver’s pulse for the first of three times to account for nervousness, consistency, and to determine if the driver’s condition is changing. Based upon these factors, if the DRE determines the driver is impaired and not suffering from a medical emergency the process continues.
4. Eye Examination	The DRE examines the driver for horizontal gaze nystagmus and vertical gaze nystagmus (see below). Certain categories of drugs, such as depressants, may cause this.

Step Name	Brief Description
5. Divided Attention Psychophysical Tests	The DRE administers four physical tests: the Modified Romberg Balance, the Walk and Turn, the One Leg Stand, and the Finger to Nose. The DRE can accurately determine whether a person's motor skills are impaired by such tests.
6. Vital Signs and Second Pulse	The DRE takes the driver's vital signs and pulse for the second of three times.
7. Dark Room Examinations	The DRE evaluates the driver's pupils and eyes for size and reaction to light. Additionally, the DRE assesses the driver's mouth and nose for evidence of drug ingestion.
8. Examination for Muscle Tone	The DRE gauges the driver's muscle tone for looseness or rigidity by observing his or her movements.
9. Check for Injection Sites and Third Pulse	The DRE checks for track marks and takes the driver's pulse for the third and final time.
10. Subject's Statements and Other Observations	The driver is given a Miranda warning (i.e., advised of his or her right to remain silent) and asked about drug use.
11. Analysis and Opinion of the Evaluator	The DRE makes a determination about the driver's impairment, indicating the drugs that caused the impairment. Generally, such a determination is based on the totality of the 12-step process and the DRE's own training and experience.
12. Toxicological Examination	Lastly, the DRE requests a blood, oral fluid, or urine test for toxicology analysis.

Source: National District Attorneys Association, (NDAA) 2018 [report](#).

Advanced Roadside Impaired Driving Enforcement (ARIDE)

DRE training is generally considered to be time-consuming and expensive. Although the costs for training are often times covered by state and NHTSA grants, municipal and county law enforcement agencies are responsible for travel and lodging costs as well as overtime pay and manpower coverage while officers attend training. Because of this, IACP and NHTSA created [ARIDE](#). This 16-hour training provides law enforcement officers with basic information on drug impairment, introducing them to the different types of drug categories and physiological effects drugs have on the body. Specifically, it helps officers observe, identify, and articulate the signs and symptoms of drug-impaired drivers as well as medical conditions and other situations that can produce similar signs of impairment. ARIDE training is typically not included in basic police academy training and can be completed through an online course, but only after an officer has demonstrated proficiency in the Standardized Field Sobriety Tests (SFSTs).

In addition, a Government Accountability Office (GAO) [report](#) concluded that marijuana-impaired drivers perform poorly on SFSTs and that these tests may be a valid means by which marijuana impairment can be detected. Table 2 below describes each step of the SFSTs.

Table 2: Standardized Field Sobriety Tests

Test Name	Brief Description
1. Horizontal Gaze Nystagmus Test	The involuntary jerking of the eyes as the eyes gaze to the side. The examiner looks for three indicators of impairment in each eye: (1) eye cannot smoothly follow a moving object; (2) if jerking is distinct and sustained nystagmus; or (3) if the angle onset of jerking is prior to 45 degrees of center.
2. Walk-and-Turn Test	The driver is directed to take nine steps, touching heel-to-toe, along a straight line. After taking the steps, the driver must turn on one foot and return in the same manner in the opposite direction.

	Generally, impairment is indicated if the driver cannot keep balance, begins before instructions have stopped, stops walking to regain balance, uses arms to balance, or takes the incorrect number of steps.
3. One-Leg Stand Test	The driver is instructed to stand with one foot approximately six inches off the ground and count aloud by ones beginning with one thousand (one thousand-one, one thousand-two, etc.) until told to put the foot down. The officer times the driver for 30 seconds. In general, an administering officer observes whether the driver can maintain balance.

Source: American Automobile Association, (AAA) 2019 [report](#).

Blood and Urine Tests

Neither IACP nor NHTSA has endorsed a roadside device (e.g., a breathalyzer) for screening drug-impaired drivers. As such, law enforcement officers generally obtain blood or urine samples to establish drug-impaired driving. Blood tests are the most commonly used chemical tests. Because of delays between initial roadside contact and blood sample draws, a driver’s drug concentration will most likely be lower than what it was at the time of the initial contact. According to a May 2018 Governors Highway Safety Association (GHSA) [report](#), some law enforcement agencies are training officers to draw blood so that drug concentrations can be more effectively measured from the time of initial contact. In addition, blood analysis is costly and requires increased laboratory capacity, leading to a backlog in cases.

Reporting Limitations

A 2018 NHTSA [study](#) revealed that there have been no evaluations of the effects of drug recognition experts or drug-impaired driving laws in reducing drug-impaired driving or crashes. Generally, states do not record drug-impaired driving offenses separately from alcohol-impaired driving offenses. The lack of data on drug-impaired driving has challenged the development and implementation of effective countermeasures. In response, NHTSA recommends that states distinguish impaired driving cases by alcohol, drugs, or both.

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