

Drug-Impaired Driving Laws

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Issue

Describe (1) drug-impaired driving laws, particularly in states that have legalized recreational marijuana, and (2) the tests or techniques used to identify drug-impaired driving. This report updates OLR report [2019-R-0056](#).

Summary

It is illegal to drive under the influence of drugs or controlled substances in all 50 states and the District of Columbia (D.C.) (sometimes referred to as driving under the influence of drugs (DUID) laws). While these laws share a number of similarities with DUI laws for alcohol, they differ primarily in what constitutes being under the influence and how it is measured.

According to the [National Conference of State Legislatures](#) (NCSL), the majority of states, including Connecticut, have impairment-based DUID laws, which require that the prosecution prove the driver was impaired (e.g., by driving recklessly or erratically). 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 where a driver's marijuana impairment may be assumed when the drug amount identified in his or her blood is over the state's established legal limit.

According to the [NCSL](#), as of May 2022, 19 states and Washington D.C. have legalized marijuana for adult recreational use. Of these, 11 states (Alaska, California, Connecticut, Maine, Massachusetts, New Jersey, New Mexico, New York, Oregon, Vermont, and Virginia) and D.C. have DUID laws requiring that the prosecution prove impairment. Seven states have per se laws: four set

a specified amount (Illinois, Nevada, Montana, and Washington), while three are zero tolerance (Arizona, Michigan, and Rhode Island). Colorado is the only state with a permissible inference law.

Evidence of drug-impaired driving is obtained through blood and urine tests as well as law enforcement officers' observations and advanced training. More recently, Alabama, Indiana, and Michigan have begun to administer roadside saliva testing with devices that can screen for marijuana, cocaine, methamphetamine, amphetamine, opioids, and benzodiazepines. In 2020, [Vermont](#) enacted legislation allowing for saliva testing, but it cannot be taken at roadside.

Drug-Impaired Driving Laws

Connecticut

Connecticut law prohibits anyone from driving a motor vehicle under the influence of alcohol or drugs. While a blood alcohol content (BAC) level of .08% or higher is per se evidence of driving under the influence, there is no such threshold for drugs, including marijuana ([CGS § 14-227a\(a\)](#)), as amended by [PA 21-1, June Special Session \(JSS\)](#), [PA 22-26](#), and [PA 22-40](#)). Instead, the law allows police officers to ask a person arrested for a DUI to submit to a “drug influence evaluation” in addition to a breathalyzer or other chemical test. This evaluation is conducted by specially trained drug recognition experts (DREs) and used to determine (1) whether a person is impaired by drugs and (2) the category of drugs causing impairment. It involves a 12-step, standardized process that includes a physical exam, questioning, and various other tests and observations. (See below for additional information about these evaluations.)

As is currently the case when a person refuses a chemical test, if a person refuses a drug influence evaluation (other than the interview portion), it may be used against them in assessing both administrative and criminal penalties. However, the odor of cannabis or burnt cannabis may not be used to justify a stop or search of a person or vehicle, but law enforcement may test for impairment based on this odor if the officer reasonably suspects that a driver was driving under the influence. ([CGS § 14-227b](#) as amended by [PA 21-1, JSS](#), and [PA 22-40](#)).

Police Officer Training. PA 21-1, JSS, requires the Police Officer Standards and Training Council (POST) and the Department of Transportation's (DOT's) Highway Safety Office to jointly (1) issue a plan, by January 1, 2022, to increase access to Advanced Roadside Impaired Driving Enforcement (ARIDE) training and DRE training for police officers and law enforcement units and (2) update the plan triennially. Beginning on that same date, the act also requires that each police officer who has not been recertified for the second time after his or her initial certification to be trained and certified in ARIDE before being recertified.

Regarding DREs, the act also requires POST and DOT's Highway Safety Office to determine the minimum number of police officers to be accredited as DREs for each law enforcement unit, considering recommendations from law enforcement units. POST must also develop and promulgate a model policy to ensure that enough police officers in each unit become trained DREs to meet the minimum requirement POST determines.

Other States

Prosecution Must Prove Impairment. According to a [September 2022 NCSL report](#), 33 states and Washington, D.C. have DUID laws requiring that law enforcement officers 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 younger than 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 5ng 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.

Drug-Impaired Driving Enforcement

As described in a 2015 U.S. Government Accountability Office (GAO) [report](#) (see p. 16), identifying a link between impairment and drug concentrations in the body is more challenging than establishing a similar link for alcohol. The report notes that while alcohol is chemically simple and is metabolized at consistent and predictable rates, drugs are chemically complex, and impairment may not necessarily correspond to a specified concentration level in the blood. Additionally, detectable amounts of a drug may remain in the body even after impairment wears off.

Relatedly, chemical testing for drugs is more complicated than it is for alcohol. Neither the International Association of Chiefs of Police (IACP) nor the National Highway Traffic Safety Administration (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.

To address these challenges, IACP and NHTSA have developed the DRE and ARIDE programs to train police officers to recognize drug impairment. We describe these programs below.

Drug Recognition Expert (DRE)

The IACP and NHTSA developed the Drug Evaluation and Classification Program (DEC) to, among other things, help law enforcement officers recognize marijuana impairment. The program includes about 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.

Similar to alcohol-impaired field sobriety tests, the DRE process is intended to assess (1) whether an individual is impaired, (2) whether the impairment is related to drugs, and (3) the type of drug that led to the impairment. To make a determination, the DRE uses 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.

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.
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: [The International Association of Chiefs of Police](#)

Advanced Roadside Impaired Driving Enforcement (ARIDE)

[ARIDE](#) is a 16-hour training created by IACP and NHTSA. It 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.

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