Drugged Driving: What States Can Do

Erin Holmes, Director of Traffic Safety
AAMVA 2016 Annual International Conference
Williamsburg, VA, August 18, 2016
Drugged Driving: Magnitude of the Problem
How frequently are drugs present?

• The best data comes from **fatal crashes** because drivers (especially fatally-injured drivers) are tested for drugs more frequently than drivers in non-fatal crashes.

• A NHTSA **study** that examined drug involvement of fatally injured drivers found that of the 12,055 drivers with known drug test results in 2009, 33% were positive for the presence of drugs. This represented a 5% increase from 2005.

Percent of *Fatally-Injured* Drivers that Tested Positive for Drugs

- **2005**: 28%
- **2009**: 33%
- **2013**: 40%

*Source: NHTSA / FARS, 2015*
Roadside data

• The most recent roadside survey data revealed an increase in drugged driving.

• Results from the NHTSA National Roadside Survey in 2013-2014 found that more than 22.5% of night-time drivers tested positive for illegal, prescription, or over-the-counter medications (based on the combined results of either or both oral fluid and blood tests).
  
  – Comparatively, only 1.5% of night-time drivers tested positive for a BAC above the legal limit of .08.

• This is much higher than the 16.3% of weekend nighttime drivers who tested positive in 2007.

Roadside data

• Other key findings of the 2013-2014 NRS:
  – Illegal drugs increased from 12.4% in 2007 to 15.1% in 2013-2014
  – Medications increased from 3.9% to 4.9%

• Illegal drugs were more prevalent on weekend nights (15.2%) than weekday days (12.1%).

• The opposite was found for prescription medication – 7.3% on weekend nights and 10.3% on weekday days.

Marijuana: Roadside survey

• The drug that has shown the largest increase in weekend nighttime prevalence is THC.

• In the 2007 NRS, 8.6% of weekend nighttime drivers tested positive for THC. This number increased to 12.6% in the 2013-2014 NRS. This reflects a 48% increase.

DUID Policy: National Snapshot
Responsibility.org and the Governors Highway Safety Association partnered to find some answers...
Report authored by Dr. Jim Hedlund

Recommendations formed by an expert panel consisting of representatives from:

- NHTSA
- ONDCP
- GHSA
- National Traffic Law Center
- AAMVA
- Colorado HSO
- WTSC
- Institute for Behavior and Health
- Responsibility.org
DUID laws

• Drugged driving legislation is not as straightforward as other established impaired driving laws:
  
  – Existing technology is limited in determining drug levels and resulting impairment; there is no agreed upon limit for which impairment can be reliably demonstrated.
  
  – Some drugs can be detected for days or even weeks after initial consumption further complicating the issue of proving impairment.
  
  – There is an ever expanding number of substances (synthetic and designer drugs) being manufactured that could potentially impair driving ability.
DUID laws

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

1. **Impairment laws:** Policy that requires law enforcement to prove impairment of the driver 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.

2. **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.

3. **Zero tolerance laws:** 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.
STATE LAW: MARIJUANA DRUG-IMPAIRED DRIVING LAWS

- Zero tolerance for THC only
- Zero tolerance for THC and metabolites
- Zero tolerance for THC and metabolites (applies only to drivers under age 21)
- THC per se (1 nanogram)
- THC per se (2 nanograms)
- THC per se (5 nanograms)
- Reasonable inference THC law (5 nanograms)
- No marijuana-specific drugged driving law
Marijuana DUID statutes

- **Zero tolerance for THC or metabolites: 9 states**
  - Arizona, Delaware, Georgia, Indiana, Illinois, Oklahoma, Rhode Island, South Dakota, and Utah

- **Zero tolerance for THC only: 3 states**
  - Iowa, Michigan, and Wisconsin

- **Per se limits for THC: 6 states**
  - Pennsylvania (1ng); Nevada and Ohio (2ng); Montana, Washington, and Illinois (5ng)

- **Reasonable inference THC law: Colorado (5ng)**

- **Marijuana exemption in zero tolerance or per se laws: 3 states**
  - Minnesota, North Carolina, Virginia
2016 enacted DUID bills

• AZ SB 1228 – DUID interlock exemption
• IL SB 2228 – establishes 5ng THC per se limit
• MI SB 207 – oral fluid pilot program
• MI SB 434 – oral fluid pilot program
• MS SB 2169 – marijuana open container law
• WV HB 4738 – broadens DUID definition
Emerging trends in DUID legislation

• Increased nanogram limits
• Implied consent language
• Oral fluid/saliva testing
• Open container laws
• Enhanced penalties for poly-substance use
• ZT for under 21
SOLUTIONS & NATIONAL NEEDS
What can states do?

- **Planning** - assess your state’s drugged driving issues; build broad partnerships; create a drugged driving strategic plan

- **Education** - develop and implement a campaign
  - Great examples in CO and WA *(Drive High, Get A DUI)* and OH *(Drugged Driving = Done Driving)*

- **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; enhanced penalties for polysubstance use; consider ALR for drugged drivers
  - Examine your DUID laws and revise as needed – e.g., screening tests, implied consent, separate DUI and DUID charges, etc.
Colorado: *Drive High, Get A DUI*
What can states do?

- **Train practitioners** - law enforcement (ARIDE and DEC); prosecutors and judges (NTLC, TSRPs, NJC, JOLs).
- **Testing** - test all fatally-injured drivers for drugs; test all DUID arrestees for drugs; ensure that labs will provide timely drug test results.
- **Prosecution and adjudication** - screen and assess all DUID and DUI offenders; use DWI/Drug Courts, intensive supervision, and treatment interventions as appropriate.
- **Data** - track DUID and DUI separately in crash, arrest, court data; use surveys to track public knowledge and attitudes.
Support law enforcement

• **Shaq** partnered with Responsibility.org and came to Capitol Hill to bring awareness about the need for more DUID training for law enforcement.

• **GHSA and Responsibility.org** awarded grants to law enforcement agencies in April. Goal is to train at least 200 officers to become DREs.
Support law enforcement

• 2016 Grantees:
  – Florida (certify 27 Troopers as DREs)
  – Illinois (train 300 officers in ARIDE)
  – Nevada (certify 40 officers as DREs)
  – Texas (train 170 officers in ARIDE)

• Four new $20,000 grants will be available to states in 2017. Contact your highway safety office for more information.
National Needs: Education

• Develop and implement a national drugged driving education campaign.
  – FAST Act – NHTSA tasked with increasing public awareness about the dangers associated with drug-impaired driving.
National Needs: Enforcement

• Develop accurate, inexpensive, and convenient roadside oral fluid testing devices.

• Develop accurate, inexpensive, and convenient roadside breath-testing for marijuana.

• Continue evaluating SFSTs; explore whether additional roadside behavioral tests could help.
National Needs: Data

• Establish national drug testing best practices for the drugs to test and the threshold concentrations for each.

• Update the crash data collection guidelines related to drugs in the Model Minimum Uniform Crash Criteria Guideline (MMUCC).

• Revise the FARS coding to include drug concentrations (ng levels) as well as drug presence.
National Needs: Research

• Evaluate the effectiveness of:
  – drugged driving laws
  – education/awareness campaigns

• Continue research on establishing the impairment produced by different concentrations of the most widely-used drugs.
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Washington Traffic Safety Commission
August 18, 2016
Oregon, Alaska, DC...
• Approved by voter Initiative 692 in 1998
  • Granted:
    • Affirmative defense to criminal prosecution for:
      • Qualifying patients and primary caregivers who possess no more than a “sixty-day supply”
      • (what is a 60 day supply?)

• Key events:
  2007 - Definition of sixty-day supply SB 6032 - 24 oz. and 15 plants
  2009 - Change in federal government’s enforcement policy
  2010 - Physician assistants, advanced registered nurse practitioners and naturopaths added as authorizers
  2011 - SB 5073 passes but is partially vetoed by Gov. Gregoire
    • Made it legal if participant in data base – vetoed
  2011 - Change in City of Seattle’s enforcement policy
This is what an ounce looks like.

1 OUNCE

60 JOINTS

DRUG POLICY RESEARCH CENTER
Imagine 15 of these plants (Trees)?
Then Comes “Recreational”

- I-502, Nov. 6, 2012
- ACLU, Rick Steves & Peter Lewis
- $6 million Campaign Fund
Under the new medical marijuana law, recognition cards are required if patients and designated providers 21 and older wish to have access to the following benefits:

- Purchase products sales-tax free.
- Purchase up to three times the current legal limit for recreational users.
- Purchase high-THC infused products.
- Grow more than four plants in their residence.
- Have full protection from arrest, prosecution, and legal penalties, although patients will still have an affirmative defense.
I-502 - Liquor & Cannabis Board sets up regulatory system
Department of Health establishing rules for medical marijuana
Regulations govern growing, processing, distribution, sales, pesticides and testing of marijuana

258 stores reporting sales of 411 with approved licenses (as of August 5, 2016)

822 producers & or processors
Current grow canopy: 13.8 million square feet
• New Medical Market could expand the canopy

Sales (as of August 5, 2016):
$4.2 million average daily sales
FY 2015 - $259,785,729 – tax obligation $65 million
FY 2016 - $972,729,675 - tax obligation $186 million
http://lcb.wa.gov/marijuana/dashboard
Marijuana impaired driving:

• Recent meta-analyses shows driving high doubles crash risk

• Affects focus, motor coordination, drowsiness and concentration

• Drivers involved in fatal crashes show a high frequency of combining pot & alcohol = synergistic effect

• Marijuana drug levels/specific type not shown in national FARS crash data

• DUI citations are down in Washington State
Marijuana Has Always Been the Dominant Drug in Fatal Crashes

Drug-Test Results of Drivers in Fatal Crashes, 2001-2015

By Year and Drug Class

- Narcotics
- Depressants
- Stimulants
- Hallucinogens
- PCP, Steroids, Inhalants

Percent of drivers testing positive by drug type

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Number of Drivers in Fatal Crashes
Under the Influence of Alcohol and/or Drugs

- POLYdrug (Drug Positive for two or more drugs OR any alcohol and drugs)
- BAC>=.08 ONLY
- ONE Drug Only (Drug Positive for one drug OR Alcohol less than .08)

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• Reviewed all toxicology paper reports and manually entered full toxicology outcomes into spreadsheet
• Worked with Dr. Couper to abstract the information for surviving drivers
• Abstracted full toxicology for everyone in fatal crashes who had toxicology testing (drivers, occupants, non-motorists)
• Married to the original FARS record for in-depth fatal crash analysis
• Initial report focused on data years 2010-2014, DRIVERS
### Most Cannabinoid-Positive Drivers Also Tested Positive for Drugs/Alcohol

<table>
<thead>
<tr>
<th>Test Status</th>
<th>Driver Category 1</th>
<th>Sample</th>
<th>Driver Category 2</th>
<th>Sample</th>
<th>Driver Category 3</th>
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<td>Not Tested</td>
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<td>THC Only</td>
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<td>Carboxy-THC Only</td>
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<td>Cannabinoids + Alcohol Only</td>
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<td>THC + Alcohol</td>
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<td>Other Drugs + Alcohol Only</td>
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</tbody>
</table>

**Total Driver Sample, 2010-2014:** 2,926

**+24 in 2015 = 80 total drivers with THC ONLY**
Fatalities Involving Drivers Positive for Alcohol and Delta-9 THC

- In 2010, 44.4% of cannabinoid-positive drivers were positive for delta-9 THC.
- In 2014, 84.3% of cannabinoid-positive drivers were positive for delta-9 THC.
- From 2010-2014, half or more of drivers positive for delta-9 THC exceeded the 5ng/ml per se.
Impaired driving Cases Filed

2009: 41,006
2010: 38,191
2011: 38,024
2012: 34,701
2013: 31,730
2014: 28,588
2015: 26,363

ARIDE
State v. Prado
In-car cameras
Mandatory impound
Marijuana legalization
Mandatory booking
Elimination of blood ICW
Statewide Blood Tests

![Graph showing the increase in statewide blood tests from 2009 to 2015.](image-url)

- 2009: 4,809
- 2010: 5,014
- 2011: 5,131
- 2012: 5,298
- 2013: 5,468
- 2014: 6,270
- 2015: 7,043

Data from WASPC 2016 Spring Exposition and Training Conference.
Processing times not including paperwork

Minutes

2013 2014 2015

192.1 229.3 237.6

113.4 118.4 134.7

blood breath

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PIRE Roadside Survey
Pacific Institute for Research and Evaluation

• Data collection: June, 2014; Nov. 2014 and June, 2015

• Statewide sample -- six counties, five areas within each (Spokane, Yakima, King, Whatcom, Snohomish, Kitsap

• Alcohol and drugs (75 types, with levels)
June 2014 Data Collection

• Six counties, 5 locations
• 926 drivers eligible
• 97% (917) breath tests
• 96% (902) saliva
• 74% (711) blood
• 95% K & A surveys

Male drivers age 20 – 34 over-represented:
  * 21% population
  * 45% survey sample
Among daytime drivers, there was a statistically significant increase in THC-positive drivers in both waves 2 and 3 compared to wave 1. Those exceeding the 5ng per se significantly decreased in wave 2 from wave 1. All other results were not statistically significant but still serve as prevalence.

In this chart, only the points that are connected by a line are statistically significant changes - the stand alone points can be described as 'point in time prevalence estimates with variation due to chance'.

Wave 1 (pre-sales)  Wave 2 (six mos. Post-sales)  Wave 3 (one year post-sales)

Daytime  Over 5ng per se  All Times  Nighttime
Drug Positive Drivers in Washington State
(Average Prevalence Estimates Wave 1 - Wave 3)

- Drug Negative: 64.7%
- THC Only: 11.5%
- THC + Other Drugs (not alcohol): 7.0%
- Illegal Drugs Only: 1.5%
- Medications Only: 14.7%
- Illegal Drugs + Medications: 0.6%

Differences between waves were not significant so we took an average of the three different values to display this general prevalence chart for drugs.
Alcohol and Drug-Positive Drivers in Washington State (Average Prevalence Estimates Wave1 - Wave3)

- No Alcohol or Drugs: 61.8%
- Alcohol Only: 2.8%
- Alcohol+THC: 1.0%
- Alcohol+Other Drugs: 1.1%
- THC: 17.5%
- Other Drugs: 15.8%
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