Drugged Driving: What States Can Do

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Overview

• State of DUI in America
• Magnitude of the DUID problem
• Complexities and challenges of the issue
• DUID policy and laws
• Solutions and recommendations
• National research/program needs
State of DUI in America
Drunk Driving Deaths Decline in 2014

Since 1982: 53%
Since 1991: 37%
Since 2005: 27%

Data Source: NHTSA, FARS, 11/15
Drunk driving fatalities among those under 21 have declined 79% from 1982 to 2013.
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
FARS surviving driver data

• In 2013, **only 31.2%** of surviving drivers were tested for drugs:
  – No drugs were detected in 56.0%
  – Drugs on the FARS list were detected in 23.4%
  – Some other drug was detected in 5.5%
  – Test results were unknown for 15.2%

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-impaired driving: Prevalence
Marijuana: Fatally-injured drivers

In 2013 nationwide, 62.6% of the fatally-injured drivers were tested for drugs.

Of those tested:

- 30.3% A drug in the FARS list was found
- 34.7% Marijuana
- 9.7% Amphetamine
- 57.3% No drugs detected
- 4.6% Unknown

DRUGGED COUNTIES
Most Commonly Detected Drugs for Drivers* in Fatal Automobile Accidents From 1995–2013 by County

* Includes all drivers involved in accidents that caused the death of at least one person.
Source: http://www-fars.nhtsa.dot.gov

DRUGTREATMENT.COM
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 Challenges
Legislatures, law enforcement, and highway safety offices in many states are urged to “DO SOMETHING” about drug-impaired driving, but what to do is far from clear.

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
Drugged driving is more complicated than drunk driving.

<table>
<thead>
<tr>
<th>DRUGGED DRIVING</th>
<th>DRUNK DRIVING</th>
</tr>
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<tbody>
<tr>
<td>Number: Hundreds of drugs</td>
<td>Alcohol is alcohol</td>
</tr>
<tr>
<td>Data on Use by Drivers &amp; Crashes: Limited</td>
<td>Abundant</td>
</tr>
<tr>
<td>Use by Drivers: Increasing</td>
<td>Decreasing</td>
</tr>
<tr>
<td>Impairment: Varies by type</td>
<td>Well-documented</td>
</tr>
<tr>
<td>Crash Risk: Varies by type</td>
<td>Precise</td>
</tr>
<tr>
<td>Beliefs &amp; Attitudes: No strong attitudes – public indifferent</td>
<td>Socially unacceptable</td>
</tr>
</tbody>
</table>

GHSA
RESPONSIBILITY.ORG

18 RESPONSIBILITY.ORG
How many drugs are out there?

- There are three main categories of drugs involved in impaired driving:
  1. Illegal drugs
  2. Prescription medications
  3. Over-the-counter medications

- FARS has codes for 430 specific drugs or metabolites.

- A single drug can have different names and can take different chemical forms.
  
  - Cannabis is the best example as FARS has separate codes for marijuana, THC, $\Delta^9$-THC, unknown cannabinoid.
How many drugs are out there?

- There is an ever-expanding list of drugs and new substances are continually being developed.
  - Since the mid-2000s, there has been a proliferation of new psychoactive drugs.

- Designer drugs: a reformulation of existing chemical compounds.
  - Increase potency; prolong effects; make detection more difficult; make an illegal drug legal

- Common types: synthetic cannabinoids (K2/spice), synthetic cathinones (bath salts), opiate derivatives, reformulated pharmaceuticals, new hallucinogens and stimulants.

- DUID testing implications.
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.
Presence vs. Impairment: Marijuana

• Marijuana metabolites can remain in the body for 30 days or longer.

• THC concentrations fall to about 60% of their peak within 15 minutes after smoking; 20% of their peak 30 minutes after smoking; impairment can last 2-4 hours.

• There is no DUID equivalent to .08 BAC.
  – It is currently impossible to define DUID impairment with an illegal limit as drug concentration levels cannot be reliably equated with a specific degree of driver impairment.
DUID crash risk

- Any drug may increase a driver’s crash risk but effects vary greatly between drivers.
- Impairing effects do not necessarily produce increased crash risk on account of compensation strategies.
- The causal relationship between drug use and collision involvement has not been clearly established.
- The recent NHTSA crash-control study found unadjusted increases in crash risk of 21% associated with illegal drugs and 25% associated with marijuana.

Marijuana crash risk

• The crash risk found in the NHTSA study was no longer statistically significant after adjusting for driver age and gender.
  — Young males are more likely to engage in risky driving behavior; they are also the demographic most likely to use cannabis.

• A comprehensive review conducted by Elvik et al. (2013) found that marijuana increased crash risk by 26%.

• The DRUID project found that marijuana increases crash risk by a factor of 1 to 3 and that THC concentrations of 3.8ng causes impairment comparable to a BAC of .05.

• Other studies have found a doubling of risk of a driver being involved in a fatal or serious injury crash.
Perceptions of risk

• There are many common misperceptions about drugged driving, specifically marijuana-impaired driving:
  – Drugged driving is not a serious problem.
  – Some drug use does not adversely affect driving ability.
  – Some drug use improves driving ability (due to compensation strategies).
  – Driving high is a safer alternative to driving drunk.
  – There are no per se laws for drugged driving.
  – The likelihood of detection and apprehension for drugged driving is low.
Perceptions of risk

- According to a recent Gallup poll:

<table>
<thead>
<tr>
<th>Substance</th>
<th>Very serious</th>
<th>Somewhat serious</th>
<th>Not much of a problem</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alcohol</td>
<td>79%</td>
<td>18%</td>
<td>2%</td>
</tr>
<tr>
<td>Prescription painkillers</td>
<td>41%</td>
<td>42%</td>
<td>15%</td>
</tr>
<tr>
<td>Marijuana</td>
<td>29%</td>
<td>39%</td>
<td>31%</td>
</tr>
<tr>
<td>Prescription antidepressants</td>
<td>28%</td>
<td>36%</td>
<td>33%</td>
</tr>
</tbody>
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*June 24-25, 2015*
Polysubstance use

- Drug use combined with alcohol use exponentially increases traffic crash risk:
  - Low amounts of marijuana combined with low amounts of alcohol cause severe impairment.
  - Research has shown that combining substances has a multiplicative effect on collision risk.
  - **Combining alcohol and marijuana** is common among seriously and fatally injured drivers.
Limitations in crash data

• States vary considerably in how they collect DUID data:
  – How many drivers are tested?
  – What tests are used?
  – How are test results reported?

• The rate at which states test drivers involved in fatal crashes ranges from less than 10% to over 90%.

• FARS data merely reflects drug presence; it does not identify drug concentrations.
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**: 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.
STATE BY STATE:
Marijuana Drug-Impaired Driving Laws

AS OF JUNE 2015

State by State Key
- THC PER SE
- ZERO TOLERANCE FOR THC ONLY
- ZERO TOLERANCE FOR THC & METABOLITES
- REASONABLE INFERENCE THC LAW

*South Dakota is a zero tolerance state only for drivers under the age of 21.

**Pennsylvania is often classified as both a zero tolerance and a per se state. A minimum threshold of 1ng is needed for a chemical test to be admitted into evidence for prosecution purposes.

***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 15ng per se limit.
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: 5 states**
  - Pennsylvania (1ng); Nevada and Ohio (2ng); Montana and Washington (5ng)

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

- **Marijuana exemption in zero tolerance or per se laws: 3 states**
  - Minnesota, North Carolina, Virginia
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.
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.
National research/program needs

- **Education:**
  - Develop a national drug-impaired driving campaign (*FAST Act tasked NHTSA with increasing DUID public awareness*)
  - Develop educational materials for prosecutors, judges, legislators

- **Enforcement:**
  - Develop accurate, inexpensive, and convenient roadside oral fluid testing devices
  - Continue evaluating the effectiveness of SFSTs for identifying drug impairment
  - Explore potential of developing a roadside breathalyzer for marijuana
National research/program needs

• **Data:**
  - Establish national drug-testing best practices (including drugs to test and concentration cut-offs)
  - Improve drug reporting to FARS
  - Increase testing of fatally/seriously-injured and arrested drivers

• **Research:**
  - Evaluate the effects of DUID laws
  - Continue research on establishing the impairment produced by different concentrations of the most widely-used drugs
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