

State Driving Under the Influence of Drugs Laws

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Abstract: Drug-impaired driving is a growing problem in the U.S. States regulate drug-impaired driving in different ways. Some do not name specific drugs or amounts. Others do identify specific drugs and may regulate cannabis separately. We provide up-to-date information about these state laws.

Introduction

Driving under the influence of drugs (DUID) or cannabis (DUIC) is a growing public health problem. Among the effects of driving under the influence of drugs are slowed reaction times, impaired distance judgement, recklessness and aggressive driving, impaired cognitive functioning, and more.¹

From 1995 to 2016, the proportion of fatally injured drivers testing positive for opioids increased from 1% to 7%.² By 2020, that prevalence had risen to an estimated 12%.³ In addition, in 2020 approximately 5% of the United States driving-age population reported driving under the influence of cannabis (DUIC) within the prior twelve months; prevalence was much

greater among young adults, who reported an annual prevalence of nearly 30%.⁴ Other research corroborates this: one study found that from 2002 to 2017, the prevalence of adult-population, past-year cannabis use (not necessarily while driving) went from 10.4% to 15.3%.⁵ Further, cannabis is the most commonly identified drug in the blood of drivers following motor vehicle crashes when excluding alcohol.⁶ Whether opioids, cannabis, or other drugs in the system of these drivers actually led to meaningful impairment in their ability to drive is unknown — and remains one of the challenges regarding enforcement of DUID and DUIC laws.

The majority of U.S. states identify drugged driving as a salient public health concern⁷; however, the legal landscape of drugged driving laws remains inconsistent from state to state. While all states have some form of impaired driving law that encompasses drug use⁸, fewer have a more specific driving under the influence of drugs (DUID) law, and still fewer have a DUIC law. Cannabis is, of course, also a drug. But some states have chosen to regulate DUID and DUIC separately.

Since 2010, there has been a concerted effort to lobby states to amend their DUID/C laws to *per se* or zero tolerance laws in order to mitigate the complexities of enforcing driving under the influence of drugs.⁹ Complicating the matter are the frequent changes in cannabis law and policy over the last decade, including the introduction of medical cannabis laws (MCL), decriminalization of cannabis, and legalization of cannabis for adult use (sometimes referred to as “recreational” use).¹⁰

Many drugs can impact driving ability, including schedule I controlled substances, prescription medications, and over-the-counter drugs accessible directly

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at the pharmacy. But enforcing DUID or DUIC laws is not as straightforward as driving under the influence of alcohol (DUIA) laws. Though some of the end effects can be similar, measuring drug impairment and influence are more complex to determine than for alcohol. Drugs tend to have variable dose-response relationships between two drugs, and even within different portions of the population. Further, different drugs may require different types of measurements (i.e., there is unlikely to be one “breathalyzer” analog in the course of a traffic stop that can detect all drugs a person may have consumed).¹¹

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improved efforts to collect drug measurements when an individual is stopped for suspected impaired or under-the-influence driving. To facilitate DUID and DUIC research, there is a need for accurate data regarding existing state laws. Policy evaluations typically require up-to-date information about the relevant laws. The present research provides state DUID and DUIC laws, and their state statutory citations as of January 2023.

Methods

We conducted a multi-step approach to identifying, categorizing, and analyzing state DUID and DUIC laws, relying on a legal mapping methodology — part of the larger field of legal epidemiology. Legal mapping is a public health law method — also referred to as a “50 state survey” — to identify existing state laws.¹²

We began by identifying existing compilations of state DUID and DUIC laws. In particular, we initially relied on older compilations provided by the Governors Highway Safety Association¹³ and a 2008 report from the National Highway Traffic Safety Administration.¹⁴ Next, we employed traditional legal research techniques, using Westlaw Precision (Thomson Reuters),

to confirm the accuracy of these compilations. Westlaw queries began with a natural language search of the state code, with filters applied for key sections or words. Natural language searches included “driving under the influence,” “operating under the influence,” “driving & under & the & influence,” “driving under the influence /s drugs OR controlled substance*,” “[state name] driving under the influence /p drugs OR controlled substance*,” “cannabis,” “marijuana,” “tetrahydrocannabinol,” and combinations thereof. Additional searches for related sections, such as the state-level controlled substances acts, were conducted using similar Boolean search terms if the section was not directly linked in Westlaw. Westlaw filters for Statutes & Court Rules and jurisdiction (state) were applied when searching for the relevant driving under the influence sections. The existing compilations served as a starting point, but legal research was conducted for all 50 states to determine the most current version of all relevant laws, as of January 1, 2023.

For purposes of analysis, we divided the state laws into the following categories: (1) laws addressing cannabis-impaired driving (DUIC laws); (2) laws addressing driving while impaired by specific drugs other than cannabis (DUID laws); and (3) laws addressing impaired driving more generally, but which did not name specifically applicable drugs. DUID laws could be either *per se* laws, which specify a particular amount of a given drug that qualifies as impaired driving, or *zero tolerance* laws, which restrict driving with any measurable amount of a named drug. We excluded those state laws from further analysis which did not name a specific drug (category 3 above). This decision was made as zero tolerance or *per se* laws impose an enforceable standard, where general impairment/influence language, in the absence of actionable criteria in the statute, do not.

To ensure accuracy in the identified code sections, two of the authors conducted an iterative review process where the laws were coded by one author, and a second author validated the chosen code section. If the authors disagreed or were unsure, both authors met and resolved the matter via mutual agreement.

Results

As of January 1, 2023, 33 states and the District of Columbia had a DUID law applicable to at least one named drug other than cannabis. Twenty-nine states and D.C. had a law specifically applicable to cannabis

(DUIC laws). All of the 29 states with a DUIC law also had a DUID law (see Table 1). Four states had a DUID law but no DUIC law. Seventeen states lacked either a DUID or DUIC law (not shown in Table).

DUID *per se* laws typically included language providing specific limits for named drugs. For example, Virginia’s DUID law forbids driving with “... a blood concentration of any of the following substances at a

Table 1

State Driving Under the Influence of Drugs (DUID) and Cannabis (DUIC) Laws (as of 1/1/2023)

| State | Drugs generally (Per se / Zero tolerance) | Marijuana (Per se/ Zero tolerance) | State Code Section* |
|----------------|---|------------------------------------|--|
| Alaska | Yes | Yes | Alaska Stat. Ann. § 28.35.030(a)(1) |
| Arizona | Yes | Yes | Ariz. Rev. Stat. Ann. § 28-1381(A)(3) |
| Colorado | Yes | Yes | Colo. Rev. Stat. Ann. § 42-4-1301(1)(a); § 42-4-1301(6)(a)(IV) |
| Connecticut | Yes | Yes | Conn. Gen. Stat. Ann. § 14-227a(a) |
| Delaware | Yes | Yes | Del. Code Ann. tit. 21 § 4177(a)(2), (6) |
| D.C. | Yes | Yes | D.C. Code Ann. § 50-2206.11(2) |
| Georgia | Yes | Yes | Ga. Code Ann. § 40-6-391(a)(6) |
| Idaho | Yes | Yes | Idaho Code Ann. § 18-8004(1)(a)-(c) |
| Illinois | Yes | Yes | 625 Ill. Comp. Stat. Ann. 5/11-501(a)(6); 5/11-501(a)(7) |
| Indiana | Yes | Yes | Ind. Code Ann. § 9-30-5-1(c) |
| Iowa | Yes | Yes | Iowa Code Ann. § 321J.2(1)(c) |
| Kentucky | Yes | - | Ky. Rev. Stat. Ann. § 189A.010(1)(d), (12)(a)-(p) |
| Louisiana | Yes | Yes | La. Stat. Ann. § 14:98(c) |
| Maine | Yes | Yes | Me. Stat. tit. 29-A, § 2411(1-A)(A)(1) |
| Massachusetts | Yes | Yes | Mass. Gen. Laws Ann. ch. 90, § 24(1)(a)(1) |
| Michigan | Yes | Yes | Mich. Comp. Laws Ann. § 257.625(1)(a) |
| Minnesota | Yes | - | Minn. Stat. Ann. § 169A.20(2), (7) |
| Mississippi | Yes | Yes | Miss. Code Ann. § 63-11-30(1)(c) |
| Missouri | Yes | Yes | Mo. Ann. Stat. § 577.001, 010(1) |
| Montana | Yes | Yes | Mont. Code Ann. § 61-8-401(1)(b), (c); MCA § 61-8-411(1)(a) |
| Nevada | Yes | Yes | Nev. Rev. Stat. Ann. § 484C.110.2(a); 484C.110.4(a) |
| New Jersey | Yes | Yes | N.J. Stat. Ann. § 39:4-50(a) |
| North Carolina | Yes | - | N.C. Gen. Stat. Ann. § 20-138.1(a)(3) |
| Ohio | Yes | Yes | Ohio Rev. Code Ann. § 4511.19(A)(1)(a); 4511.19(A)(1)(j)(vii) |
| Oklahoma | Yes | Yes | Okla. Stat. Ann. tit. 47, § 11-902(A)(3) |
| Oregon | Yes | Yes | Or. Rev. Stat. Ann. § 813.010(1)(b) |
| Pennsylvania | Yes | Yes | 75 Pa. Stat. and Cons. Stat. Ann. § 3802(d)(1)(i)-(iii) |
| Rhode Island | Yes | Yes | R.I. Gen. Laws Ann. § 31-27-2(a) |
| South Dakota | Yes | Yes | S.D. Codified Laws § 32-23-1(2) |
| Utah | Yes | Yes | Utah Code Ann. § 41-6a-517(2)(a) |
| Virginia | Yes | - | Va. Code Ann. § 18.2-266(v)(a)-(d) |
| Washington | Yes | Yes | Wash. Rev. Code Ann. § 46.61.502(1)(c), (d); 46.61.502(1)(b) |
| West Virginia | Yes | Yes | W.Va. Code, § 17C-5-2(e) |
| Wisconsin | Yes | Yes | Wis. Stat. Ann. § 346.63(1)(am) |

* States where only one code section citation is listed have only one statute that encompasses both DUID and DUIC laws. States where two code sections are listed have two separate statutes for DUID and DUIC. In states where there are two code sections listed, the DUID law is listed first.

level that is equal to or greater than: (a) 0.02 milligrams of cocaine per liter of blood, (b) 0.1 milligrams of methamphetamine per liter of blood, (c) 0.01 milligrams of phencyclidine per liter of blood, or (d) 0.1 milligrams of 3,4-methylenedioxyamphetamine per liter of blood...¹⁵

Other states refer to any measurable amount of specific substances (zero tolerance laws) and may cross-reference to a separate list of “controlled substances.” For example, Kentucky forbids driving “... (d) While the presence of a controlled substance listed in subsection (12) of this section is detected in the blood, as measured by a scientifically reliable test, or tests, taken within two (2) hours of cessation of operation or physical control of a motor vehicle ...”¹⁶

Kansas provides an example of one of the 17 states (not in Table) which criminalize impaired driving generally, but which do not list any specific drugs. In Kansas, it is unlawful to drive “under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle.”¹⁷

Conclusion

Our research suggests several opportunities for states to improve their ability to address impaired driving. The 17 states lacking a DUID law which name specific drugs should consider enacting such a law. These states already have expressed their concern — through legislation — with drug impaired driving. However, failure to name specific drugs is likely to make the laws more difficult to enforce. These laws may force courts and/or law enforcement to rely on potentially subjective indicators of impairment.

The rapidly changing landscape of cannabis regulation — including legalization of adult use — suggests the need to address cannabis-impaired driving as well. Yet 21 states lack a specific DUIC law.

There is an urgent need for additional evaluations of DUID and DUIC laws — including which components of the laws are most effective. By providing up-to-date information for these state laws, our findings enable researchers to take advantage of robust study designs. With an increasing number of overall motor vehicle crash deaths in the U.S., particularly during the pandemic, identifying new interventions is more important than ever.

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