

## Vermont H-511 Analysis

Vermont's legislature should reject H-511. The act, entitled "An act relating to highway safety," is not intended to promote highway safety, but rather to legalize marijuana, which will reduce highway safety.<sup>1</sup> DUID Victim Voices offers the following comments to the Senate proposed amendments to the House bill.

Section 15 Using tobacco or marijuana in a motor vehicle with a child present

Vermont is one of only three states (with SD & NM) that has no DUI Child Endangerment law. Paragraph (c) of section 15 begins to address this disgraceful condition by providing for a starting maximum fine of \$500 for a driver who uses marijuana *while driving*. There is still no additional penalty for driving *impaired* with a child present as 47 other states have. Vermont's Child endangerment law, 13 V.S.A. 1304 provides a maximum 2-year prison sentence that is missing from H-511.

Section 17 Disparities in enforcement of drug laws; marijuana regulatory commission

### Findings

Paragraph (a)(6) asserts:

By adopting a comprehensive regulatory structure for legalizing and licensing the marijuana market, Vermont can revise drug laws that have a disparate impact on racial minorities, help prevent access to marijuana by youths, better control the safety and quality of marijuana being consumed by Vermonters, substantially reduce the illegal marijuana market, and use revenues to support substance use prevention and education and enforcement of impaired driving laws.

This paragraph substitutes wishful thinking for lessons learned from other states:

1. Disparate impact: This has not proven to be true in Colorado, where there was a 10% drop in *overall* marijuana arrests in Colorado from 2012 to 2014, when Amendment 64 went into effect. But during the same time period, according to NPR, there was a 20% *increase* in arrests for Latinos and a 50% *increase* in arrests for blacks.<sup>2</sup>
2. Reduce access to marijuana by youth: This has not proven to be true in Colorado, where SAMHSA reported past month use by youth ages 12-17 years old rising from a pre-commercialization rate of 7.6% in 2005/2006, to 9.9% at commercialization in 2009/2010 and 11.1% in 2014/2015.<sup>3</sup> Note this contradicts the official Colorado statements that are based on the state-sponsored Healthy Kids Colorado Survey. HKCS is a voluntary survey conducted in schools and therefore cannot capture the results of children who have dropped out of school due to use of or addiction to marijuana.
3. Better control the safety and quality of marijuana: There is no basis for this claim, since Vermont

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<sup>1</sup> Colorado's Public Health Executive Director said Oct 25, 2017 that, "There has been no increase in recorded impaired driving," but that is true for marijuana only because Colorado does not record any causes of DUI. Inferential data from FARS shows marijuana-involved traffic fatalities tripled from 41 in 2009 before marijuana commercialization to 123 in 2013.

<sup>2</sup> <https://www.npr.org/2016/06/29/483954157/as-adults-legally-smoke-pot-in-colorado-more-minority-kids-arrested-for-it>

<sup>3</sup> Legalization of Marijuana in Colorado: The Impact Vol 5 Oct 2017. Rocky Mountain High Intensity Drug Trafficking Area, [http://www.rmhidta.org/html/FINAL 2017 Legalization of Marijuana in Colorado The Impact.pdf](http://www.rmhidta.org/html/FINAL%202017%20Legalization%20of%20Marijuana%20in%20Colorado%20The%20Impact.pdf), p36

has no measure of today's quality and safety. No other states have reliable pre/post legalization product safety data either. Be advised that only DEA qualified laboratories have access to THC standards needed to provide qualified test results on THC content, and DEA qualified labs are not permitted to test to support use of federally illegal substances.

4. Substantially reduce the illegal marijuana market: The opposite has been proven in Colorado where seizures of illegal marijuana exports rose from 425 pounds in 2014 to 3.5 tons in 2016.<sup>4</sup>
5. Use revenues to support substance abuse prevention and education and enforce impaired driving laws: Whether or not tax revenue will exceed the societal costs to the state of increased use of the drug is an open question. It cannot be answered from the pilot states that have adopted legal marijuana, since none attempt to measure the societal costs to the state for their decision.

In short, Colorado has demonstrated that marijuana regulation doesn't work as promised. **Stringent regulation has not kept marijuana out of the hands of children**, who are 21% of Colorado's marijuana market.<sup>5</sup> State officials do not agree, citing dubious data, since to do so would admit a political failure.<sup>6</sup> This is unfortunate because the failure is not due to a failure of execution, but rather to a failure of concept.

#### Best practices

Paragraph (e)(1) proposes,

Best practices. The Commission shall examine best practices for addressing impaired driving, including consideration of a regional impairment threshold for the New England states and parity in impaired driving laws and penalties;

#### *Impairment threshold*

There are two problems here. First is that "best practices" and "impairment thresholds" for marijuana's THC are self-contradictory. Colorado and Washington selected 5 ng/ml THC in whole blood as an impairment threshold. The AAA Foundation for Traffic Safety reported in 2016 that, "A quantitative threshold for *per se* laws for THC following cannabis use cannot be scientifically supported."<sup>7</sup> In particular, a 5 ng/ml level ensures that 70% of cannabinoid-positive drivers arrested for driving under the influence will escape conviction.<sup>8</sup>

For victims of drivers impaired by marijuana edibles, the situation is even worse. Blood levels of THC never exceed 3 ng/ml in whole blood for those who consume up to five times Colorado's standard dose of 10 mg THC.<sup>9</sup>

Consequently, Colorado has the weakest DUID law in the nation and Washington is just one step up

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<sup>4</sup> Legalization of Marijuana in Colorado: The Impact Vol 5 Oct 2017. Rocky Mountain High Intensity Drug Trafficking Area, [http://www.rmhidta.org/html/FINAL 2017 Legalization of Marijuana in Colorado The Impact.pdf](http://www.rmhidta.org/html/FINAL%202017%20Legalization%20of%20Marijuana%20in%20Colorado%20The%20Impact.pdf), p 93.

<sup>5</sup> [https://www.colorado.gov/pacific/sites/default/files/Market Size and Demand Study, July 9, 2014\[1\] 3.pdf](https://www.colorado.gov/pacific/sites/default/files/Market%20Size%20and%20Demand%20Study,%20July%209,%202014%5B1%5D%203.pdf), p 13.

<sup>6</sup> <http://www.duidvictimvoices.org/colorado-is-out-of-touch-with-reality/>

<sup>7</sup> Logan B, Kacinko SLK, Beirness DJ, An Evaluation of Data from Drivers Arrested for Driving Under the Influence in Relation to *per se* Limits for Cannabis, AAA Foundation for Traffic Safety, (2016) Page 3

<sup>8</sup> Huestis M, Effects of Cannabis With and Without Alcohol on Driving, ACMT Seminars in Forensic Toxicology, Denver CO, Presentation made December 9, 2015. Slide 28

<sup>9</sup> Vandry R, Hermann ES, Mitchell JM et al., Pharmacokinetic Profile of Oral Cannabis in Humans: Blood and Oral Fluid Disposition and Relation to Pharmacodynamic Outcomes, *J of Anal Tox*, (2017) 41:83-99

from that, since its threshold is a *per se* limit rather than a mere permissible inference level.

Canada is planning to adopt a two-tier approach in its current Bill C-46; 2 ng/ml calls for a fine whereas 5 ng/ml becomes a “hybrid offence”. This in spite of the fact that the Canadian Society for Forensic Sciences declared that impaired drivers can test below 2 ng/ml.<sup>10</sup>

Drugged driving conviction rates are far lower than alcohol-impaired driving conviction rates. Drugged driving conviction rates have been estimated to be as low as 1% in Canada,<sup>11</sup> although our research suggests a much higher rate in Colorado, but still well below alcohol rates<sup>12</sup>. Unfortunately, blood *per se* levels that have proven so successful with alcohol cannot work for marijuana’s THC because unlike alcohol, THC is fat-soluble.<sup>13</sup>

### *Parity*

The second problem with paragraph (e)(1) is the expressed desire to achieve parity in impaired driving laws and penalties. There absolutely should be parity between drug and alcohol impaired driving laws and penalties. Parity in conviction rates does not exist today as noted immediately above.

Vermont does not know what its lack of parity is today. Although 23 V.S.A. 1201 has separate citation numbers for impaired driving due to alcohol (a) (2), and impaired driving due to drugs or a combination of drugs and alcohol (a)(3), there is no means to determine what the prevalence or comparative conviction rates are for drugs versus alcohol. All state reports cite alcohol only.

The Governors Highway Safety Association declared, “States cannot estimate the size or characteristics of their drugged driving problem without good data on drugs in crashes and arrests. This requires alcohol and drugs to be assessed and recorded separately.”<sup>14</sup> Vermont must find a way to do this.

Vermont should also revise 13 V.S.A. 1304’s paragraph (c) to address drug impairment as well as alcohol impairment to have any hope of achieving parity. Another recommended change would be to adopt a tandem *per se* law for drugs, under which a person would be guilty of driving under the influence of drugs *per se* if two sequential events occur:

- The driver was arrested by an officer who had probable cause, based on the driver’s demeanor, behavior, and observable impairment to believe the driver was impaired, and;
- The driver had any amount of an impairing substance in their blood, oral fluid, or breath.

**In short, no state has shown that it is possible to simultaneously legalize a psychoactive drug, maintain or reduce drugged-driving traffic fatalities, and provide justice to victims of drivers who are impaired by such drugs. If Vermont legalizes marijuana, there will be more traffic victims, and justice for them will be denied. Especially under H-511.**

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<sup>10</sup> Wallage, Rachele, et al. Report on Drug *per se* Limits, Canadian Society of Forensic Sciences, Drugs and Driving Committee, April 2017. Page 15

<sup>11</sup> <http://torontosun.com/news/local-news/the-ttc-has-gone-overboard-no-pain-relief-for-subway-driver-who-needs-cannabis-oil>

<sup>12</sup> Wood E, Salomonsen-Sautel S. DUID prevalence in Colorado’s DUI citations, J of Safety Research, (2016) 57 (33-38) <http://dx.doi.org/10.1016/j.jsr.2016.03.005> Table 1

<sup>13</sup> This is an essential report for those wishing to understand why THC *per se* limits are scientifically invalid, and pose a grave threat to DUID victims. <http://www.duidvictimvoices.org/wp-content/uploads/2017/07/Brief-in-opposition-to-C-46.pdf>

<sup>14</sup> [https://www.ghsa.org/sites/default/files/2017-07/GHSA\\_DruggedDriving2017\\_FINAL\\_revised.pdf](https://www.ghsa.org/sites/default/files/2017-07/GHSA_DruggedDriving2017_FINAL_revised.pdf) Page 45