



Recommended Drugged Driving Initiatives

“Essentially what we surmised is that in the state of Missouri you can smoke marijuana, drive a motor vehicle, fail to yield and kill someone, just don’t have the marijuana on you at the time of the crash.”— Trish Bottfield, whose nephew was killed in a crash involving a driver with marijuana in his system and was not charged.

The Problem

- Drugged Drivers are less frequently detected and prosecuted than drunk drivers which means:
 - No conviction which means –
 - No punishment or accountability which means -
 - No rehabilitation which means -
 - No justice for the victim/survivor and
 - No protection for society.
- There is a lack of uniformity or consistency in the way 50 states approach drugged drivers.
- Laws in most U.S. States make it difficult to identify, prosecute or convict drugged drivers.
- Too few police officers have been trained to detect and test drugged drivers.
- There are no valid statistics on the depth and nature of the problem due to a myriad of factors.
- Drunk driving is socially unacceptable, whereas drugged driving is socially acceptable.

The Solution

Congress should support the following initiatives to stop Drugged Driving:

1. **Collect, analyze and publish DUID (Driving Under the Influence of Drugs) data:**
Collect, analyze and publish data to understand the prevalence, causes and consequences of drugged driving. Report the number of DUID citations and causes, and DUID convictions compared to DUI-alcohol. (Recommended by NHTSA and GHSA.)
2. **Implement oral fluid testing (both roadside preliminary devices and evidentiary assays):**
 - Roadside non-quantitative oral fluid testing devices can be used by officers prior to arrest if the officer has *reasonable grounds* to believe that the driver may be impaired by drugs.
 - Results of non-quantitative oral fluid testing shall guide officers in evidence collection.
 - The roadside non-quantitative oral fluid tests results may not be considered evidentiary.
 - Available devices test for drugs including opiates, cocaine, amphetamines, and cannabis.
 - Evidentiary laboratory oral fluid testing may be used in lieu of blood evidentiary testing to prove presence of an impairing substance.
3. **Provide more DREs, ARIDE-trained officers:**
Provide additional training for and use of Drug Recognition Experts (DREs) and officers trained in Advanced Roadside Impaired Driving Enforcement (ARIDE).

4. Implement mandatory drug testing in the following cases:

- Preliminary breath alcohol tests and preliminary drug oral fluid tests for all DUI arrests.
- Evidentiary alcohol and drug tests of all (surviving and deceased) drivers involved in crashes that result in death or serious injuries. Lack of testing ensures DUID remains under-reported.

In 2016 there were 51,914 drivers involved in fatal crashes that killed 37,461 people. Yet only 15,734 (30.3%) were tested for drugs.

5. Implement eWarrants for blood draws:

Reduce delays in collecting blood samples through the use of electronic warrants. Traditional warrants can add 1½ hour to the normal two hours required to collect a blood sample in cases of death or serious bodily injury. An average of 73% of marijuana's THC is cleared from the blood within 25 minutes after smoking, making blood test levels irrelevant after such a delay.

6. Enhance penalties for polydrug impairment:

Enhance penalties for driving under the influence of combinations of drugs or drugs plus alcohol. Combinations of drugs can be more impairing than individual drugs. Enhanced penalties can incentivize and financially support additional drug testing.

7. Adopt responsible DUID legislative options:

1. Zero tolerance for impairing drugs for drivers under the age of 21.
2. Tandem per se where a driver is guilty of DUID *per se* if the following sequence of events occurs:
 - The driver was arrested by an officer who had probable cause, based on the driver's demeanor, behavior and observable impairment to believe that the driver was impaired; and
 - Proof that the driver had any amount of an impairing substance in blood, oral fluid or breath.

Sixteen states have zero drug tolerance for drivers, following the Department of Transportation zero drug tolerance policy for commercial drivers and other select employees. These zero tolerance laws vary widely from state-to-state but all are suitable substitutes for Tandem *per se*. *Per se* limits for drugs are not advised. The impossibility of determining scientifically valid *per se* levels of all scheduled drugs becomes readily apparent when one considers the multiple thousand combinations of drugs that must also be considered.

A 5 ng/ml THC per se law or permissible inference level is NOT a responsible DUID option; most marijuana-impaired drivers test below 5 ng/ml THC in whole blood.

8. Implement 24/7 sobriety programs for chronic alcohol and drug offenders:

24/7 sobriety programs have proven beneficial for chronic alcohol offenders but are far less common for chronic drug offenders.

9. Impose Administrative License Revocation for drugged driving:

Drivers' licenses should be revoked administratively for all drivers who either fail preliminary alcohol or drug tests or who refuse to provide biological samples for alcohol or drug testing.

Specific Requested Action

Congress should revise Title 23 U.S. Code to provide incentives to States to implement the above initiatives to reduce drugged driving. Specific grants to States to reduce alcohol impairment are provided, but none for drugged driving impairment.

The combination of all these initiatives will act as a deterrent to drugged driving, and demonstrate that DUID will not be tolerated. They will provide the means to collect reliable and critical data that will enable States to measure the impact of their initiatives and develop effective long-term strategies to deal with this growing threat on our highways.