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*Education and promoting effective laws to reduce Driving Under the Influence of Drugs (DUID) – A scientifically - based perspective from DUID Victims.*

## **Executive summary of Weakest in the Nation**

Two facets of the Driving Under the Influence of Drugs (DUID) problem are of concern. First, DUID drivers kill and maim innocent victims. Second, DUID victims often fail to see the same kind of justice that is delivered to drunk driving victims because laws designed to deal with alcohol impairment do not work well for drug impairment.

Driving Under the Influence (DUI) is not just about alcohol, and DUID is not just about marijuana. Whereas in years past, alcohol was the only impairing substance commonly found in drivers, today's forensic laboratories report that polydrug impairment (impairment by multiple drugs) is more common than impairment by either alcohol alone or marijuana alone. Although alcohol and marijuana are the most commonly found drugs in drivers involved in fatal crashes, they are very frequently found in combination, often with narcotics, depressants, stimulants, and other drugs.

Public knowledge about drunk driving is widespread but frequently wrong. Knowledge about drugged driving is far less common and even more commonly wrong. The public in general fails to understand the DUI arrest process, the difference between DUI and DUI *per se*, and the many differences between alcohol and other drugs.

Until the last few years, driving has become increasingly safer. The average person will be involved in a fatal crash only about once every 85 lifetimes. So when drivers are warned that an activity like drinking alcohol, using drugs or texting and driving can increase the risk of a fatal crash, drivers can and do ignore such warnings. And they usually get away with it. This explains why so many messages to avoid drunk, drugged or distracted driving are ineffective.

Marijuana-impaired driving is of particular concern not just because of its inherent danger, but because of its increasing prevalence and a common but falsely-held belief that stoned driving is not dangerous. Marijuana-impaired driving is less deadly than drunk driving, just as a .22 caliber bullet is less deadly than a .45 caliber bullet. But all four can and do kill.

Blood tests or breath tests have been used successfully to assess alcohol impairment for decades. But alcohol is the *only* drug for which there is a strong correlation between impairment and blood or breath concentrations. For marijuana's impairing delta 9-tetrahydrocannabinol (THC), all recent scientific research has demonstrated that even though higher doses of THC are more impairing than lower doses, there is absolutely no correlation between levels of THC impairment and blood levels of THC.

Individuals can develop a tolerance to some of the impairing effects of drugs, including alcohol, marijuana and opioids. But tolerance to some of a drug's impairing effects does not make the individual tolerant to all impairing effects. Addicts and other heavy users of drugs can be just as impaired as novice users, just as alcoholics can be as impaired as social drinkers.

Colorado's DUID laws are considered the weakest in the nation for several reasons:

1. The 5 nanogram per milliliter permissible inference level for marijuana's THC ensures that most THC-impaired drivers who test below 5 ng/ml will *not* be convicted of DUI.
2. The 5 ng/ml permissible inference level does not guarantee that THC-impaired drivers who test above 5 ng/ml will be convicted of DUI.
3. Colorado relies upon a very stringent statutory definition of DUI that is difficult to prove in court: *the person is substantially incapable* of safe driving.
4. Colorado has a lower offense of Driving While Ability Impaired (DWAI): *affects the person to the slightest degree* similar to the statutory DUI definition of some other states. But although vehicular homicide due to DUI is a Class 3 felony, vehicular homicide due to DWAI is not even a misdemeanor. It is not unlawful.
5. Colorado tests a minority of DUI suspects and drivers involved in fatal crashes for drug presence. Therefore, the prevalence of drug impaired driving is not well understood.
6. Colorado provides a statutory presumption of innocence for drivers testing below a Blood Alcohol Concentration (BAC) of 0.05, which fails to recognize that a non-impairing dose of alcohol combined with a non-impairing dose of THC can impair a driver.

The following statutory changes are recommended to improve Colorado's DUID laws. These are offered as a menu, not as a package, since the effects of some recommendations overlap.

#### *Transformative changes*

1. Change the THC permissible inference law to a Tandem *per se* law. [See Chapter 12.]
2. Require evidentiary drug testing of any driver who tests positive for drugs on a preliminary drug test; and evidentiary drug testing of *all* drivers involved in fatal crashes.
3. Implement oral fluid testing: roadside non-quantitative preliminary oral fluid testing if the officer has reasonable grounds to believe that the driver may be impaired by drugs; evidentiary laboratory oral fluid testing as an alternative to blood testing to prove the presence of an impairing substance.

#### *Improvements*

1. Redefine DUI for drugs similar to Vermont's recent definition.
2. Establish zero tolerance for all psychotropic drugs in drivers under the age of 21.
3. Reclassify penalties and misdemeanors to criminalize vehicular homicide or assault due to DWAI; make vehicular homicide or assault due to careless driving a felony.
4. Impose the same requirements and sanctions for drug testing that currently apply to alcohol testing.
5. Eliminate the statutory presumption of innocence for a BAC below .05 if psychotropic drugs in addition to alcohol are present.
6. Enhance penalties for polydrug impairment.
7. Eliminate alcohol sanctions for drug impairment convictions.
8. Implement electronic warrants to reduce delays in taking blood samples.
9. Adopt National Safety Council forensic testing recommendations.
10. Include officer-collected evidence from the scene of arrest in statutory reports from the Division of Criminal Justice.

Weakest in the Nation is available on Amazon.com.