



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.
- Current 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.
- Drugged driving is socially acceptable.

The Solution

Congress should support the following initiatives to stop Drugged Driving:

- All states to collect, analyze and publish data to know the prevalence, causes and consequences of drugged driving. Report the number of DUID (Driving Under the Influence of Drugs) citations and causes, and DUID convictions compared to DUI-alcohol. (Recommended by NHTSA and GHSA.)
- Implement oral fluid testing:
 - 1 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.
 - a Results of non-quantitative oral fluid testing shall guide officer in evidence collection
 - b The roadside non-quantitative oral fluid tests results may not be considered evidentiary.
 - c Devices are available that test for opiates, cocaine, amphetamines, and cannabis.
 - 2 Evidentiary laboratory oral fluid testing may be used in lieu of blood evidentiary testing to prove presence of an impairing substance.

- Implement mandatory testing of all (surviving and deceased) drivers involved in crashes that result in death or serious bodily injuries. Today’s lack of testing ensures DUID remains under-reported and often without resolution.
 - ▶ ***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.***
- Provide additional training for and use of Drug Recognition Experts (DREs) and officers trained in Advanced Roadside Impaired Driving Enforcement (ARIDE). Most officers are not qualified to identify drugged drivers.
- Reduce delays in collecting blood samples through the use of electronic warrants. A recent study in Colorado revealed that traditional warrants add an average of 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.
- Enhance penalties for driving under the influence of combinations of drugs or drugs plus alcohol, recognizing that combinations of drugs can be more impairing than drugs individually. This is a strong NHTSA recommendation.
- Implement effective treatment programs such as the 24/7 sobriety program for chronic offenders of both alcohol and drugs.
- Adopt Zero Tolerance laws to facilitate drugged driving prosecution as alcohol per se laws do for drunk driving prosecution. Most states currently have zero tolerance for alcohol in minors, yet we hesitate to do that for illegal drugs. The Department of Transportation has a zero-tolerance drug policy for employees involved in safety-sensitive positions such as commercial drivers. The impossibility of determining per se levels of all scheduled drugs becomes readily apparent when one considers the multiple thousand combinations of drugs that must also be considered.
- Replace 5 ng/ml THC permissible inference or per se with a tandem *per se* law wherein 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 their blood, oral fluid or breath.
- Zero tolerance for impairing drugs for drivers under the age of 21.
- Administrative License Revocation – ALR for drugs same as for alcohol.

Specific Requested Action

We request revisions to 23 U.S. Code §405 to provide incentives to States to implement the above initiatives to reduce drugged driving. There are specific grants to States to reduce alcohol impairment (such as grants to adopt and enforce mandatory alcohol-ignition interlocks) 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. Most importantly, 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.