

Florida SB 1118 sponsored by Senator Gibson Florida HB 299 introduced by Representative Darryle Rouson

0 Per Se or Zero Tolerance Legislation Talking Points

Almost one-third of states have adopted the per se standard, which may be the single most effective policy tool for dealing with drugged drivers.” NHTSA – National Highway Traffic Safety Administration

0 per se: Per se means that upon arrest, any detectable amount of a controlled substance, other than a medicine prescribed by a physician for that driver, in a driver's body fluids, constitutes per se evidence of a "drugged driving" violation.

The prevalence of drugged driving is increasing:

- In 2009, 33% of fatally injured drivers were positive for drugs other than alcohol.ⁱ
- A 2005 study of seriously injured drivers admitted to a shock-trauma center showed that 51% were positive for drugs; 25% of all drivers were positive for *both* drugs and alcohol.ⁱⁱ
- Among randomly stopped weekend nighttime drivers who provided oral fluid and/or blood specimens in 2007, 16.3% were positive for drugs.ⁱⁱⁱ

Data from the National Highway and Traffic Administration revealed that although the number of drivers killed in motor vehicle crashes has declined,^{iv} the proportion of fatally injured drivers testing positive for drugs has increased 18% over the past five years.^v

A study of vehicle assault and homicide suspects showed that 82% were positive for alcohol and/or drugs; 18% were positive for drugs only while an additional 33% were positive for *both* drugs and alcohol.^{vi} Among alcohol-positive drivers with illegal BACs (0.08 or higher), half were also drug-positive. Of alcohol-positive drivers below 0.08 BAC, 65% were drug-positive.

Overall, **marijuana** is the most prevalent illegal drug detected in impaired drivers, fatally injured drivers, and motor vehicle crash victims. Marijuana use doubles risk of crash.^{vii viii} Driving while under the influence of marijuana *and* alcohol is also trending upward with similar deadly consequences. The impairing effects of alcohol are additive; the combination of marijuana with low levels of alcohol is dramatically impairing.^{ix}

Each year, nearly 44,000 impaired drivers are arrested in the state of Florida, of which approximately 4,300 are identified as specifically impaired by drugs.

More than 100 people are killed and more than 1,500 people are injured in drugged driving crashes annually in Florida. These estimates are conservative because drugged driving is commonly underreported and drivers often not tested for the presence of drugs.

Currently 18 states have some form of the per se standard for drugs. We need to demonstrate **zero tolerance** for drugged drivers.

Under **zero tolerance per se** drugged driving laws, the presence of any controlled drug that is not prescribed for the driver constitutes a violation. The arresting officer still must have probable cause to pull the driver over such as erratic and dangerous driving or an equipment violation.

Because impaired drivers may use alcohol or drugs alone or in combination, all drivers arrested for impaired driving should be tested for both alcohol *and* drugs. Like the use of per se alcohol laws offer problem alcohol users a pathway to treatment, per se drugged driving laws could also be used “as an innovative way to encourage substance abusers to enter a treatment program.” *THE FEASIBILITY OF PER SE DRUGGED DRIVING LEGISLATION*

Zero tolerance per se laws will facilitate the successful enforcement and prosecution of drugged drivers in the way that 0.08 BAC per se laws do for drunk driving in all 50 states. Without per se drugged driving laws, prosecution for impaired driving is much less likely

Zero tolerance for all Schedule I and II controlled substances *including marijuana* is the standard for commercial drivers and others in safety-sensitive roles such as airline pilots and air traffic controllers in the United States since 1986. In the interest of public safety this widely used standard should be applied to all drivers.

We all suffer from Florida’s lack of an effective drug *per se* law:

- The public – many drugged drivers today drive impaired by drugs knowing they can “get away with it.”
- The court system – cases relying on subjective measures only take longer to prosecute than cases with crisp, easy-to-understand objective laboratory measures.

SB1118 and HB299 are not anti-drug bills. They are not anti-patients’ rights’ bills. They are bills to protect public safety. People can engage in any type of behavior they wish, as long as they do not endanger others by their choices. Today, more people are choosing to drive after ingesting impairing drugs. Their behavior threatens all of us. It leaves victims in their wake.

Zero-tolerance drugged driving laws can be integrated into current alcohol-impaired driving laws and law enforcement procedures in ways that reinforce and support all efforts to combat alcohol-impaired driving while enhancing drugged driving efforts.”^x

SB1118 and HB 299 accomplish these objectives and will implement a revenue-neutral law whose content has passed appellate review in other states. It will address the growing problem of drug impaired driving in a constitutionally acceptable and workable fashion. It is worthy of support.

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- ⁱ National Highway Traffic Safety Administration. (2013). Drug involvement of fatally injured drivers. *Traffic Safety Facts*. DOT HS 811 415. Washington, DC: NHTSA's National Center for Statistics and Analysis.
- ⁱⁱ Walsh, J. M., Flegel, R., Atkins, R., Cangianelli, L. A., Cooper, C., Welsh, C., & Kerns, T. J. (2005). Drug and alcohol use among drivers admitted to a Level-1 trauma center. *Accident Analysis & Prevention*, 37(5), 894-901.
- ⁱⁱⁱ Lacey, J. H., Kelley-Baker, T., Furr-Holden, D., Voas, R.B., Romano, E., Ramirez, A. et al. (2009). 2007 National Roadside Survey of Alcohol and Drug Use by Drivers: Drug Results. National Highway Traffic Safety. Washington, DC: National Highway Traffic Safety Administration.
- ^{iv} <http://www-nrd.nhtsa.dot.gov/Pubs/811552.pdf>
- ^v National Highway Traffic Safety Administration. (2013). Drug involvement of fatally injured drivers. *Traffic Safety Facts*. DOT HS 811 415. Washington, DC: NHTSA's National Center for Statistics and Analysis.
- ^{vi} Logan, B. K. & Barnes, L. (2006). Combined Drug and Alcohol Use in Drivers Suspected of Vehicular Assault and Homicide. Washington State Patrol. American Academy of Forensic Sciences, Annual Meeting. Seattle, WA, February 2006.
- ^{vii} Li, M., Brady, J. E., DiMaggio, C. J., Lusardi, A. R., Tzong, K. Y., & Li, G. (2012). Marijuana use and motor vehicle crashes. *Epidemiologic Reviews*, 34(1), 65-72.
- ^{viii} Asbridge, M., Hayden, J. A., & Cartwright, J. L. (2012). Acute cannabis consumption and motor vehicle collision risk: systematic review of observational studies and meta-analysis. *British Medical Journal*, 344, e536.
- ^{ix} Ramaekers, J.G., Robbe, H.W., O'Hanlon, J.F. (2000). Marijuana, alcohol and actual driving performance. *Human Psychopharmacology*, 15(7), 551-558
- ^x DuPont, R. L., Voas, R. B., Walsh, J. M., Shea, C., Talpins, S. K., & Neil, M. M. (2012). The need for drugged driving per se laws: A commentary. *Traffic Injury Prevention*, 13(1), 31-42.