



We Save Lives, DUID Victim Voices and High Means DUI, a project of SAM, Smart Approaches to Marijuana, joined forces to develop policies to combat marijuana-impaired driving. These policies are recommended for all states, regardless of the legal status of marijuana use. These policies neither condemn nor support marijuana legalization, but focus only on driving impairment by marijuana and other drugs.

## **Marijuana-Impaired Driving Policy Statement**

### **Goal**

Laws, policies and their enforcement should ensure parity in conviction rates, sentences, and treatment for cases of impaired driving irrespective of cause: alcohol, drugs, or a combination of both. This policy provides guidance to establish laws and policies that deal with the following aspects of drugged driving:

- Enforcement
- Prevention
- Treatment, monitoring, accountability
- Justice for victims

### **Enforcement**

1. Support collection and publication of data for DUID citations and convictions compared to DUI-alcohol.
2. Oppose *per se* limits above zero (0) for THC and other drugs. Instead, the following options are supported:
  - a. Tandem *per se*: convict drivers of DUID *per se* after two sequential events:
    - i. An officer had probable cause, based on the driver's demeanor, behavior, and observable impairment to believe the driver was impaired, and;
    - ii. The driver had any amount of an impairing substance in blood, oral fluid, or breath.
  - b. Zero tolerance for drugged driving under the age of 21.
  - c. Zero tolerance for THC, illicit drugs, and controlled substances not taken in accordance with a valid prescription.
3. Support mandatory drug testing of blood or oral fluid in all DUI cases.
4. Support mandatory drug testing of all drivers (surviving and deceased) in crashes that result in serious bodily injuries or death.
5. Support forensic laboratories establishing minimum testing policies and capabilities compliant with those set forth in *Recommendations for Toxicological Investigation of Drug-Impaired Driving and Motor Vehicle Fatalities – 2017 Update* (Logan, Lowrie, Turri, et al., Journal of Analytical Toxicology, 2017).
6. Support infrastructure, tools, and training for electronic search warrants to speed access to biological fluids for drug testing.
7. Support enhanced penalties for poly-drug impairment.
8. Support use of roadside preliminary oral fluid drug testing.

9. Support use of evidential oral fluid testing in drug cases.
10. Support administrative license revocation for positive roadside drug tests and/or refusal to provide a biological sample for evidential testing.
11. Support expedited phlebotomy programs, including DUID blood draws by local EMS or officers trained as phlebotomists.
12. Support defining impairment for DUID as “impairment to the slightest degree.”
13. Support defining “drug” in traffic law as “Any substance that, when taken into the human body, can impair the ability of the person to operate the vehicle safely.”
14. Support increased funding for DRE and ARIDE training.

### **Prevention**

1. Support remanding of drivers convicted of DUID to education programs and in addition, as needed to counselling, treatment, and rehabilitation programs.
2. Support State Impairment Task Forces that emphasizes DUID in addition to DUI-alcohol.

### **Treatment, monitoring, accountability**

- Support 24/7 programs for DUI and DUID offenders.

### **Justice for victims**

1. Support training and equipping victims’ advocates to service DUID victims as well as DUI-alcohol victims.
2. Provide crash data (including toxicology report) to DUID victims and survivors in a timely manner.
3. Keep victims and survivors informed about the progress of their case in a timely manner.
4. Do everything possible to bring DUID cases to a swift resolution.
5. Treat DUID cases as seriously as DUI-alcohol crashes and crimes.

### **Definitions**

1. DUI: Driving under the influence, also known as DWI, OWI, DUII, OUI, etc. Although commonly assumed to refer only to driving under the influence of alcohol, it is an all-inclusive term referring to driving under the influence of any substance: alcohol, drugs, or a combination of both.
2. DUID: Driving under the influence of drugs. In most jurisdictions this violation is included within the definition of DUI.
3. DUI *per se*: Driving while having a concentration of an intoxicant in blood or oral fluid in excess of statutory thresholds. The common threshold for alcohol is 0.08 gm/dl but there is no scientifically accepted threshold greater than zero for other drugs.
4. THC:  $\Delta$ 9-tetrahydrocannabinol, the primary psychoactive ingredient in marijuana, not to be confused with its secondary inactive metabolite, 11-nor-9 carboxy-tetrahydrocannabinol, also known as carboxy-THC or THC-COOH.
5. Polydrug Impairment: Impairment by a combination of two or more intoxicants, including alcohol.

6. DRE: Drug Recognition Expert.
7. ARIDE: Advanced Roadside Impaired Driving Enforcement.
8. 24/7 programs: These require those arrested for or convicted of alcohol/drug offenses take twice-a-day breathalyzer, oral fluid tests or wear a continuous alcohol monitoring bracelet. Those who fail or skip their tests are immediately subject to swift, certain but modest sanctions—typically a day or two in jail.

### **Issues**

1. THC *per se* limits above zero (0) cannot be supported by science. Due to the complex pharmacokinetics of THC, including its rapid departure from blood into fatty tissues, there is no minimum threshold below which a driver can be considered unaffected after THC use.
2. The costs of enforcing DUI laws and policies should be borne by DUI/DUID fines.
3. Collection time for forensic blood samples range, on average, from 1.5 to 4 hours, depending on geographic location and other factors. Delays in sample collection pose a significant challenge to obtaining forensically relevant toxicological evidence. Training officers as phlebotomists, collaborating with local EMS providers for blood draws, and using electronic search warrants can help reduce this challenge.
4. Polydrug impairment renders non-zero *per se* levels (including that for alcohol) of limited value. For example, a driver impaired by two drugs, each with a *per se* limit of 2 ng/ml would not be convicted if each drug tested at 1.5 ng/ml. But in combination, the drugs may pose a greater risk to the public than either drug individually, or greater than either drug at 2ng/ml.
5. Implementation of enhanced penalties for polydrug impairment may require modification of statutes that provide a presumption of innocence for drivers who test below .05 g/dl of alcohol in blood. See above comment. A .05 g/dl statutory presumption of innocence should be restricted to cases of impairment by alcohol alone.