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DRIVING UNDER THE INFLUENCE OF DRUGS (DUID) LEGISLATION IN THE UNITED STATES

NOVEMBER 2002

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EXECUTIVE SUMMARY

Recent research^{1,2,3,4,5} indicates that driving under the influence of illegal drugs (DUID) other than alcohol is common; however, drugged-drivers are less frequently detected, prosecuted, or treated when compared with drunk-drivers.

In an effort to examine current public policy on drugged driving, The Robert Wood Johnson Foundation (Substance Abuse Policy Research Program) provided funding to The Walsh Group P.A. and The American Bar Association's Standing Committee on Substance Abuse to review state laws regarding drugged-driving, and to convene meetings of experts [Police, Judges, Prosecutors, Health & Safety, Constituent Groups, etc.] in a consensus development process to explore how these laws might be made more effective. This document provides a comprehensive analysis of state statutes regarding DUID.

In the developing process of substance abuse, there are often warning signs that provide an opportunity for early identification and treatment. Typical warning signs include trouble with the police (e.g. DUI, drunk and disorderly charges) or ending up in the emergency room. Our vision, for a more effective public policy to cope with the increasing problem of drugged drivers, involves the concept that detection and prosecution can provide an opportunity for treatment while improving traffic safety.

The good news contained in this document is that the majority of state DUID statutes contain provisions for substance abuse evaluation, education, and treatment for those convicted of drugged-driving. The bad news is that the current law in most states makes it exceedingly difficult to identify, prosecute, or convict drugged drivers.

There are three principal types of drugged-driving laws: 1) Statutes that require drugs to render a driver "incapable" of driving safely; 2) Statutes requiring that the drug impair the driver's ability to operate safely or require a driver to be "under the influence or affected by an intoxicating drug"; and 3) Per se laws which make it a criminal offense to have a drug or metabolite in one's body/body fluids while operating a motor vehicle (often referred to as "Zero Tolerance" laws). In the first two types of statutes, which are the most prevalent in the United States, the state must prove that "the drug" caused the impaired driving, which is a technically complicated and difficult task. During the consensus process in this project, the stakeholders [police, judges, prosecutors, health and safety etc.] agreed that the 'per se' type statutes provide a better mechanism to facilitate the identification, prosecution and potential treatment of drugged-driver offenders. Unfortunately, only eight states (AZ, GA, IA, IN, IL, MN, RI, and UT) currently have per se type statutes.

Overall, our state-by-state analysis indicates there is a lack of uniformity or consistency in the way the States approach drugged-drivers. The National Household Survey on Drug Abuse indicates that roughly 12 million adult Americans over the age of 18 are current users of illegal drugs⁶. The majority of these people are also licensed drivers.

Considering the prevalence of drug abuse in the nation our stakeholders believe the States need to take a more practical approach to identifying, prosecuting, and treating drugged-drivers.

The bottom line is that the current DUID statutes in most states do not support or encourage enforcement and prosecution of DUID laws. As the problem of substance abuse in the nation is significant, there is clearly a need for national leadership at the Federal level to develop model statutes and to strongly encourage the States to modify their laws to be more effective.

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Driving Under the Influence of Drugs (DUID) Legislation in the United States

PRÉCIS

Introduction

This report has been compiled pursuant to a joint effort by The Walsh Group and The American Bar Association's Standing Committee on Substance Abuse and funded by The Robert Wood Johnson Foundation to examine the feasibility of uniform per se (or zero tolerance) legislation for the offense of Driving Under the Influence of Drugs (DUID). The purpose of this report is threefold:

1. To summarize aspects of the current DUID laws for all 50 states and the District of Columbia
2. To identify the contestable issues that might arise in a discussion of implementing per se laws for DUID in the individual states
3. To provide anecdotal information, where possible, depicting the States' usage of Drug Recognition Experts and Evaluations in the investigation and prosecution of DUID.

The legislative information in this report is current as of December 2000. The main sources consulted in the drafting of this report were the Codified Laws, the Codes and Statutes of the individual states and the District of Columbia, and the Digest of State Alcohol-Highway Safety Related Legislation, Eighteenth Edition (2000) published by the National Highway Traffic Safety Administration, U. S. Department of Transportation. Particularly in the recitation of sanctions, the import of this report is an attempt to discern how each state views the prohibited behavior and what level of seriousness each state attaches to it. This report is not intended to be a reference to be relied upon for official legal citation; please consult the most recent official statutes in each individual state for official citation.

The appellation "DUI" is used for any drunk or drugged driving offense although this report targets only statutes related to drugged driving. References to any alcohol-related DUI are limited. "DUID" refers specifically to drugged driving offenses. "DRE" refers to both Drug Recognition Evaluations and Drug Recognition Experts (police officers specially trained to perform drug recognition evaluations).

Comparisons and Contrasts Among the States

(see Appendix I for State by State Comparison Summary)

DUID Statutes:

DUID statutes are predominately found in the Transportation or Motor Vehicle Codes or Titles of the respective states' Codes or Statutes. In only three states (Idaho, Minnesota and Texas) can one find the state's DUID statutes in the Penal Code or Criminal Title.

All of the states save Texas and New York use the phrase "under the influence" in their DUID statutes. Several of the states have gone on to define the standard that constitutes "under the influence" within the body of the statute. A total of 14 states (Alabama, Arkansas, Illinois, Kansas, Nevada, Maryland, New Mexico, North Dakota, Oklahoma, Pennsylvania, South Dakota, Vermont, Wisconsin, and Wyoming) set the standard at "incapacity"; i.e., the influence of the drug "renders the driver incapable of safely driving." All of these states have placed this standard in the language of the DUID statute. Incapacity to drive safely is thus linked to the drug ingested and the prosecutor must show a connection between drug ingestion and the incapacity of the driver.

Eight states (Arizona, Florida, Hawaii, Indiana, Kentucky, Montana, South Carolina, and Virginia) use the standard of impairment to define "under the influence" so that the influence is such that the driver's abilities are impaired. This suggests the requirement of a less stringent effect on the driver than one that renders the driver incapable of safely driving; nevertheless, the prosecutor must still prove that the impairment must be directly related to the drug ingested.

Six states (Colorado, Michigan, Minnesota, Mississippi, Oklahoma, and Tennessee) use the standard of impairment to construct a separate offense so that, in these states, a person can be charged with either driving under the influence or with impaired driving, or with both. New York also uses the term "impaired driving," but that is the only offense with which a person may be charged in New York. It does not have a statute relating to "under the influence."

Likewise, Texas also shuns the language of "under the influence." It sets a standard of intoxication, which it defines as "not having the normal use of mental or physical faculties" by reason of ingestion of a drug. Texas also makes it illegal for chemically dependent persons who are a danger to themselves or for those who are addicted to a controlled substance or another drug which renders that person incapable of driving, to receive a driver's license. This has the effect of a zero tolerance provision for these classes of persons in that it is illegal for such persons to drive a vehicle without a license.

There are a total of 16 states that have variations of zero tolerance type legislation with regard to DUID. Five states (California, Colorado, Idaho, Kansas, and West Virginia) make it illegal for any drug addict or habitual user of drugs to

drive a vehicle in their states. Two states (North Carolina, South Dakota) make it illegal for any person under the age of twenty-one to drive with any amount of a prohibited drug or substance in their bodies. One state (Nevada) has determined that driving with specific percentages of prohibited drugs or substances other than alcohol is a per se violation of its DUI statute. But only eight states (Arizona, Georgia, Indiana, Illinois, Iowa, Minnesota, Rhode Island, and Utah) will not tolerate any presence of a prohibited drug or substance in a driver's body while he/she is driving. Any amount found in the blood or urine of drivers while operating a motor vehicle is a per se violation of those states' DUI statutes.

In addition to its "under the influence" statute, the state of Washington has a "negligent driving" statute that prohibits the negligent operation of a vehicle if it "endangers or is likely to endanger any person or property, and [the driver] exhibits the effects of having consumed an illegal drug."

Only two states (Hawaii and New York) have DUID statutes separate from their DUI-alcohol statutes. In all of the other states, a driver violates a DUI statute if he/she drives under the influence of alcohol, drugs, or a combination of alcohol and drugs. The language used in all of these statutes, "or", infers that it does not matter what substance is influencing the driver, or that the driver is under the influence of a combination of substances [e.g. Alcohol plus drugs]. The violation is the same, as are the ensuing penalties. The one exception found is the state of Washington, where the DUID language is included in the overall DUI statute, but different penalties attach where there has been only drug use, as opposed to alcohol use or a combination of alcohol and drug use.

Defenses Available:

A total of 21 states (Alabama, Arizona, Arkansas, Colorado, Delaware, Georgia (with one exception), Idaho, Illinois, Kansas, Kentucky, Montana, North Carolina, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, Washington, and West Virginia) specifically disallow legal entitlement to use the drug as a defense to a DUID charge. Maryland allows for limited use of legal entitlement as a defense in two circumstances: 1) where the Defendant was unaware that the drug would render him/her incapable of safely driving, or 2) where the Defendant was legally entitled to use a controlled substance. North Dakota will allow legal entitlement to be used as a defense if the drug was used only as directed or cautioned by an attending physician or other practitioner who legally prescribed or dispensed the drug to the Defendant.

Use of a drug pursuant to a valid prescription and/or according to directions is a defense to a DUID charge in several states (Arizona, Indiana, Iowa, Minnesota [all per se states], and North Carolina). In the state of Washington, use of a drug pursuant to a valid prescription is a defense to a charge of negligent driving. In North Carolina, it is a defense to a per se charge if the person under 21 lawfully obtained the substance and was using it in "therapeutically appropriate amounts" at the time of the offense. Georgia will allow the defense of legal entitlement to a

charge under its per se statute unless the driver is rendered incapable of safely driving by the drug use. In California, the zero tolerance provision will not be applied to a drug addict who is participating in a narcotic treatment program. In Utah, it is an affirmative defense to a charge under its per se statute that the controlled substance was involuntarily ingested or was prescribed by a practitioner for use by the defendant. (This could be a serious problem in states that have enacted medical marijuana laws.)

Wisconsin allows a defense to a charge of DUID "causing injury" if the Defendant can prove that the injury would have occurred even if he/she had been using due care and was not under the influence of a drug.

Implied Consent Law:

All but five states (Alabama, Alaska, Massachusetts, New Jersey, and West Virginia) extend their implied consent [to provide a specimen if requested by police] laws to instances of DUID. However, both Alabama and Alaska make provision for compulsory testing in certain circumstances involving serious injury or death related accidents. Of those 45 states (plus the District of Columbia) that do extend implied consent laws to drugged driving, six states (Arkansas, Minnesota, Nebraska, New Mexico, Ohio, and Rhode Island) have taken an additional step by providing criminal penalties for a refusal to take a test under the implied consent law. Alaska also provides for criminal sanctions under its limited circumstances of compelling a test. New Mexico has a separate statute specifically denoting a refusal to test as a separate crime. A couple of other states (Kentucky and Maine) do not provide for criminal penalties, but uses a refusal to test as an enhancement of penalties should the driver be convicted of DUID. Twenty-six states (Alaska, California, Delaware, Florida, Hawaii, Illinois, Iowa, Louisiana, Maine, Maryland, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, Texas, Vermont, Washington, and Wisconsin) and the District of Columbia allow for the forced taking of a specimen for a chemical test over the objection of a driver. In the majority of cases, the taking of a specimen without consent is limited to circumstances where there has been a serious injury or death related accident and there is probable cause that the driver is DUI. Of those twenty-six states, New Mexico, Pennsylvania and Vermont consider such action a search and therefore require either a search warrant or the exigent circumstances that would permit a warrant-less search and seizure. Wisconsin, too, will only allow a forced test through the use of "lawful means."

Hawaii is the only state extending its implied consent law to cases of drugged driving that does not allow evidence of a refusal to take a test to be admitted into evidence in any case against the defendant driver. Maryland will only allow such evidence if it is "material and relevant" to issues related to the DUI offense. Michigan admits such evidence only to show that a test had been requested. Virginia allows the introduction of such evidence only for purposes of rebuttal.

Wisconsin will only hold such evidence to be admissible if its implied consent provisions were correctly followed. All of the other states and the District of Columbia extend their implied consent laws to DUID and hold that evidence of a refusal is admissible in criminal cases, and several also allow it in any civil case against the defendant driver.

Under the implied consent provisions most state statutes stipulate the type of specimen that police officers are authorized to collect. Forty states permit blood and or urine. Two states (MD, and TX) only allow blood. Five states permit saliva [CO, MO, NY, ND, OK]. And eight states (AZ, GA, IN, KS, LA, NV, NC, SD) permit "Other bodily substances." Because the implied consent does not extend to DUID there are no provisions for collecting a specimen to test for drugs in three states (MA, NJ, and WV).

Sanctions:

It is impossible to compile an overview of sanctions among the states for either refusal to take a test or upon conviction. Some states have relatively light sentences for first time offenses; others throw the book at first time offenders. A few states have made a second or third offense a felony; others do not reach felony status until a fourth or subsequent offense has been committed. As indicated in the discussion of the implied consent laws, a few states attach criminal penalties to a refusal to take a test; most of the others only provide for administrative license suspension and/or revocation. Again, the time periods for such suspensions/revocations run the gamut. For both refusals and upon conviction, some states provide for mandatory sentencing with no exceptions, some provide for mandatory sentencing with exceptions, and some have no mandatory requirements.

Penalties in addition to fines and incarceration likewise run the gamut from state to state. Many states employ community service, house arrest, electronic monitoring, work release, restitution, and the assessment of costs and fees to supplement the court's ability to sanction offenders.

Thirty-one states provide for court-ordered substance abuse treatment and/or education for offenders. A few of the states allow courts to "sentence" offenders to inpatient or outpatient treatment facilities or programs as part of their sentences (FL, KY, MA, MO, MT, NH, PA, TN, TX). Several of the states require defendants to participate in screening processes to establish whether additional participation in educational or treatment programs would be beneficial to the defendant, and then order the defendant to participate in the recommended programs (AZ, MT). Several states require participation in a program or treatment as a condition of probation or as a pre-requisite to reinstatement of driving privileges (AL, ME, NC, RI, SC, UT, VT, WV).

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State Data



Code of Alabama
Section 32-5A-191

Type of DUID Law: Under the Influence: Incapacity

Section 32-5A-191

(a) A person shall not drive or be in actual physical control of any vehicle while: (3) under the influence of a controlled substance to a degree which renders him incapable of safely driving; (4) under the combined influence of alcohol and a controlled substance to a degree which renders him incapable of safely driving; or (5) under the influence of any substance which impairs the mental or physical faculties of such person to a degree which renders him incapable of safely driving.

Type of Drugs Prohibited: A controlled substance or any substance which impairs mental or physical faculties

Required Proof:

1. The Defendant was driving or in actual physical control of a vehicle
2. At time of driving, the defendant was under the influence of a prohibited substance
3. That the influence of the prohibited substance was such that it rendered the defendant incapable of safely driving

Possible Defenses Allowed by Statute: The fact that any person charged with violating this section is or has been legally entitled to use...a controlled substance shall not constitute a defense against any charge of violating this section.

Implied Consent for Drugs: No

Special Circumstances: Under a separate provision, if a person is Involved in an accident resulting in a "serious physical injury", and where there are reasonable grounds to believe that he was driving while under the influence of amphetamines, opiates or cannabis, then that person shall be deemed to have given consent to a test of his blood for the purpose of determining the presence of the drugs listed. Section 32-5A-192.1 (a)

Arrest Required Prior to Test: Yes, for special circumstance

Specimens to be Tested: Blood and Urine for special circumstance

Sanctions for Refusal to Test:

Evidentiary: Refusal admitted into evidence

Criminal: None

Administrative: For refusing under the special circumstance, 2 years mandatory suspension

Sanctions Following Conviction:

Criminal: Not more than 1 year imprisonment, \$600 - \$1200 fine for 1st offense; not more than 1 year (mandatory 48 hrs or 20 days community service in non-injury cases), \$1000 - \$5100 for 2d offense within 5 years; 60 days (mandatory) -1 year, \$2100 - \$10,000 for 3d offense; 1 year and 1 day (mandatory, or successful completion of treatment), \$4100 - \$10,000 for 4th or subsequent offense. In cases of severe injury DWI (assault in the 1st degree), 2-20 years, not more than \$10,000.

Court-Ordered Other: Defendant may be required to pay restitution; Special fine of \$100 mandatory; Court may forbid defendant to drive for a limited period or perpetually.

Administrative: Six month suspension (mandatory) for 1st offense; 1 year revocation for 2d offense; 3 years revocation for 3d offense; 5 years revocation for 4th or subsequent offense. Defendants must complete a substance abuse program prior to reinstatement.

Possible Contestable Issues: In states where a causal connection is required between the presence of the specific substance ingested and the resulting incapacity, there might be a resistance to implementing a zero tolerance version of the statute. Such evidentiary requirements are indicative of some concern that the drug itself is the cause of the incapacity. These states often require expert testimony (although there is no indication that Alabama courts do) when making this determination. Likewise, such states are less likely to welcome the testimony of a Drug Recognition Expert or value the evidentiary weight of a Drug Recognition Evaluation without more corroboration or other weight.



Alaska Statutes
Section 28.35.030

Type of DUID law: Under the influence

Section 28.35.030

(a) A person commits the crime of driving while intoxicated if the person operates or drives a motor vehicle...

1. while under the influence of ...any controlled substance
2. while the person is under the combined influence of intoxicating liquor and a controlled substance

Types of Drugs Prohibited: Any controlled substance

Required Proof:

1. The Defendant was operating or driving a motor vehicle in Alaska
2. At time of driving, the defendant was under the influence of a controlled substance or the combined influence of intoxicating liquor and a controlled substance

Possible Defenses Allowed by Statute: None

Implied Consent for Drugs: No

Special Circumstances: A driver shall submit to a test of blood or urine for a controlled substance if there are "reasonable grounds" to believe that the person was driving or operating a motor vehicle in this state that was involved in an accident causing death or serious physical injury to another person, or where the driver has been arrested for DUI

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood and Urine under the special circumstances listed above

Sanctions for Refusal to Test:

Evidentiary: Refusal admitted into evidence

Criminal: Under the special circumstances cited above, not more than 1 year imprisonment and not more than \$5000 fine (for Class A misdemeanor) to not more than 5 years imprisonment and not more than \$50,000 fine (for Class C felony).

Administrative: Mandatory 90 day Revocation for 1st refusal; not less than one year for 2d refusal within 10 years; not less than 3 years for 3d refusal within 10 years; not less than 5 years for 4th and subsequent refusals within 10 years.

Sanctions Following Conviction:

Criminal: Not more than 1 year imprisonment (mandatory 72 hours), not more than \$5000 fine (mandatory \$250) for 1st offense; not more than 1 year (mandatory 20 days), not more than \$5000 (mandatory \$500) for 2nd offense; not more than 1 year (mandatory 60 days), not more than \$5000 (mandatory \$1000) for 3rd offense occurring between 5-10 years after previous offense; not more than 1 year (mandatory 120 days), not more than \$5000 (mandatory \$2000) for 4th offense; not more than 1 year (mandatory 240 days), not more than \$5000 (mandatory \$3000) for 5th offense; not more than 1 year (mandatory 360 days), not more than \$5000 (mandatory \$4000) for 6th offense.

If three or more offenses occur within 5 years, then offense is a felony, with not more than 5 years (mandatory 120 days), not more than \$50000 (mandatory \$5000) for 3rd offense; not more than 5 years (mandatory 240 days), not more than \$50000 (mandatory \$5000) for 4th offense; not more than 5 years (mandatory 360 days), not more than \$50000 (mandatory \$5000) for 5th and subsequent offense.

Court-Ordered Other: Community Service mandatory 24 hours for 1st offense; mandatory 160 hours for 2nd offense; discretionary for subsequent offenses; Restitution may be ordered; Incarceration, EMS, Police, Fire Dept. costs may be assessed.

Administrative: Not applicable to DUID

Possible Contestable Issues: States requiring a lesser prosecutorial burden than that required by the standard of incapacity may be more willing to explore a zero tolerance regime. Most states now allow objective testimony of behavior that is indicative of being under the influence by police officers, and are also often more amenable to the use of Drug Recognition Experts and Evaluations.



Arizona Revised Statutes
Section 28-1381

Type of DUID Law: Under the Influence: Impairment
Zero Tolerance (Per Se)

Section 28-1381

A. It is unlawful for any person to drive or be in actual physical control of any vehicle within this state under any of the following circumstances:

1. While under the influence of...any drug, a vapor releasing substance containing a toxic substance or any combination of liquor, drugs or vapor releasing substances if the person is impaired to the slightest degree.
2. While there is any drug defined in section 13-3401 or its metabolite in the person's body

Type of Drugs Prohibited: Any drug, any substance containing a toxic substance, or any drug (or its metabolite) defined in Section 13-3401 (very extensive listing).

Required Proof:

1. Defendant was driving or in actual physical control of a vehicle in Arizona
2. At time of driving or control, Defendant was under the influence of any drug or substance containing a toxic substance such that the defendant was impaired to the slightest degree OR
3. At time of driving, any drug or its metabolite that is listed in Section 13-3401 was present in the Defendant's body

Possible Defenses Allowed by Statute: It is not a defense to Section 28-1381 A (1) that person is or has been entitled to use the drug under the laws of the state, but "a person using a drug prescribed by a medical practitioner...is not guilty of violating subsection A, paragraph 3 of this section. Section 28-1381D.

Implied Consent for Drugs: Yes

Special Circumstance: Arizona has a separate implied consent law where a law enforcement officer can request a driver to submit to a chemical test for drug content if the driver is involved in an accident that caused either a death or a serious physical injury and either (1) there is "probable cause to believe" that the driver caused the accident or (2) the driver was issued a citation for a traffic offense. Section 28-673.

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood, Urine and "Other Bodily Substances"

Sanctions for Refusal to Test:

Evidentiary: Refusal is admitted into evidence

Criminal: None

Administrative: 12-month mandatory suspension for 1st offense, 2-year mandatory suspension for subsequent refusal within 60 months.

Sanctions Following Conviction:

Criminal: Not more than 6 months (mandatory 24 hours) imprisonment, not more than \$2500 (mandatory \$250) fine for 1st offense; not more than 6 months (mandatory 30 days), not more than \$2500 (mandatory \$500) for 2nd offense within 60 months; 2 1/2 - 3 years (mandatory 4 months), not more than \$150,000 for 3rd offense within 60 months; 3-12 years (mandatory 8 months), not more than \$150,000 for 4th or subsequent offense within 60 months.

Court-Ordered Other: Court may order community service, restitution, completion of a driver training course, probation, and/or penalty assessments. Defendants must also participate in a three-tiered process in which he/she is screened to establish whether he/she will be required to participate in an educational program or treatment program, or both, pursuant to court order.

Administrative: Not less than 90 days nor more than 1 year suspension for 1st offense (if not already suspended pursuant to implied consent law); 1 year revocation for 2nd offense (if not already revoked pursuant to implied consent law); 3 year revocation for 3rd or subsequent offense within 60 months. Forfeiture of defendant-owned vehicle is mandatory under certain circumstances.

Possible Contestable Issues: Arizona is one of 10 states that have zero tolerance language in their statutes. According to Section 28-1341 A (3), the very presence of a prohibited drug while driving is per se evidence of impairment and is concurrently prosecuted in cases where drugs and objective evidence of impairment is found. The use of DRE is widespread and very effective, not only in DUID cases but also in cases involving vehicular homicide and assault.



Arkansas Code Annotated
Section 5-65-102
Section 5-65-103

Type of DUID Law: Intoxication

Section 5-65-102

Definitions

As used in this act, unless the context otherwise requires:

- (1) "Intoxicated" means influenced or affected by the ingestion of ... a controlled substance, any intoxicant, or any combination thereof, to such a degree that the driver's reactions, motor skills, and judgment are substantially altered and the driver, therefore, constitutes a clear and substantial danger of physical injury or death to himself and other motorists or pedestrians.
- (2) "Controlled substance" means any drug, substance, or immediate precursor in Schedules I through VI (very extensive listing)

Section 5-65-103

It is unlawful and punishable as provided in this act for any person who is intoxicated to operate or be in actual physical control of a motor vehicle

Types of Drugs Prohibited: A drug, substance or immediate precursor listed in Schedules I through VI (Section 5-64-101-215)

Required Proof:

1. The defendant operated or was in actual physical control of a vehicle in Arkansas
2. At time of operating the defendant was influenced or affected by a controlled substance or any intoxicant listed in statute
3. The influence must be of a degree that it substantially alters the defendant's reaction, motor skills, and judgment so as to constitute a clear and substantial danger of physical injury or death.

Possible Defenses Allowed by Statute: The fact that a person charged with a violation of this act is or has been entitled to use that drug or controlled substance under the laws of this state shall not constitute a defense against any charge of violating this act. Section 5-65-102 (2).

Implied Consent for Drugs: Yes

Arrest Required Prior to Test: No

A law enforcement officer can request a driver to submit to a chemical test if the driver has been arrested for DUI, is involved in an accident, or if, at the time of a DUI arrest, there is reasonable cause to believe the driver is intoxicated. Section 5-65-202 (a).

Specimens to be Tested: Blood and Urine

Sanctions for Refusal to Test:

Evidentiary: Refusal is admitted into evidence

Criminal: \$100 (mandatory) - \$500 fine and possible community service for 1st offense; \$200 (mandatory) - \$1000 and 30 days (mandatory) community service for 2nd offense; \$500 (mandatory) - \$2000 and 60 days (mandatory) community service for 3rd and subsequent offenses.

Administrative: 180 days suspension for 1st refusal; 2 years (mandatory) for 2nd offense within 5 years; 3 year (mandatory) revocation for 3rd offense within 5 years; lifetime (mandatory) revocation for 4th or subsequent offense within 5 years.

Sanctions Following Conviction:

Criminal: 24 hours (mandatory) -1 year imprisonment, \$150 (mandatory) fine for 1st offense; 7 days (mandatory) - 1 year, \$400 (mandatory) - \$3000 for 2nd offense within 5 years; 990 days (mandatory) - 1 year, \$900 (mandatory) - \$5000 for 3rd offense within 5 years; 1 year (mandatory) - 6 years, \$900 (mandatory) - \$5000 for 4th or subsequent offense within 5 years.

Court-Ordered Other: In lieu of jail the court may order community service for 1st offense; mandatory 30 days community service for 2nd offense within 5 years; mandatory 90 days community service for 3rd within 5 years; 1 year mandatory community service for 4th or subsequent offense within 5 years. Community service may also be ordered as an alternative to a fine. Restitution not to exceed \$10000, other fees and assessments, or forfeiture may also be ordered. A special court cost of \$250 is assessed.

Administrative: 6-month suspension (mandatory)

Possible Contestable Issues: The heavy burden of proof indicates that Arkansas tends to be skeptical and would require proof that the drug ingested caused the requisite impairment and would likely be less amenable to a per se law.



California Vehicle Code
Section 23152

Type of DUID law: Under the influence
Zero tolerance for drug addicts

Section 23152 VC

(a) It is unlawful for any person who is under the influence of any...drug or under the combined influence of any alcoholic beverage and drug, to drive a vehicle

(c) It is unlawful for any person who is addicted to the use of any drug to drive a vehicle

Types of Drugs Prohibited: Any drug

Required Proof:

1. The Defendant was driving a vehicle in California
2. While driving, the defendant was under the influence of a drug OR
3. While driving, the defendant was a person who is addicted to the use of a drug

Possible Defenses Allowed by Statute:

The provision relating to persons addicted to a drug is not applicable to persons participating in a narcotic treatment program (including methadone maintenance) approved pursuant to... the Health and Safety Code. Section 23152 (c).

Implied Consent for Drugs: Yes

Special Circumstances: A person arrested for DUI may be compelled to submit to a blood test for the presence of drugs

Arrest Required Prior to Test: Yes

Specimens to be tested: Blood or Urine

Sanctions for Refusal to test:

Evidentiary: Refusal is admitted into evidence

Criminal: None

Administrative action against driving privilege: 1 year (mandatory) suspension for 1st refusal; 2

Years (mandatory) revocation for 2nd offense within 7 years; 3 years (mandatory) revocation for 3rd offense within 7 years.

Sanctions Following Conviction:

Criminal: For Non-injury DUI (23152 VC): 96 hours - 6 months imprisonment in county jail, \$390 (mandatory) - \$1000 fine for 1st offense; 90 days (96 hours mandatory) - 1 year imprisonment in county jail, \$390 (mandatory) - \$1000 for 2nd offense within 7 years; 130 days (30 days mandatory) - 1 year, \$390 (mandatory) - \$1000 for 3rd offense within 7 years; 180 days (mandatory) - 3 years, \$390 (mandatory) - \$1000 for 4th within 7 years.

For Injury-Related DUI (23153 VC): 90 days (5 days mandatory) - 1 year imprisonment, \$390 (mandatory) - \$1000 fine for 1st offense; 120 days (30 days mandatory) - 1 year, \$390 (mandatory) - \$5000 for 2nd offense within 7 years; 2 years (60 days mandatory) - 4 years, \$1015 (mandatory) - \$5000 for 3rd offense within 7 years; 5-7 years, \$1015 (mandatory) - \$5000 for 4th or subsequent offense within 7 years.

Court-Ordered Other: The court may order community service, restitution to Victim's Assistance Fund or directly to the victims, fees, assessments and costs. Home detention, impoundment and forfeiture may also be ordered.

Administrative action against driving privilege: For Non-Injury DUI (23152 VC): 6 months (mandatory) suspension for 1st offense; 2 years revoked for 2nd offense within 7 years; 3 years (18 months mandatory) revoked for 3rd offense within 7 years; 4 years (24 months mandatory) revoked for 4th or subsequent offense within 7 years.

For Injury-Related DUI (23153 VC): 1 year (mandatory) suspension for 1st offense; 3 years (18 months mandatory) revoked for 2nd offense within 7 years; 5 years (30 months) revoked for 3rd or subsequent offense within 7 years.

Possible Contestable Issues: California has a zero tolerance statute for persons who are addicted to any drug, which would normally suggest amenability to an across-the-board zero tolerance statute. However, anecdotal information suggests that California may not be amenable to eventual passage of a zero tolerance law for all drug use while driving. California does make use of DRE officers in both investigation and prosecution of DUI cases as well as for other drug cases.



COLORADO

Colorado Revised Statutes Section 42-1301

Type of DUID Law: Under the influence; Impairment; Zero Tolerance for persons who are habitual users of controlled substances

Section 43-4-1301(1)

- (b) It is a misdemeanor for any person who is under the influence of...one or more drugs...to drive any vehicle in this state
- (c) It is a misdemeanor for any person who is impaired by...one or more drugs...to drive any vehicle in this state
- (d) It is a misdemeanor for any person who is an habitual user of any controlled substance defined in section 12-22-303(7), C.R.S. to drive any vehicle in this state...
- (f) "Driving under the influence" means driving a vehicle when a person has consumed...one or more drugs...which... one or more drugs alone ... affects the person to a degree that the person is substantially incapable, either mentally or physically, or both mentally and physically, to exercise clear judgment, sufficient physical control, or due care in the safe operation of a vehicle.
- (g) "Driving while ability impaired" means driving a vehicle when a person has consumed...one or more drugs...which...one or more drugs alone...affects the person to the slightest degree so that the person is less able than the person ordinarily would have been, either mentally or physically, ore both mentally and physically, to exercise clear judgment, sufficient physical control, or due care in the safe operation of a vehicle.

Type of Drugs Prohibited: Any Drug

A drug is defined as either (1) A substance that is intended to cure or prevent disease, listed in the U.S. Pharmacopoeia, (2) A controlled substance, or (3) A toxic vapor or vapors including but not limited to glue sniffing and aerosol inhalation. Sections 42-4-1301 (d)

Required Proof:

1. Defendant was driving a vehicle in Colorado
2. While driving, the defendant had ingested a drug which affected the defendant to the extent that he/she was substantially incapable to exercising clear judgment, sufficient control or due care to safely operate the vehicle
3. While driving, the defendant ingested a drug which affected him/her to the slightest degree so that he/she was less able to exercise clear judgment, sufficient physical control or due care in operating the vehicle OR
4. While driving, the defendant was a habitual user of any controlled substance defined in section 12-22-303 of the Colorado Revised Statutes.

Possible Defenses Allowed by Statute: Entitlement "to use a drug under the laws of this state shall not constitute a defense against a charge of violating subsection (1) "cited above. Section 42-4-1301 (e)

Implied Consent for Drugs: Yes. The law provides for express consent. Any person who operates a motor vehicle in this state, is "deemed to have expressed such person's consent" to submit to a chemical test of their blood, breath, urine or saliva. Section 42-4-1301 (7) (a) (III)

Arrest Required Prior to Test: No, but probable cause if required

Specimens to be tested: Blood, Urine and Saliva

Sanctions for Refusal to Test:

Evidentiary: Refusal is admitted into evidence

Criminal: None

Administrative: 1 year (mandatory) revocation for 1st offense; 2 years (mandatory) revocation for 2nd offense; 3 years (mandatory) revocation for 3rd or subsequent refusal.

Sanctions Following Conviction:

Criminal: For Under the Influence/Zero Tolerance Cases: 5 days (mandatory) - 1 year imprisonment, \$300 - \$1000 fine for 1st offense; 70 days (mandatory) - 1 year, \$450 - \$1500 for a 1st DUI but within 5 years of a DWI conviction; 90 days (mandatory) - 1 year, \$500 - \$1500 for a 2nd or subsequent offense within 5 years.

For Driving While Impaired Cases: 2 days (mandatory) - 180 days imprisonment, \$100 - \$500 fine for 1st offense; 60 days (mandatory) - 1 year, \$450 - \$1200 for 1st DWI but within 5 years of a DUI/Per Se Conviction; 45 days (mandatory) - 1 year, \$300 - \$1000 for a 2nd or subsequent offense.

For Injury Related Cases: 2-6 years imprisonment, \$2000- \$500000 fine (Class 4 felony)

Court-Ordered Other: The court may order Community Service (some mandatory periods apply) and Restitution to the Victim's Compensation Fund. Various mandatory fees and costs attach and there is a requirement for mandatory parole in felony cases.

Administrative: 1 year (mandatory) suspension for 1st offense; 1 year (mandatory) revocation for 2nd offense within 5 years; 2 year (1 year mandatory) - indefinite revocation for 3rd or subsequent offense.

Possible Contestable Issues: Colorado's use of the "due care" standard of behavior in the criminal statutes and its "zero tolerance" statute with regard to habitual users of controlled substances suggests that it may be amenable to the introduction of more inclusive zero tolerance legislation.



Connecticut General Statutes
Section 14-227 a

Type of DUID Law: Under the Influence

Section 14-227a

No person shall operate a motor vehicle while under the influence of ...any drug.... A person commits the offense of operating a motor vehicle while under the influence of ...any drug...if he operates a motor vehicle on a public highway of this state or on any road of a district organized under the provisions of chapter 105, a purpose of which is the construction and maintenance of roads and sidewalks, or on any private road on which a speed limit has been established in accordance with the provision of section 14-218a, or in any parking area for ten or more cars or on any school property (1) while under the influence of ...any drug....

Type of Drugs Prohibited: Any drug

Required Proof:

1. Defendant was driving a vehicle in Connecticut
2. While driving, the defendant was under the influence of any drug

Possible Defenses Allowed by Statute: None found

Implied Consent for Drugs: Yes

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood and Urine

Sanctions for Refusal to test:

Evidentiary: Refusal is admitted into evidence in criminal cases

Criminal: None

Administrative: 6 months (90 Days mandatory) suspension for 1st refusal;
1 year (mandatory) suspension for 2nd refusal; 3 years (mandatory)
suspension for subsequent refusals.

Sanctions Following Conviction:

Criminal: Not more than 6 months (48 hours mandatory) imprisonment, \$500-\$1000 fine for 1st offense; not more than 2 years (120 days mandatory), \$1000-\$4000 for 2nd offense within 10 years; not more than 3 years (1 year mandatory), \$2000-\$8000 for 3rd or subsequent offense within 10 years (felony conviction).

Court-Ordered Other: The court may order 100 hours of community service in lieu of mandatory jail time for 1st offense; must order 100 hours in addition to jail for 2nd or subsequent offenses. The court may also order restitution and/or costs of incarceration to be paid. A special cost of \$15 is imposed for any DUI conviction.

Administrative: 1 year suspension (no mandatory period) for 1st offense; 3 years suspension (no mandatory) for 2nd offense; permanent revocation for 3rd and subsequent offenses.

Possible Contestable Issues: The statutory evidentiary requirements seem to be in accord with the notions of using DRE in police investigations and prosecution. Anecdotal information indicates that a few officers have been trained but that the program has stalled. The moderate standard for proof required and the broad drug prohibition may suggest amenability with the introduction of possible zero tolerance legislation; however, the sentences appear to be relatively light which is indicative of a weaker stance against drugged driving. Again, anecdotal information relays that there has been little interest in per se legislation for drugs, the emphasis having been on alcohol-related DUI.



Delaware Code
21 Del. Code Section 4177

Type of DUID Law: Under the influence

21 Section 4177

(a) No person shall drive a vehicle ... (2) When the person is under the influence of any drug

(a)(5) "While under the influence" shall mean that the person is, because of...drugs..., less able than the person would ordinarily have been, either mentally or physically, to exercise clear judgment, sufficient physical control, or due care in the driving of a vehicle.

Type of Drugs Prohibited: Any drug, which "shall include any substance or preparation defined as such by Title 11 or Title 16 or which has been placed in the schedules of controlled substance pursuant to Chapter 47 of Title 16. "Drug" shall also include any substance or preparation having the property of releasing vapors or fumes which may be used for the purpose of producing a condition of intoxication, inebriation, exhilaration, stupefaction or lethargy or for the purpose of dulling the brain or nervous system. 21 Section 4177 (c)(7)

Proof Required:

1. The Defendant was driving a vehicle in Delaware
2. While driving, the defendant was under the influence of a drug
3. Because of the drug, the defendant was less able than ordinary, either mentally or physically, to exercise clear judgment, sufficient physical control or due care in driving.

Possible Defenses Allowed by Statute:

The fact that any person charged with violating this section is, or has been, legally entitled to use...a drug shall not constitute a defense. .

Implied Consent for Drugs: Yes

Special Circumstances: A person must submit to a chemical test in cases where there is probable cause to believe that the person committed a DUI offense that was related to an accident where there was a death. 21 Section 2740

Arrest Required: No, but probable cause probably is. 21 Sections 2740, 2741 (b)

Specimens to be Tested: Blood and Urine

Sanctions for Refusal to test:

Evidentiary: Refusal can be admitted into evidence

Criminal: None

Administrative: 1 year (6 months mandatory) revocation for 1st refusal; 18 months (mandatory) for 2nd refusal or offense within 5 years; 24 months (mandatory) for 3rd and subsequent refusals/offenses.

Sanctions Following Conviction:

Criminal: 60 days (no mandatory) imprisonment, \$230 (mandatory) - \$1150 fine for 1st offense; 60 days (mandatory) - 18 months, \$575 (mandatory) - \$3000 for 2nd offense within 5 years; 1 year (3 months mandatory) - 2 years, \$1000 (mandatory) - \$3000 for 3rd offense within 5 years (felony); 2 years (6 months mandatory) - 5 years, \$2000 (mandatory) - \$6000 for 4th and subsequent offenses (felony).

Court-Ordered Other: The court may, at its discretion, order community service, restitution directly to the victim, and house arrest in lieu of imprisonment. A special assessment equal to 15% of any fine must be paid to the Victim Compensation Fund.

Administrative: 1 year (90 days mandatory) revocation for 1st offense; 1 year (6 months mandatory) revocation for 2nd offense within 5 years; 18 months (6 months mandatory) for 3rd or subsequent offense within 5 years.

Possible Contestable Issues: The lighter burden of proving the prosecutor's case indicates amenability to future zero tolerance laws. Moreover, the relative stiffness of the criminal sentences suggests that the state is not easy on drugged drivers, and may be amenable to getting and keeping them off the streets.

DISTRICT OF COLUMBIA

D.C. Code
Section 40-716

Type of DUID Law: Under the influence

Section 40-716

(b) (1) No individual shall, when...under the influence of...any drug...,[Prescription drugs are allowed provided approved and prescribed by a doctor and taken in prescribed dose]... operate or be in physical control of any vehicle in the District...

Type of Drugs Prohibited: Any drug

Required Proof:

1. Defendant was operating or was in physical control of a vehicle in the District
2. While so operating a vehicle, the defendant was under the influence of any drug

Possible Defenses: None found

Implied Consent for Drugs: Yes

Special Circumstances: A person is required to submit to a chemical test if he/she has been involved in an accident and that person has been arrested for a DUI offense. Section 40-502 (b)

Arrest Required: Yes

Specimens to be Tested: Blood and Urine and Breath

Sanctions for Refusal to test:

Evidentiary: Refusal may be admitted into evidence

Criminal: None

Administrative: 12 months mandatory suspension in all cases of refusal

Sanctions Following Conviction:

Criminal: Not more than 90 days imprisonment, not more than \$399 fine for 1st offense; not more than 1 year, \$1000 - \$5000 for 2nd offense within 15 years; not more than 1 year, \$2000 - \$10,000 for 3rd or subsequent offense within 15 years.

Court-Ordered Other: The court may order a defendant to pay restitution to the Victims' Compensation Fund or to the victim directly. Offenders are also required to pay an assessment to finance the Crime Victim's Compensation Fund.

Administrative: 6 months (mandatory) revocation for 1st offense; 1 year (mandatory) revocation for 2nd offense; 2 years (mandatory) revocation for 3rd and subsequent offenses.

Possible Contestable Issues: While proof is less stringent than in other jurisdictions, the relatively light sentences reflect a notion that the crimes are not considered as seriously as in other jurisdictions, and may indicate a less aggressive stance which may not be amenable to passage of zero tolerance legislation.



Florida Statutes Annotated
Section 316.193

Type of DUID Law: Under the Influence: Impairment

Section 326.193

- (1) A person is guilty of the offense of driving under the influence and is subject to punishment as provided in subsection (2) if the person is driving or in actual physical control of a vehicle within this state and:
- (a) The person is under the influence of ... any chemical substance...or any controlled substance..., when affected to the extent that the person's normal faculties are impaired.

Type of Drugs Prohibited: Any chemical substance set forth in section 877.111, or any substance controlled under chapter 893

Proof Required:

1. The defendant was driving or in actual physical control of a vehicle in the state of Florida
2. While driving, the defendant was under the influence of a chemical substance or controlled substance, and
3. That as a result of the influence, the defendant 's normal faculties were impaired

Possible Defenses Allowed by Statute: None found

Implied Consent for Drugs: Yes, for testing of urine only

Special Circumstances: As of July 1, 2002, The officer must require the driver to provide a blood sample for testing he/she has been involved in a crash resulting in death or serious bodily injury. Section 316.1933 (1)

Arrest Required: Yes, but not if the driver has been taken to a medical facility for treatment as a result of a crash. Section 316.1932 (1) (c)

Specimens to be Tested: Blood, but only if driver is taken to a medical facility for treatment and a urine test is impracticable
Urine, for purpose of detecting presence of a controlled substance

Sanctions for Refusal to Test: As of July 1, 2002, the defendant no longer has the right to refuse a breath/blood/urine test. House bill 1057 creates 316.1939 (327.353 for boating) making the second refusal to take a test a first degree misdemeanor.

Sanctions Following Conviction: As of July 1, 2002, It will be a third degree felony upon conviction for a third DUI within 10 years after a prior conviction for DUI. DUI offenders with a BAC of .20 or higher and DUI offenders who were accompanied by a minor to place an ignition interlock device upon all vehicles that are individually or jointly leased or owned and routinely operated by the convicted person.

Criminal: Not more than 6 months imprisonment, \$250 - \$500 for 1st offense; not more than 9 months (10 days mandatory if 2nd offense is within 5 years of a previous DUI), \$500 - \$1000 for 2nd offense; not more than 12 months (30 days mandatory if 3rd offense is within 10 years of a previous DUI), \$1000 - \$2500 for 3rd offense; not more than 5 years (30 days if subsequent offense is within 10 years of a previous DUI), \$1000 - \$5000 for 4th or subsequent offense (felony conviction).

Court-Ordered Other: The Court may order a defendant to serve all or part of a jail sentence at a drug residential treatment program. The court may also order community service, specified public service, restitution to the victim, court costs and assessments, and/or use of bumper stickers to identify as a DUI.

Administrative: 180 days - 1 year revocation for 1st offense; not less than years (12 months mandatory) revocation for 2nd offense within 5 years; not less than 10 years (24 months mandatory) revocation for 3rd offense within 10 years; permanent (5 years mandatory) revocation for 4th offense. A substance abuse course is required. Forfeiture or impoundment is also possible.

Possible Contestable Issues: Florida uses the term "impairment" in describing the prohibited state, which is a lesser disruption to the person than the assignation of "incapacity". Nevertheless, the prosecution must prove a direct relation between the impairment and the substance used. Anecdotal information indicates that Florida utilizes DRE in both investigation and prosecution, but has recently rejected zero tolerance legislation.



Code of Georgia Annotated
Section 40-6-391

Type of DUID Law: Zero Tolerance (Per Se) for marijuana and controlled
Substances
Under the Influence for Other Substances

Section 40-6-391 (a)

- (a) A person shall not drive or be in actual physical control of any moving vehicle while:
- (2) Under the influence of any drug to the extent that it is less safe for the person to drive;
 - (3) Under the intentional influence of any glue, aerosol, or other toxic vapor to the extent that it is less safe for the person to drive;
 - (6) Subject to the provisions of subsection (b) of this Code section, there is any amount of marijuana or a controlled substance, as defined in Section 16-13-21, present in the person's blood or urine, or both, including the metabolites and derivatives of each or both without regard to whether or not any alcohol is present in the person's breath or blood.

Type of Drugs Prohibited: Any drug, glue, aerosol or other toxic vapor, marijuana, or any controlled substances

Required Proof:

- 1. The defendant was driving or was in actual physical control of a moving vehicle in Georgia
- 2. While driving, there was any amount of marijuana or a controlled substance present in his/her blood or urine OR
- 3. While driving, the defendant was under the influence of any drug, or under the intentional influence of glue, aerosol, or toxic vapor
- 4. The influence was such that it was "less safe" for the defendant to drive

Possible Defenses Allowed by Statute: Legal entitlement to use a drug is not a defense; however, "a person shall not be in violation of this Code section unless such person is rendered incapable of driving safely as a result of using a drug other than alcohol which such person is legally entitled to use. Section 40-6-391(b)

Implied Consent for Drugs: Yes

Arrest Required Prior to Test: Yes, but arrest is not required where there are reasonable grounds to believe that a person is DUI and he/she is involved in an accident that resulted in serious injury or death.

Specimens to be tested: Blood, Urine, Other Bodily Substance

Sanctions for Refusal to Test:

Evidentiary: Refusal is admitted into evidence. Also refusal to take PBT, HGN or other field sobriety tests also admitted

Criminal: None

Administrative: 1 year (mandatory) suspension

Sanctions Following Conviction:

Criminal: 10 days (24 hours mandatory) - 12 months imprisonment, \$300 (mandatory) - \$1000 fine for 1st offense; 90 days (48 hours mandatory) - 12 months, \$600 (mandatory) - \$1000 for 2nd offense within 5 years; 120 days (10 days mandatory) - 12 months, \$1000 (mandatory or \$500 plus a drug treatment program) - \$5000 for 3rd or subsequent offense within 5 years; 7 - 15 years for DUI with a severe injury (felony conviction).

Court-Ordered Other: The court must order community service as follows: not less than 40 hours (40 hours mandatory) for 1st offense; not less than 80 hours (80 hours mandatory) for 2nd offense within 5 years; not less than 20 days (20 days mandatory) for 3rd or subsequent offense within 5 years. Restitution may be ordered. Various fees and assessments must be assessed. The name, address and photo of 2nd and subsequent offenders shall be published in the appropriate county. Probation is mandatory if the jail sentence is less than 1 year.

Administrative: 12 months (no mandatory minimum) suspension for 1st offense; 3 years (120 days mandatory) suspension for 2nd offense; 5 years (2 years mandatory) revocation for 3rd offense within 5 years; 3 years (mandatory) suspension of a DUI with a serious injury. Forfeiture is mandatory for habitual offenders.

Possible Contestable Issues: Georgia is one of the states with a zero tolerance provision in their statutes, at least for certain kinds of substances. The language of the statute indicates that there is little tolerance for driving while using drugs because of the relatively slight standard of "less safe to drive" for the charge of under the influence of drugs other than marijuana or controlled substances. Anecdotal information indicates that the use of DRE is proving to be reliable with 89% - 100% of the evaluations being supported by positive test results in 1999.



Hawaii Revised Statutes
Section 291-7

Type of DUID Law: Under the influence: Impairment

Section 291-7

Driving Under the Influence of Drugs

(a) A person commits the offense of driving under the influence of drugs if the person operates or assumes actual physical control of the operation of any vehicle while under the influence of any drug which impairs such person's ability to operate the vehicle in a careful and prudent manner.

Type of Drugs Prohibited: Controlled Substances enumerated in Schedules I-IV of Chapter 329

Required Proof:

1. Defendant was operating or had physical control of a vehicle in Hawaii
2. While so operating the vehicle, defendant was under the influence of a controlled substance
3. The influence of the controlled substance was such that the defendant's ability to operate the vehicle in a careful and prudent manner was impaired.

Possible Defenses Allowed by Statute: None found

Implied Consent for Drugs: Yes

Special Circumstances: Blood or urine can be taken without consent if defendant is involved in a collision resulting in either injury or death to any person. Section 286-163

Arrest Required Prior to Test: Yes

Specimens to be tested: Blood and Urine

Sanctions for Refusal to Test:

Evidentiary: None - statute specifically prohibits introduction of such evidence. Section 286-159

Criminal: None

Administrative: 1 year (mandatory) revocation for 1st refusal; 2 years (mandatory) revocation for 2nd refusal within 5 years; 4 years (mandatory) revocation for 3rd refusal within 7 years; revocation for life (mandatory) for 4th and subsequent offense within 10 years.

Sanctions Following Conviction:

Criminal: 48 hours imprisonment, \$150 - \$1000 fine for 1st offense; not less than 48 hours (mandatory), \$500 (mandatory) - \$1000 for 2nd offense within 5 years; 10 days (mandatory) - 180 days, \$500 (mandatory) - \$1000 for 3rd offense within 5 years; not more than 5 years, not more than \$10,000 for 4th and subsequent offenses within 10 years (felony conviction).

Court-Ordered Other: The court may order the following community service in lieu of or in addition to jail time and fines: 72 hours for 1st offense; 80 hours for 2nd offense within 5 years. Restitution to the victim, home detention, special assessment of \$100, curfew using monitoring, or supervised release may also be ordered.

Administrative: 90 days (30 days with a restricted license for 60 days mandatory) suspension and a mandatory 14 hour drug abuse education or counseling program for 1st offense; 1 year (mandatory) suspension for 2nd offense; 1 year (mandatory) - 5 years revocation for 3rd offense.

Possible Contestable Issues: Use of the relatively low bar of impairment to operate a vehicle in a careful and prudent manner indicates that Hawaii has little tolerance for driving while using drugs. This low bar suggests that DRE use in investigation and prosecution is welcome, and indeed, anecdotal information indicates that Hawaii does use DRE in both. Also, Hawaii Revised Statute 286.158.5 provides that any amount of drugs found in the body within three hours of the arrest can be used as competent evidence of impairment. The sentences upon conviction, though, seem lighter rather than harsher, especially for 1st and 2nd offenses. With prosecution and sentencing seemingly at odds, it is unclear whether Hawaii would be amenable to zero tolerance legislation.



Idaho Code
Section 18-8004

Type of DUID Law: Under the Influence
Zero Tolerance for Habitual Users of Narcotic Drugs
Impairment

Section 18-8004

(1) It is unlawful for any person who is under the influence of drugs or any other intoxicating substances...as shown by analysis of his blood, urine, or breath, to drive or be in actual physical control of a motor vehicle within this state, whether upon a highway, street or bridge, or upon public or private property open to the public.

(5) It is unlawful for any person who is an habitual user of, or under the influence of any narcotic drug, or who is under the influence of any other drug...to a degree which impairs the driver's ability to safely operate a motor vehicle within this state....

Type of Drugs Prohibited: Any drug or other intoxicating substance

Required Proof:

1. Defendant was driving or in actual physical control (defined as "being in the driver's position with the motor running or the motor vehicle moving") of a motor vehicle in Idaho.
2. While driving or in control of the vehicle. Defendant was under the influence of a drug or any other intoxicating substance OR
3. While driving or in control of the vehicle. Defendant was a habitual user of any narcotic drug OR
4. While driving or in control of the vehicle, Defendant was under the influence of a drug to a degree which impairs the driver's ability to safely operate a motor vehicle.

Possible Defenses Allowed by Statute: The fact that any person charged with a violation of the provisions of this subsection is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of a violation of the provision of this subsection. Section 18-8004(5)

Implied Consent for Drugs: Yes

Arrest Required Prior to Test: No. A peace officer only requires reasonable grounds to believe a DUI has been committed

Specimens to be Tested: Blood, Urine

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in evidence in criminal cases

Criminal: None

Administrative: 180 days (mandatory) suspensions for 1st refusal; 1 year (mandatory) suspension for 2nd refusal within 5 years.

Sanctions Following Conviction:

Criminal: Not more than 6 months imprisonment, not more than \$1000 fine for 1st offense; 10 days (mandatory) - 1 year, not more than \$2000 for 2nd offense within 5 years; not more than 5 years (30 days mandatory), not more than \$5000 for 3rd or subsequent offense within 5 years or a 4th or subsequent offense within 10 years (felony); not more than 5 years (30 days mandatory), not more than \$5000 for a serious injury DUI (felony).

Court- Ordered Other: The court may also order community service, restitution, and electronic monitoring during probation.

Administrative: 30 days (mandatory) - 150 days suspension for 1st offense; 1 year (mandatory) suspension after release from confinement for 2nd offense; 1 year (mandatory) - 5 years suspension after release for 3rd or subsequent offenses; 1 year (mandatory) - 5 years suspensions after release for a serious injury DUI offense.

Possible Contestable Issues: The DUID statutes in Idaho are found in the state's criminal code, not in the motor vehicle or transportation titles like most of the other states, and it makes a third offense a felony; therefore, it is clear that Idaho considers this behavior criminal. The lower tolerance for habitual users of narcotics may indicate a willingness to consider zero tolerance across the board. The lack of required treatment is problematic.



Illinois Compiled Statutes
Section 625 ILCS 5/11-501

Type of DUID Law: Under the Influence: Incapacity
Zero Tolerance as to certain substances

Section 625 ILCS 5/11-501

A person shall not drive or be in actual physical control of any vehicle within this state while: (3) under the influence of any intoxicating compound or combination of intoxicating compounds to a degree that renders the person incapable of driving safely; under the influence of any other drug or combination of drugs to a degree that renders the person incapable of safely driving; (6) there is any amount of a drug, substance, or compound in the person's breath, blood, or urine resulting from the unlawful use or consumption of cannabis listed in the Cannabis Control Act, or a controlled substance listed in the Illinois Controlled Substances Act or intoxicating compound listed in the Use of Intoxicating Compounds Act.

Type of Drugs Prohibited: Intoxicating compounds, other drugs, cannabis, controlled substances

Required Proof:

1. Defendant was driving or in actual physical control of a vehicle in Illinois
2. While driving, Defendant was under the influence of an intoxicating compound or other drug, or a combination
3. That influence rendered the defendant incapable of safely driving OR
4. While driving, the defendant had any amount of cannabis, a controlled substance, or intoxicating compound in his/her blood or urine which he unlawfully used.

Possible Defenses Allowed by Statute: Legal entitlement to use the drug or compound is not a defense to a violation of the statute.

Implied Consent for Drugs: Yes

Special Circumstance: Where there is probable cause of a DUI related to a death or injury, the driver must submit to a chemical test

Arrest Required: Yes

Specimens to be Tested: Blood and Urine

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible into evidence in civil and criminal cases

Criminal: None

Administrative: 6 month suspension for 1st refusal; 3 years (2 years mandatory) suspension for subsequent refusals within 5 years

Sanctions Following Conviction:

Criminal: Less than 1 year (no mandatory) imprisonment, not more than \$2,500 fine for 1st offense; less than 1 year (48 hours mandatory), not more than \$2,500 for 2nd offense; 1 year (48 hours mandatory) - 3 years, not more than \$25,000 for 3rd or subsequent offenses within 5 years (felony).

Court-Ordered Other: The court may order community service (100 hours mandatory as alternative to mandatory jail time) for a 2nd offense; (30 days mandatory in lieu of mandatory jail time) for 3rd or subsequent offense. The court may also order restitution directly to the victim, or participation in a visitation program. Additional fees, surcharges, costs and fees are also assessed. Forfeiture may also be ordered.

Administrative: For per se pre-conviction: 3 months suspension for 1st offense; 1 year (90 days mandatory) suspension for subsequent offense within 5 years.

For DUI convictions: 1 year revocation for 1st offense; 5 years revocation for 2nd offense within 20 years; 10 years revocation for 3rd offense; permanent revocation for subsequent offenses.

Possible Contestable Issues: Illinois has a comprehensive zero tolerance statute and considers a third offense to be a felony. However, they, like most of the other zero tolerance states adhere to the incapacity burden for a conviction under the "under the influence" subsection of the statute. Also, sanctions for a first or second offense seem rather light.



INDIANA

Indiana Code Annotated
Section 9-30-5-1
Section 9-30-5-2

Type of DUID Law: Zero Tolerance
Under the Influence: Impairment

Section 9-30-5-1

A person who operates a vehicle with a controlled substance listed in Schedule I or II of IC 35-48-2 in the person's blood commits a Class C misdemeanor.

Section 9-30-5-2

A person who operates a vehicle while intoxicated commits a Class A misdemeanor

Section 9-13-2-86

"Intoxicated" means under the influence of...

(2) a controlled substance

(3) a drug other than alcohol or a controlled substance

so that there is an impaired condition of thought and action and the loss of mental control of a person's faculties to an extent that endangers a person.

Type of Drugs Prohibited: Controlled Substances listed in schedules I and II of Section 35-48-2, and drugs other than alcohol or controlled substances

Required Proof:

1. Defendant was operating a vehicle in Indiana
2. While operating the vehicle. Defendant had any amount of a controlled substance in his/her blood OR
3. While operating the vehicle, Defendant was under the influence of a controlled substance or other drug
4. The influence was such that Defendant was in an impaired condition with loss of normal control of his/her faculties to the extent that endangers him/her.

Possible Defenses Allowed by Statute: It is a defense to the zero tolerance provision if the driver consumed the substance pursuant to a valid prescription or while under a doctor's care.

Implied Consent for Drugs: Yes

Arrest Required: No, probable cause is sufficient

Specimens to be Tested: Blood, Urine, or any other bodily substance

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in criminal and civil cases

Criminal: Not more than \$500 fine, not more than 1 year suspension in cases of serious bodily injury only

Administrative: 1 year suspension for any refusal

Sanctions Following Conviction:

Criminal: Not more than 60 days imprisonment, not more than \$500 fine for 1st per se offense; not more than 1 year, not more than \$500 fine for 1st DUI offense; not more than 1 1/2 years (5 days mandatory), not more than \$10,000 for any 2nd offense within 5 years (felony); not more than 1 1/2 years (10 days mandatory), not more than \$10,000 for 3rd offense within 5 years (felony); fixed term of 2 years, not more than \$10,000 for serious injury DUI offense (felony); fixed term of 4 years, not more than \$10,000 for subsequent serious injury DUI offense (felony).

Court-Ordered Other: The court may order community service, restitution of not more than \$1000 to the victim, various fees and assessments, participation in a victim impact program, and home detention.

Administrative: 90 days (30 days mandatory) - 2 years suspension for 1st offense; 180 days (mandatory) - 2 years suspension for 2nd or subsequent offense within 5 years; 2 years (mandatory) - 5 years suspension for an injury related per se or DUI offense.

Possible Contestable Issues: Indiana is one of the per se states and appears to be making a real attempt at getting DUID offenders off the street. It provides very stiff sentences (the 2nd offense is a felony) and liberally uses its administrative powers to suspend licenses for offenders.



Code of Iowa
Section 321J.2

Type of DUID Law: Under the Influence
Zero tolerance

Section 321J.2

A person commits the offense of operating while intoxicated if the person operates a motor vehicle in this state in any of the following conditions:

- (a) While under the influence of...[a] drug (other than alcohol)...
- (c) While any amount of a controlled substance is present in the person, as measured in the person's blood or urine

Type of Drugs Prohibited: Any drug or controlled substance

Required Proof:

1. Defendant was operating a motor vehicle in Iowa
2. While operating the motor vehicle, Defendant was under the influence of any drug OR
3. While operating the motor vehicle, Defendant had any amount of a controlled substance present in his/her body as measured in his/her blood or urine.

Possible Defenses Allowed by Statute: It is an affirmative defense to the per se provision that the controlled substance present in the person's blood or urine was prescribed or dispensed for the person and was taken in accordance with the directions of the doctor or pharmacy. It is an affirmative defense to either a per se or a DUID violation if the substance was prescribed and taken according to the prescription or was dispensed by a pharmacist without a prescription pursuant to the rules of the board of pharmacy examiners IF there is no evidence of consumption of alcohol and the doctor or pharmacist had not directed the person to refrain from operating a motor vehicle.

Implied Consent for Drugs: Yes

Special Circumstances: A driver must submit to a chemical test if he/she is involved in an accident that includes death or serious injury

Arrest Required: No, either arrest, serious injury, or a refusal to take a preliminary breath test is sufficient

Specimens to be Tested: Blood or Urine

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in civil and criminal cases

Criminal: None

Administrative: 1 year (90 days mandatory) revocation for 1st refusal; 2 years (1 year mandatory) revocation for 2nd or subsequent refusals

Sanctions Following Conviction:

Criminal: Not more than 1 year (48 hours mandatory) imprisonment, \$500 (mandatory) - \$1000 fine for 1st offense; not more than 2 years (7 days mandatory), \$1500 (mandatory) - \$5000 for 2nd offense within 12 years (aggravated misdemeanor); not more than 5 years (30 days mandatory), \$2500 (mandatory) - \$7500 for 3rd and subsequent offenses within 12 years (felony); not more than 5 years (no mandatory), \$750 (mandatory) - \$7500 for a serious injury DUI offense (felony).

Court- Ordered Other: The court may order community service in lieu of the fine, restitution directly to the victim, deferred judgment with license revocation, surcharges, civil penalties, and costs of emergency response up to \$500. The court can also order home detention in lieu of incarceration.

Administrative: 180 days (30 days mandatory) revocation for 1st per se offense; 1 year (mandatory) revocation for 2nd or subsequent offense within 12 years; 180 days (30 days mandatory) - 1 year revocation for 1st DUI offense; 2 years (1 year mandatory) revocation for 2nd offense within 12 years; 6 years (1 year mandatory) for 3rd or subsequent offense; 1 year (no mandatory) for serious injury DUI offense.

Possible Contestable Issues: Like Indiana, Iowa is one of the per se states, and has a statutory structure designed to punish DUID offenders and keep them off the streets. The criminal penalties are stiff.



KANSAS

Kansas Statutes Annotated Section 8-1567

Type of DUID Law: Under the Influence: Incapacity
Zero tolerance for habitual users

Section 8-1567

- (a) No person shall operate or attempt to operate any vehicle within this state while: (4) under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle...
- (b) No person shall operate or attempt to operate any vehicle within this state if the person is a habitual user of any narcotic, hypnotic, somnifacient or stimulating drug.

Type of Drugs Prohibited: Any drug

Required Proof:

- 1. Defendant was operating or attempting to operate a motor vehicle in Kansas
- 2. While operating or attempting to operate the vehicle, Defendant was under the influence of a drug
- 3. That influence rendered Defendant incapable of safely driving a vehicle
OR
- 4. While so operating the vehicle, Defendant was a habitual user of a narcotic, hypnotic, somnifacient or stimulating drug

Possible Defenses Allowed by Statute: Legal entitlement to use the drug is not a defense against a DUID charge

Implied Consent for Drugs: Yes

Arrest Required Prior to Test: Not necessarily. A police officer must have reasonable grounds to believe that a DUI is occurring and either 1) an arrest or 2) the defendant is involved in an accident with property damage, injury or death.

Specimens to be Tested: Blood, Urine, Other Bodily Substances

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible into evidence in criminal cases

Criminal: None

Administrative: 1 year mandatory suspension for first test refusal; 2 year mandatory suspension for second test refusal; 3 year mandatory suspension for third test refusal; 10 year mandatory suspension for 4th test refusal; lifetime suspension for 5th or subsequent test refusal.

Sanctions Following Conviction:

Criminal: 48 hours (mandatory) - 6 months imprisonment, \$500 - \$1000 fine for 1st offense; 90 days (5 days mandatory – 48 hours must be served consecutively before the offender is eligible for work release or house arrest) - 1 year, \$1000 (mandatory) - \$1500 for 2nd offense within lifetime; 90 days (mandatory – 48 hours must be served consecutively before the offender is eligible for work release or house arrest) - 1 year, \$1500 (mandatory) - \$2500 for 3rd within lifetime (felony); 90 days (mandatory – 72 hours must be served consecutively before the offender is eligible for work release or house arrest) – 1 year, \$2500 for 4th or subsequent offense within lifetime.

Court- Ordered Other: The court may order work release or house arrest in lieu of incarceration, although the minimum mandatory amounts of time in jail are required. Also, the court may approve of a 1st time offender's entry into a diversion program, the successful completion of which will result in a dismissal of the DUI charges. The court may also order community service in lieu of incarceration or fine, restitution directly to the victim, and various assessed fees.

Administrative: 30 days (mandatory) suspension and 330 days restriction for 1st offense; 1 year (mandatory) suspension for 2nd, 3rd, or 4th offense. Lifetime suspension for 5th or subsequent offenses

Possible Contestable Issues: Kansas, like Idaho and California, has a zero tolerance provision for habitual users, which makes it likely that an across-the-board zero tolerance might be considered. On the other hand, it has the higher incapacity standard for the regular offense, which might cut against passage of a true zero tolerance statute. The state also takes into account characteristics of the offense other than the criminal characteristic by providing the option for a diversion program for first time offenders.



Kentucky Revised Statutes
Section 189A.010

Type of DUID Law: Under the influence: Impairment

Section 189A.010

- (1) No person shall operate or be in physical control of a motor vehicle anywhere in this state:
- (c) While under the influence of any other [than alcohol] substance or combination of substances which impairs one's driving ability....

Type of Drugs Prohibited: Any substance which impairs driving ability

Required Proof:

1. Defendant was operating or was in physical control of a motor vehicle in Kentucky
2. While operating the vehicle, Defendant was under the influence of a substance which impaired the defendant's driving ability

Possible Defenses Allowed by Statute: Legal entitlement to use any substance shall not constitute a defense. Section 189A.010(4)

Implied Consent for Drugs: Yes

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood, Urine

Sanctions for Refusal:

Evidentiary: Refusal is admissible into evidence in criminal cases

Criminal: None, but a refusal to test is considered an aggravating circumstance that can be used to enhance a penalty on conviction

Administrative: 6 months (mandatory) suspension for 1st refusal; 18 months (mandatory) suspension for 2nd refusal within 5 years; 36 months (mandatory) suspension for 3rd refusal within 5 years; 60 months (mandatory) suspension for 4th or subsequent refusals within 5 years.

Sanctions Following Conviction:

Criminal: 48 hours (mandatory) - 30 days imprisonment, \$200 - \$500 fine for 1st offense; 7 days (mandatory) - 6 months, \$350 - \$500 for 2nd offense within 5 years; 30 days (mandatory) - 12 months, \$500 - \$1000 for 3rd offense within 5 years; 1 year (120 days mandatory) - 5 years, \$1000 - \$10,000 for 4th or subsequent offense within 5 years (felony). If aggravating circumstance exist, penalties are enhanced.

Court-Ordered Other: The court may order the jail time for a 1st or 2nd offense served as weekend confinement. The court may also order that any misdemeanor conviction be served in "home incarceration." The court may also order community service, restitution directly to the victim or to a Victim's Compensation Board, and may require a defendant to reimburse the state or local government for any incarceration costs. Defendants are required to pay various other fees and assessments. Subsequent offenders must be sentenced to a substance abuse treatment program for 1 year.

Administrative: 90 days (30 days mandatory followed by 60 days restricted) revocation for 1st offense; 12 months (mandatory) revocation for 2nd offense; 24 months (mandatory) revocation for 3rd offense; 60 months (mandatory) revocation for 4th or subsequent offense.

Possible Contestable Issues: The relatively light burden of proof and the broad band of prohibition of substances suggest that Kentucky may be amenable to zero tolerance legislation; however, sanctions are relatively light, also suggesting that Kentucky does not consider DUID behavior in the same manner as other, more stringent, states.



Louisiana Revised Statutes
Title 14: Section 98

Type of DUID Law: Under the influence

Section 14:98

- A. (1) The crime of operating a vehicle while intoxicated is the operating of any motor vehicle, aircraft, watercraft, vessel, or other means of conveyance when:
- (c) The operator is under the influence of any controlled dangerous substance listed in Schedule I, II, III, IV, or V as set forth in La. R.S. 40:964

Type of Drugs Prohibited: Controlled dangerous substances (extensive list)

Required Proof:

1. Defendant was operating a motor vehicle in Louisiana
2. While Defendant was operating the vehicle, he/she was under the influence of a controlled dangerous substance

Possible Defenses Allowed by Statute: None found

Implied Consent for Drugs: Yes

Special Circumstances: A driver under arrest for DUI may not refuse a chemical test if he/she has been involved in an accident with a fatality or serious injury.

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood, Urine or Other Bodily Substance

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible into evidence in criminal cases and DUI administrative hearings

Criminal: None

Administrative: 180 days (90 days mandatory) suspension for 1st refusal; 545 days (mandatory) suspension for 2nd or subsequent refusal or for any refusal in a fatality or serious injury-related DUI.

Sanctions Following Conviction:

Criminal: 10 days (mandatory) - 6 months imprisonment, \$300 - \$1000 fine for 1st offense; 30 days (mandatory) - 6 months, \$750 - \$1000 for 2nd offense within 10 years; 1 year (30 days mandatory) - 5 years with or without hard labor, \$2000 for 3rd offense within 10 years (felony); 10 years (6 months mandatory) - 30 years with hard labor, \$5000 for 4th offense within 10 years (felony).

Court-Ordered Other: The court may order a combination of probation, community service and participation in a substance abuse and driver improvement programs in lieu of the mandatory sentences. Home incarceration may also be ordered. The Defendant must pay restitution to the victim where there has been an "actual pecuniary loss" and must also pay fees covering the costs of chemical tests and fees to help defray the costs of probation or incarceration.

Administrative: 90 days suspension for 1st offense; 12 months (mandatory) suspension for 2nd offense within 5 years; 24 months (mandatory) suspension for 3rd or subsequent offense within 5 years.

Possible Contestable Issues: Louisiana's sanctions upon conviction are among the most stringent of all the states. However, there is the option of participation in a treatment program. Whether Louisiana would be amenable to zero tolerance legislation is unclear.



Maine Revised Statutes
Title 29-A Section 2401
Title 29-A Section 2411

Type of DUID Law: Under the influence

Title 29-A Section 2401

3. Drugs means Scheduled drugs as defined under Title 17-A Section 1101. The term "drugs" includes any natural or artificial chemical substance that, when taken into the human body, can impair the ability of the person to safely operate a motor vehicle.
8. "OUI" means operating under the influence of intoxicants
13. Under the influence of intoxicants means being under the influence of ...a drug other than alcohol, a combination of drugs....

Title 29-A Section 2411

A person commits OUI, which is a Class D crime unless otherwise provided, if that person operates a motor vehicle:

- A. While under the influence of intoxicants....

Type of Drugs Prohibited: Scheduled drugs listed extensively under Title 17-A Section 1101. It includes any natural or artificial chemical substance, prescription drugs, etc.

Required Proof:

1. Defendant was operating a motor vehicle in Maine
2. While operating the vehicle, Defendant was under the influence of a drug that, when taken into the body, impairs the ability to safely operate a motor vehicle.

Possible Defenses Allowed by Statute: None found

Implied Consent for Drugs: Yes

Special Circumstances: A driver is required to submit to a test in accident cases where a police officer has probable cause to believe a death has or will occur as a result of the accident. The statute providing for implied consent uses the word "shall" but allows for refusal in other cases.

Arrest Required Prior to Test: No. Probable cause is sufficient

Specimens to be Tested: Blood, Breath, or Urine

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible into evidence in criminal cases

Criminal: None, but a refusal will subject a defendant to enhanced penalties upon conviction

Administrative: 275 days suspension (a restricted license may be substituted if Defendant participates in a treatment program) for 1st refusal; 18 months (mandatory) suspension for 2nd refusal; 4 years (mandatory) suspension for 3rd refusal; 6 years (mandatory) suspension for 4th refusal. In repeat refusal situations, a temporary restricted license may be issued for purposes of attendance at an education or treatment program.

Sanctions Following Conviction:

Criminal: Less than 1 year (48 hours mandatory under certain circumstances or 96 hours mandatory if test refused) imprisonment, not more than \$2000 (\$400 mandatory or \$500 if test refused) fine for 1st offense; less than 1 year (7 days mandatory or 12 days if test refused), not more than \$2000 (\$600 mandatory or \$800 if test refused) for 2nd offense within 10 years; less than 1 year (30 days mandatory or 40 days if test refused), not more than \$2000 (\$1000 mandatory or \$1300 if test refused) for 3rd offense within 10 years; not more than 5 years (6 months mandatory or 6 months, 20 days if test refused), not more than \$5000 (\$2000 mandatory or \$2400 if test refused) for 4th or subsequent offense within 10 years (felony).

Court-Ordered Other: The court may order community service as a condition of probation, and restitution either directly to the victim or to a victims' compensation fund. Certain surcharges must be assessed against the defendant.

Administrative: 90 days (60 days mandatory) suspension for 1st offense; 18 month (mandatory) suspension for 2nd offense within 10 years; 4 years (mandatory) suspension for 3rd offense within 10 years; 6 years (mandatory) suspension for 4th or subsequent offense within 10 years. A temporary restricted license for the purpose of attending a treatment program may be ordered. All offenders must participate in and complete a drug program before their driving privileges can be restored.

Possible Contestable Issues: The broad scope of drug prohibition and the inclusion of the impairment standard in the definition of prohibited drugs are indications that Maine might welcome zero tolerance legislation. Also, the options for participation in treatment programs, especially as 1st time offenders, indicate that the ultimate goal of the current system is to nip the problem in the bud.



Annotated Code of Maryland
Transportation Section 21-902

Type of DUID Law: Under the Influence: Incapacity

Transportation Code Section 21-902

(c) Driving while under influence of drugs...

(1) A person may not drive or attempt to drive any vehicle while he is so far under the influence of any drug, any combination of drugs,...that he cannot drive a vehicle safely.

(d) Driving while under the influence of controlled dangerous substance.

A person may not drive or attempt to drive any vehicle while he is under the influence of any controlled dangerous substance, as that term is defined in Article 27, @279 of the Code, if the person is not entitled to use the controlled dangerous substance under the laws of this State.

Type of Drugs Prohibited: Any drug or controlled dangerous substance as defined in Article 27 Section 279 (extensive list)

Required Proof:

1. Defendant was driving or attempting to drive a vehicle in Maryland
2. While driving that vehicle, Defendant was so far under the influence of any drug that he/she cannot drive the vehicle safely OR
3. While driving the vehicle, Defendant was under the influence of a controlled dangerous substance

Possible Defenses Allowed by Statute: Legal entitlement to use any drug is not a defense to (c)(1) unless the person was unaware that the drug would make him incapable of safely driving. Legal entitlement to use a controlled dangerous substance is a defense to a charge under subsection (d) Section 21-902

Implied Consent for Drugs: Yes

Special Circumstances: If a driver is involved in an accident resulting in death or a life threatening injury, a test is required by statute

Arrest Required Prior to Test: Unclear. The statute uses the phrase "detained on suspicion" of DUI, and allow the police officer to request that a driver submit to a test if the officer "stops or detains" the driver on reasonable grounds to believe a DUI has been committed.

Specimens to be Tested: Blood

Sanctions for Refusal to Test:

Evidentiary: Evidence of a refusal can only be admitted if it is "material and relevant" to issues related to a DUI offense

Criminal: None

Administrative: 120 days suspension for 1st refusal; 1 year suspension for a 2nd or subsequent refusal

Sanctions Following Conviction:

Criminal: Not more than 2 months (no mandatory) imprisonment, not more than \$500 fine for 1st offense; not more than 1 year (no mandatory), not more than \$500 for subsequent offenses.

Court-Ordered Other: The court may order restitution in addition to incarceration and fines.

Administrative: For Driving under the influence of drugs offenses: not more than 60 days (no mandatory) suspension for 1st offense; 120 days suspension for 2nd offense within 3 years; revocation of 3rd or subsequent offense and for all driving under the influence of controlled dangerous substances. The period of revocation is based on whether there have been any previous revocations; i.e. 6 months for 1st revocation; 1 year for a 2nd revocation; 18 months for 3rd revocation; 2 years for 4th or subsequent revocations.

Possible Contestable Issues: Maryland's DUI laws are more interested in punishing drunk drivers rather than drugged drivers, yet sanctions for all DUI offenses are considerably lighter than those in many other states. Anecdotal information tells us that DRE officers are used in Maryland where they are available. Smaller law enforcement agencies may not have access to a DRE officer. However, where used, they are successful in identifying DUID offenders. Zero tolerance legislation, however, is unlikely to be embraced given the wording of the current statute.



Massachusetts General Laws
Chapter 90 Section 24

Type of DUID Law: Under the influence

Chapter 90, Section 24

(1)(a)(1) Whoever, upon any way or in any place to which the public has a right of access, or upon any way or in any place to which members of the public have access as invitees or licensees, operates a motor vehicle while under the influence of...marijuana, narcotic drugs, depressants or stimulant substances, all as defined in section one of chapter ninety-four C, or the vapors of glue shall be punished....

Type of Drugs Prohibited: Marijuana, narcotic drugs, depressants, stimulant substances, vapors of glue

Required Proof:

1. Defendant was operating a motor vehicle in Massachusetts
2. While operating the vehicle, Defendant was under the influence of one of the above-listed substances

Possible Defense Allowed by Statute: None found

Implied Consent for Drugs: No

Arrest Required Prior to Test: Not applicable

Specimens to be Tested: Not applicable

Sanctions for Refusal to Test:

Evidentiary: None

Criminal: None

Administrative: Not applicable

Sanctions Following Conviction:

Criminal: Not more than 2 1/2 years (no mandatory) imprisonment, \$500 - \$5000 fine for 1st offense; 60 days (30 days mandatory) - 2 1/2 years, \$600 - \$10,000 for 2nd offense within 10 years; 180 days (150 days mandatory) - 2 1/2 years, \$1000 - \$15,000 for 3rd offense within 10 years (felony); 2 years (12 months mandatory) - 2 1/2 years, \$15,000 - \$25,000 for 4th offense within 10 years (felony); 2 1/2 years (24 months mandatory), \$2000 - \$50,000 for 5th or subsequent offense within 10 years (felony). Penalties are enhanced in cases of serious bodily injury- related DUI and when either recklessness or negligence is involved.

Court-Ordered Other: The court may order community service as a condition of probation, and restitution. The court must order all DUID offenders to a driver education program, a drug treatment program, a drug rehabilitation program, or any combination the programs. The offender must also pay a \$100 surcharge.

Administrative: 1 year (3 months mandatory) revocation for 1st offense; 2 years (6 months mandatory) revocation for 2nd offense within 10 years; 8 years (2 years mandatory) revocation for 3rd offense within 10 years; 10 years (5 years mandatory) revocation for 4th offense within 10 years; life (mandatory) revocation for 5th or subsequent offense within 10 years.

Possible Contestable Issues: Massachusetts is one of the few states that does not extend its implied consent statute to drug-related DUI under any circumstances. It is also one of the few to substantially limit the number of prohibited drugs. Given that Massachusetts does not seem to be overly concerned about DUID, zero tolerance legislation most likely would not be entertained there.



Michigan Statutes Annotated
Section 9.2325

Type of DUID Law: Under the Influence
Impairment

Section 9.2325

- (1) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if either of the following applies:
 - (a) The person is under the influence of...a controlled substance...
 - (2) The owner of a vehicle or a person in charge or in control of a vehicle shall not authorize or knowingly permit the vehicle to be operated upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of motor vehicles, within this state by a person who is under the influence of...a controlled substance...or whose ability to operate the motor vehicle is visibly impaired due to the consumption of... a controlled substance.
- (3) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state when, due to the consumption of...a controlled substance..., the person's ability to operate the vehicle is visibly impaired. If a person is charged with violating subsection (1), a finding of guilty under this subsection may be rendered.

Type of Drugs Prohibited: Controlled substances

Required Proof:

1. Defendant was operating a vehicle in Michigan
2. While operating the vehicle, Defendant was under the influence of a controlled substance OR
3. While operating the vehicle, Defendant had consumed a controlled substance that visibly impaired his/her ability to operate the vehicle OR
4. Defendant was the owner of a vehicle and knowingly permitted someone to operate his/her vehicle while that person was under the influence of a controlled substance or who had consumed a controlled substance that impaired that person's ability to operate the vehicle.

Possible Defenses Allowed by Statute: None found

Implied Consent for Drugs: Yes

Special Circumstances: A test may be required by court order following a refusal

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood, Urine

Sanctions for Refusal to Test:

Evidentiary: A refusal is admissible in criminal cases, but only to show a test was requested

Criminal: None

Administrative: 6 month suspension (restricted license may be issued) for 1st refusal; 1 year (mandatory) suspension for 2nd or subsequent refusals within 7 years.

Sanctions Following Conviction:

Criminal: Not more than 93 days (no mandatory) imprisonment, not more than \$300 fine for 1st offense; 5 days (mandatory) - 1 years, \$200 (mandatory) - \$1000 for 2nd offense within 7 years; 1 year (mandatory) - 5 years, \$500 (mandatory) - \$5000 for 3rd or subsequent offenses (felony) only if prison is ordered. The court can order the defendant up to 5 years probation and not less than 30 days or more than 1 year incarceration in jail instead of prison; 5 years (no mandatory), \$1000 - \$5000 for any DUI offense with a "serious impairment of a body function" (felony). Sanctions are the same for both the under-the-influence offense and the visibly-impaired offense.

Court-Ordered Other: The court may order community service in addition to or in lieu of jail time with some minimum mandatory periods if done in lieu of imprisonment. The court may also order restitution directly to the victim, and may order the Defendant to pay assessments, costs of prosecution and costs of any emergency response required in the case.

Administrative: 180 days (no mandatory) suspension for 1st offense; not less than 1 year (mandatory) revocation for 2nd DUI offense or any serious impairment-related DUI; not less than 5 years (mandatory) for any subsequent offense within 7 years.

Possible Contestable Issues: In Michigan, a driver may be charged with driving under the influence or driving while impaired. This acknowledgement of impairment as a separate crime and the relatively light burden it carries is suggestive of Michigan's amenability to zero tolerance legislation. In addition, Michigan's broad prohibition of any controlled substance also lends a base of support for such legislation.



Minnesota Statutes Annotated
Section 169A.20

Type of DUID Law: Under the Influence; Impairment
Zero Tolerance for Scheduled Controlled Substances other than marijuana or tetrahydrocannabinols

Section 169A.20

It is a crime for any person to drive, operate, or be in physical control of any motor vehicle within this state or upon the ice of any boundary water of this state...

- (2) when the person is under the influence of a controlled substance
- (3) when the person is knowingly under the influence of a hazardous substance that affects the nervous system, brain, or muscles of the person so as to substantially impair the person's ability to drive or operate the motor vehicle;
- (7) when the person's body contains any amount of a controlled substance listed in schedule I or II other than marijuana or tetrahydrocannabinols

Type of Drugs Prohibited: Controlled substance, hazardous substances that affect the nervous system, brain or muscles, Scheduled controlled substances

Required Proof:

1. Defendant was driving, operating or in physical control of a motor vehicle in Minnesota
2. While driving, Defendant was under the influence of a controlled substance OR
3. 3.While driving, Defendant was knowingly under the influence of a hazardous substance that affects his/her nervous system, brain, or muscles such that the defendant 's ability to drive was substantially impaired OR
4. 4.While driving, Defendant's body contained any amount of a scheduled controlled substance other than marijuana or tetrahydrocannabinols

Possible Defenses Allowed by Statute: There is an affirmative defense to the zero tolerance provision if the defendant can show that the controlled substance was being used pursuant to a valid prescription.

Implied Consent for Drugs: Yes

Arrest Required Prior to Test: No, either arrest, refusal to take a preliminary screening test, or the person was involved in an accident resulting in property damage, personal injury, or death act as bases to request a test.

Specimens to be Tested: Blood and Urine

Sanctions for Refusal to Test:

Evidentiary: Refusal can be admitted into evidence

Criminal: Not more than 90 days imprisonment and not more than \$700 fine for 1st refusal; not more than 1 year, not more than \$3000 for 2nd refusal or previous DUI within 5 years, or 2 or more previous DUIs.

Administrative: 1 year (15 days mandatory) revocation for 1st refusal; 1 year (180 days mandatory) for subsequent refusals

Sanctions Following Conviction:

Criminal: Up to 90 days (no mandatory) imprisonment, not more than \$700 (\$210 mandatory) fine for misdemeanor (driving under the influence of a controlled substance); not more than 1 year (30 days mandatory for 1st offense, 90 days mandatory for 2nd offense within 10 years, 180 days mandatory for 3rd offense within 10 years), not more than \$3000 (\$900 mandatory) fine for gross misdemeanors (driving under the influence of a controlled substance or with any amount of a controlled substance in the body either within 5 years of a prior offense or within 10 years of 2 or more prior DUI offenses). There are enhanced sanctions for aggravated cases.

Court-Ordered Other: The court may order community service in lieu of jail time, restitution to the victim directly or to the Victim's Fund, assessments and surcharges, and participation in a chemical use dependency treatment program.

Administrative: For zero tolerance offenses, 90 days (15 days mandatory) revocation for 1st offense, 180 days (90 days mandatory) revocation for 2nd or subsequent offense within 5 years. For all other offenses, not less than 30 days (15 days mandatory) revocation for 1st offense; not less than 180 days (90 days mandatory if defendant submits to a test or 180 days mandatory if defendant refused a test) revocation for 2nd offense within 5 years; not less than 1 year (90 days or 180 days mandatory depending on whether defendant submitted to a test) revocation for 3rd offense within 5 years; not less than 2 years (90 days or 180 days mandatory) revocation for 4th or subsequent offense.

Possible Contestable Issues: Minnesota is one of the states that includes a provision for zero tolerance of certain scheduled controlled substances, although it does not allow for zero tolerance of one of the most widely abused substances, marijuana. The sentences in Minnesota are stiff for refusal to take a chemical test.



MISSISSIPPI

Mississippi Code Annotated Section 63-11-30

Type of DUID Law: Under the Influence
Impairment

Section 63-11-30

- (1) It is unlawful for any person to drive or otherwise operate a vehicle in this state who
- (b) is under the influence of any other [than alcohol] substance which has impaired such person's ability to operate a motor vehicle;
- (c) is under the influence of any drug or controlled substance, the possession of which is unlawful under the Mississippi Controlled Substances Law....

Type of Drugs Prohibited: Any substance other than intoxicating liquor that causes impairment, any illegal drug or controlled substance

Required Proof:

- 1. Defendant was driving a motor vehicle in Mississippi
- 2. While driving the vehicle, Defendant was under the influence of any substance which impaired the defendant's ability to operate the vehicle
OR
- 3. That while driving, Defendant was under the influence of an illegal drug or controlled substance

Possible Defenses Allowed by Statute: None found

Implied Consent for Drugs: Yes. The statute uses mandatory language ("shall give consent") but allows for refusals

Special Circumstances: Drivers involved in fatal accidents cannot refuse a test

Arrest Required Prior to Test: No, but police officers must have reasonable grounds to request a test and probable cause that a DUI has occurred

Specimens to be Tested: Blood, Urine

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in criminal cases only

Criminal: None

Administrative: 90 days (mandatory) suspension if there has been no previous DUI conviction; 1 year (mandatory) suspension if there has been a previous DUI conviction.

Sanctions Following Conviction:

Criminal: Not more than 48 hours imprisonment, \$250 (mandatory) - \$1000 fine for 1st offense; 10 days - 1 year, \$600 (mandatory) - \$1500 for 2nd offense within 5 years; 1 - 5 years, \$2000 (mandatory) - \$5000 for 3rd offense or subsequent offense within 5 years (felony); not less than 5 years and not to exceed 25 years imprisonment for a DUI where there has been negligence resulting in death, disfigurement or disability (felony).

Court-Ordered Other: The court may order community service in addition to imprisonment, restitution to be paid directly to a victim, and attendance at a drug education or treatment programs or to counseling. Assessments are assessed against the defendant.

Administrative: 90 days (30 days mandatory) - 1 year suspension for 1st offense; 2 years (1 year mandatory) suspension for 2nd offense within 5 years; 5 years (3 years mandatory) suspension for 3rd or subsequent offense within 5 years. These suspensions run consecutively to any suspension given for a refusal to submit to a chemical test. The court may shorten a suspension period under certain circumstances.

Possible Contestable Issues: Mississippi's broad prohibition of substances, its relatively light standard of impairment, and its use of counseling and treatment programs may indicate an amenability for zero tolerance legislation. Anecdotal information tells us that Mississippi is just beginning to use DREs so their efficacy in investigation and prosecution is yet to be determined.



Missouri Revised Statutes
Section 577.010
Section 577.001

Type of DUID Law: Under the Influence

Section 577.010

1. A person commits the crime of "driving while intoxicated: if he operates a motor vehicle while in an intoxicated or drugged condition

Section 577.001

- (2) ...a person is in an "intoxicated condition" when he is under the influence of ... a controlled substance, or drug, or any combination thereof.

Type of Drugs Prohibited: Controlled substances and drugs

Required Proof:

1. Defendant was operating a motor vehicle in Missouri
2. While operating the vehicle, Defendant was under the influence of a controlled substance and/or a drug..

Possible Defenses Allowed by Statute: None found

Implied Consent for Drugs: Yes

Special Circumstances: A blood sample may be taken without consent and prior to a DUI arrest when exigent circumstances exist and there is probable cause to believe a DUI has occurred.

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood, Urine, Saliva

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in criminal and civil cases

Criminal: None

Administrative: 1 year (90 days mandatory) revocation for 1st refusal; 1 year (mandatory) revocation for 2nd or subsequent refusal. Completion of a substance abuse program is required for reinstatement.

Sanctions Following Conviction:

Criminal: Not more than 6 months (no mandatory) imprisonment, not more than \$500 (no mandatory) fine for 1st offense; not more than 1 year (48 hours mandatory), not more than \$1000 for 2nd offense within 5 years; not more than 5 years (48 hours mandatory), not more than \$5000 for 3rd or subsequent offense within 10 years (felony).

Court-Ordered Other: The court may order at least 10 days community service in lieu of imprisonment for repeat offenders, restitution directly to a victim or to a victim's compensation fund, and for 1st offenders, the court may suspend a sentence provided the defendant is placed on probation for at least 2 years. The court may also require a defendant to reimburse the state or local governments for the costs associated with the person's arrest. Upon a plea of guilty or a finding of guilty, the court must order the defendant to complete a substance abuse traffic offender program.

Administrative: 30 days (mandatory) suspension for 1st offenders; 5 years (2 years mandatory) revocation for 2nd offense within 5 years; 10 years (3 years mandatory) - permanent revocation for 3rd or subsequent offenses. After 3 years, hardship driving privileges may be granted.

Possible Contestable Issues: Missouri has a broad prohibition of drugs and controlled substances and seems to be concerned with getting drugged drivers off the road. That combined with its requirement for treatment makes it resemble several of the per se states. It appears that Missouri has the groundwork laid for introduction of zero tolerance legislation.



Montana Code Annotated
Section 61-8-401

Type of DUID Law: Under the influence: Impairment

Section 61-8-401

- (1) It is unlawful and punishable as provided in 61-8-442 and 61-8-731 through 61-8-734 for any person who is under the influence of :
 - (e) a dangerous drug to drive or be in actual physical control of a vehicle within this state;
 - (f) any other drug to drive or be in actual physical control of a vehicle within this state...
- (2) "Under the influence" means that as a result of taking into the body...drugs, or any combination thereof, a person's ability to safely operate a motor vehicle has been diminished.

Type of Drugs Prohibited: Any drug or any dangerous drug

Required Proof:

1. Defendant was driving or was in actual physical control of a vehicle in Montana
2. Defendant had taken into his/her body a drug or a dangerous drug
3. As a result of taking the drug into the body, Defendant's ability to safely operate the vehicle was diminished

Possible Defenses Allowed by Statute: Legal entitlement to use the drug is not a defense. Section 61-8-401

Implied Consent for Drugs: Yes

Arrest Required Prior to Test: Yes

Special Circumstances: If the Driver is in an accident resulting in property damage, bodily injury or death, and the police officer has probable cause to believe driver was DUI, no arrest is required.

Specimens to be Tested: Blood

Sanction for Refusal to Test:

Evidentiary: Refusal is admissible in criminal cases

Criminal: None

Administrative: 6 month (mandatory) suspension for 1st refusal; 1 year (mandatory) revocation for 2nd or subsequent refusal within 5 years

Sanctions Following Conviction:

Criminal: 24 hours (mandatory) - 6 months imprisonment, \$100 (no mandatory) - \$500 fine for 1st offense; 7 days (3 days mandatory) - 6 months, \$300 - \$500 for 2nd offense within 5 years; 30 days (10 days mandatory) - 1 year, \$500 - \$1000 for 3rd offense within 5 years; 6 months (mandatory) - 13 months, \$1000 - \$10,000 for 4th or subsequent offense within 5 years (felony); not more than 1 year, not more than \$1000 for an injury-related DUI offense; not more than 5 years, not more than \$10,000 for a serious injury-related DUI offense (felony).

Court-Ordered Other: The court may order jail time other than the first 1-2 days to be performed as home detention. The court may also order community service and order that restitution be paid directly to any person who suffered pecuniary loss as a result of Defendant's actions. Probation and certain surcharges must be imposed in certain circumstances, and may be imposed otherwise. If an assessment indicates need, a Defendant must be ordered to participate in a chemical dependency treatment program.

Administrative: 6 months (no mandatory) suspension for 1st offense; 1 year (no mandatory) revocation for a 2nd offense within 5 years; 1 year revocation for a 3rd offense within 5 years; and for any injury-related DUI offense or any serious injury-related DUI offense.

Possible Contestable Issues: The lower standard of diminished ability plus the broad prohibition of drugs suggests a strong likelihood that Montana may be ready to embrace a zero tolerance scheme.



Revised Statutes of Nebraska
Section 60-6,196

Type of DUID Law: Under the Influence

Section 60-6,196

(1) It shall be unlawful for any person to operate or be in the actual physical control of any motor vehicle:

(a) While under the influence of ...any drug...

Type of Drugs Prohibited: Any drug

Required Proof:

1. Defendant was operating or was in actual physical control of a motor vehicle in Nebraska
2. While operating the vehicle. Defendant was under the influence of any drug

Possible Defenses Allowed by Statute: None found

Implied Consent for Drugs: Yes

Special Circumstances: A driver who survives an accident where a fatality occurs must submit to a chemical test

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood and Urine

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in criminal and civil cases

Criminal: Not more than 60 days (7 days mandatory) imprisonment, \$400 (mandatory) fine for 1st refusal; not more than 90 days (30 days mandatory), \$500 (mandatory) for 2nd refusal within 12 years; not more than 1 year (90 days mandatory), \$600 (mandatory) for 3rd refusal within 12 years; not more than 5 years (10 days mandatory), \$10,000 for 4th or subsequent refusal (felony). If probation is ordered, mandatory jail time is lessened and combined with mandatory community service hours.

Administrative: 6 months (mandatory) revocation for 1st refusal; 1 year (mandatory) revocation for 2nd refusal; 15 years (mandatory) revocation for 3rd or subsequent refusal. If probation is granted, revocation periods are shortened.

Sanctions Following Conviction:

Criminal: Not more than 60 days (7 days mandatory) imprisonment, \$400 (mandatory) fine for 1st offense; not more than 90 days (30 days mandatory), \$500 (mandatory) for 2nd offense within 12 years; not more than 1 year (90 days mandatory), \$600 (mandatory) for 3rd offense within 12 years; not more than 5 years (10 days mandatory), not more than \$10,000 (no mandatory) for 4th or subsequent offense within 12 years and for serious injury- related DUI offenses (felony). Jail penalties are reduced if the defendant is placed on probation.

Court-Ordered Other: The court may order community service as an alternative to incarceration, restitution to a victim, and may require a defendant to participate in a drug treatment program. The defendant must also attend a driver education program.

Administrative: 6 months (mandatory) revocation for 1st offense; 1 year (mandatory) revocation for 2nd offense within 12 years; 15 years (7 years mandatory) revocation for 3rd or subsequent offense and for any serious injury-related DUI offense. Mandatory revocation periods are shortened if the defendant is placed on probation.

Possible Contestable Issues: Nebraska is one of the few states that makes refusal to take a chemical test a crime. It also provides for relatively stiff sentences and stringent revocation periods. These factors, along with its broad prohibition of drugs and its moderate burden indicate that Nebraska takes DUID seriously and may be amenable to zero tolerance legislation.



Nevada Revised Statutes
Section 484.379

Type of DUID Law: Under the Influence: Incapacity
Zero Tolerance for amounts of Prohibited Substances

Section 484.379

It is unlawful for any person who is under the influence of any controlled substance, ...or inhales, ingests, applies or otherwise uses any chemical, poison, or organic solvent, or any compound or combination of any of these, to a degree which renders him incapable of safely driving or exercising actual physical control of a vehicle to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access....It is unlawful for any person to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access with an amount of a prohibited substance in his blood or urine that is equal to or greater than [listed quantities].

Type of Drugs Prohibited: Controlled substances, certain chemicals, poisons, organic solvents and compounds

Required Proof:

1. Defendant was driving or was in actual physical control of a vehicle in Nevada
2. At the time, Defendant was under the influence of a controlled substance or used any chemical. Poison, organic solvent or compound
3. That influence rendered the Defendant incapable of safely driving or exercising actual physical control of a vehicle OR
4. At time of driving, the Defendant had a certain amount of a prohibited controlled substance present in his blood or urine

Possible Defenses Allowed by Statute: The fact that any person charged with a violation of the incapacity subsection is or has been entitled to use that drug under the laws of this state is not a defense.

Implied Consent for Drugs: Yes.

Special Circumstance: A blood sample may be obtained without consent if the police officer has reasonable grounds to believe a DUI has been committed or where there is a death or serious injury or if the Defendant has been stopped for a subsequent offense within 7 years.

Arrest Required: No. A police officer need only reasonable grounds to believe that a DUI crime was committed before requesting that the defendant submit to a chemical test.

Specimens to be Tested: Blood and Urine (under limited circumstances)

Sanctions for Refusal to Test:

Evidentiary: Refusal is admitted into evidence in criminal cases

Criminal: None. Upon refusal, however, the requesting officer shall seize the license of the driver and arrest him/her for DUI

Administrative: Immediate seizure of license by police officer

Sanctions Following Conviction:

Criminal: 2 days (mandatory) – 6 months imprisonment, \$400 (mandatory)

D \$1000 fine for 1st offense; 10 days (mandatory) – 6 months, \$750 (mandatory) - \$1000 for 2nd offense within 7 years; 1 year (mandatory) – 6 years, \$2000 (mandatory) - \$5000 for 3rd and subsequent offense within 7 years (felony).

Court-Ordered Other: The court may order participation in a drug treatment program (6 months mandatory for 1st offense, 1 year mandatory for 2nd offense) in exchange for a suspended sentence. The court may order community service (of varying mandatory lengths) in lieu of or in addition to jail time. The court may also order restitution either directly to a victim or to the Victim's Compensation Fund, and residential confinement with or without electronic monitoring. The defendant must be ordered to pay various fines, fees and assessments and to attend a meeting with DUI victims to discuss the impact of DUI on victims.

Administrative: Unspecified revocation authorized for zero tolerance violations; 90 days (45 days mandatory) revocation for 1st DUI offense; 1 year (mandatory) revocation for 2nd DUI offense within 7 years; 3 years (18 months mandatory) revocation for 3rd DUI and subsequent DUI offenses within 7 years.

Possible Contestable Issues: Nevada is the one per se state that lists specific amounts of prohibited substances as per se violative of the state's "under the influence" statute. The use of innovative sanctions and required treatment indicates a thoughtful process that attempts to get at the heart of the problem of substance abuse without trivializing the tragic effects it has on the community.

NEW HAMPSHIRE



Revised Statutes Annotated
Section 265:82
Section 265:82-a

Type of DUID Law: Under the influence

Section 265:82

- I. No person shall drive or attempt to drive a vehicle upon any way:
(a) While such person is under the influence of...any controlled drug ...

Section 265:82-a

A person shall be guilty of a violation of this section if the person drives or attempts to drive a vehicle upon any way:

While under the influence of...any controlled drug...and, at the time alleged:

- (a) Drives at a speed more than 30 miles per hour in excess of the prima facie limit
(b) Causes a motor vehicle collision resulting in serious bodily injury... or
(c) Attempts to elude pursuit by a law enforcement officer by increasing speed, extinguishing headlamps while still in motion, or abandoning a vehicle while being pursued.

Type of Drugs Prohibited: Any controlled drug (as defined in 318-B:1 – extensive listing)

Required Proof:

1. Defendant was driving or attempting to drive a vehicle in New Hampshire
2. While driving the vehicle, Defendant was under the influence of any controlled drug

Possible Defenses Allowed by Statute: None found

Implied Consent for Drugs: Yes

Special Circumstances: A driver involved in an accident involving death or serious injury must be tested if there is probable cause to believe a DUI occurred.

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood, Urine

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in both criminal and civil cases

Criminal: None

Administrative: 180 days (mandatory) suspension for 1st refusal with no prior DUI; 2 year (mandatory) suspension for 2nd refusal or 1st refusal with a prior DUI. These revocations must run consecutively with any other suspensions or revocations.

Sanctions Following Convictions:

Criminal: No imprisonment, \$350 (mandatory) - \$1000 fine for 1st offense; not more than 1 year (no mandatory), \$500 (mandatory) - \$2000 for 1st aggravated offense; not more than 1 year (10 days mandatory), \$500 (mandatory) - \$2000 for any 2nd or subsequent offense within 7 years; not more than 7 years (no mandatory), \$1000 (mandatory) - \$4000 for a serious injury-related aggravated DUI offense (felony).

Court-Ordered Other: The court may order community service pursuant to a conditional discharge in a felony or an aggravated DUI case, restitution to the victims compensation fund, and may also order the Defendant to reimburse a public agency for the costs incurred to respond to an accident involving DUI. Defendants will be assessed certain penalty assessments and repeat offenders must be ordered to complete a substance abuse treatment program.

Administrative: 90 days (mandatory) – 2 year revocation for 1st offense; 1 year (mandatory) – 2 year revocation for 1st aggravated DUI offense; not less than 3 years (mandatory) revocation for 2nd offense within 7 years; at least 5 years (mandatory) revocation for 3rd offense within 7 years; indefinite (7 years mandatory) revocation for 4th or subsequent offense; 1 year (mandatory) – 2 year revocation for any serious bodily injury-related aggravated DUI offense.

Possible Contestable Issues: New Hampshire's broad prohibition of drugs, its relatively simple burden suggests a desire to keep DUID offenders off the road. Some of the sentencing requirements seem inconsistent, though. It is unclear whether New Hampshire would be amenable to zero tolerance legislation.



New Jersey Statutes Annotated
Section 39:4-50

Type of DUID Law: Under the Influence

Section 39:4-50

(a) A person who operates a motor vehicle while under the influence of...[a] narcotic, hallucinogenic or habit-producing drug...or permits another person who is under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug to operate a motor vehicle owned by him or in his custody or control...shall be subject....

Type of Drug Prohibited: Any narcotic, hallucinogenic or habit-producing drug

Required Proof:

1. Defendant was operating a motor vehicle in New Jersey
2. While operating the motor vehicle, Defendant was under the influence of one of the above-listed drugs OR
3. Defendant was an owner of a motor vehicle who permitted someone under the influence of one of the above-listed drugs to operate his/her motor vehicle.

Possible Defenses Allowed by Statute: None found

Implied Consent for Drugs: No

Arrest Required Prior to Test: Not applicable

Specimens to be Tested: Not applicable

Sanctions for Refusal to Test:

Evidentiary: Not applicable

Criminal: Not applicable. Under a separate statute, a commercial driver who refuses a chemical test for DUID is subject to a fine of \$250 - \$500

Administrative: Not applicable

Sanctions Following Conviction:

Criminal: Not more than 30 days (no mandatory) imprisonment, \$250 (mandatory) - \$400 fine for 1st offense; 48 hours (mandatory) – 90 days, \$500 (mandatory) - \$1000 for 2nd offense within 10 years; not less than 180 days (90 days mandatory), \$1000 (mandatory) for 3rd or subsequent offenses within 10 years of 2nd offense.

Court-Ordered Other: The court may order Defendant to participate in a work release program and/or community service in lieu of or in addition to incarceration. The court may also order restitution to be paid to the victim, and may sentence Defendant to a supervised visitation program for purpose of observing victims of DUI Drivers. Mandatory fees and surcharges are also assessed against the defendant.

Administrative: 6 months (mandatory) - 1 year revocation for 1st offense; 2 years (mandatory) revocation for 2nd offense; 10 years (mandatory) revocation for 3rd and subsequent offenses.

Possible Contestable Issues: New Jersey is one of the few states that do not extend its implied consent law to DUID. In addition, New Jersey limits the kinds of drugs prohibited and imposes relatively light sentences in comparison to many other states. Given these factors, it is not a likely candidate for zero tolerance legislation.



NEW MEXICO

New Mexico Statutes Annotated Section 66-8-102

Type of DUID Law: Under the Influence: Incapacity

Section 66-8-102

- B. It is unlawful for any person who is under the influence of any drug to a degree that renders him incapable of safely driving a vehicle to drive any vehicle within this state;
- D. Aggravated driving while under the influence of...drugs consists of a person who:
 - (2) has caused bodily injury to a human being as a result of the unlawful operation of a motor vehicle while driving under the influence of ...drugs; or
 - (3) refused to submit to chemical testing, as provided for in the Implied Consent Act [66-8-105 to 66-8-112 NMSA 1978], and in the judgment of the court, based upon evidence of intoxication presented to the court, the person was under the influence of...drugs.

Type of Drugs Prohibited: Any drug

Required Proof:

- 1. Defendant was driving or in actual physical control of a vehicle in New Mexico
- 2. While driving the vehicle, Defendant was under the influence of a drug
- 3. The drug's influence rendered Defendant incapable of safely driving the vehicle OR
- 4. While driving under the influence, Defendant caused bodily injury to a human being OR
- 5. Defendant refused to submit to a chemical test and appeared to be under the influence of a drug

Possible Defenses Allowed by Statute: None found

Implied Consent for Drugs: Yes

Special Circumstances: A search warrant may be issued to require a defendant to submit to a chemical test

Arrest Required: Yes, only to trigger the Implied Consent Act. A voluntary search is permitted.

Specimens to be Tested: Blood and breath (inhalants)

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in criminal and civil cases

Criminal: None but a refusal to submit to a chemical test is grounds for a separate criminal charge under Section 66-8-102D (Aggravated DWI)

Administrative: 1 year (mandatory) revocation for any refusal

Sanctions Following Conviction: Same as for DWI alcohol.

Criminal: Not more than 90 days (no mandatory) imprisonment, not more than \$500 (no mandatory) fine for 1st offense; not more than 364 days (72 hour mandatory), not more than \$1000 (\$500 mandatory) for 2nd offense; not more than 364 days (30 days mandatory), not more than \$1000 (\$750 mandatory) for 3rd offense; not more than 18 months (6 months mandatory), not more than \$5000 (no mandatory) for 4th or subsequent offenses (felony); 3 years (2 years mandatory), not more than \$5000 (no mandatory) for any great bodily injury-related DUI offense (felony).

Court-Ordered Other: The court may order community service, restitution, and must assess fees to defray the costs of the chemical test and to fund DUI community programs. The may also order Defendant to participate in rehabilitative services and/or a driver safety course.

Administrative: 1 year (no mandatory) revocation for 1st offense; 1 year (30 days mandatory) revocation for 2nd offense; 10 years (30 days mandatory) revocation for 3rd offense within 10 years.

Possible Contestable Issues: New Mexico uses a tougher standard of proof (incapacity) but also allows for a broad prohibition of drugs and exhibits a "per se" like handling of a test refusal. The latter two factors suggest that New Mexico has little tolerance for DUID, particularly for refusing to allow a chemical test, and may indicate a willingness to consider zero tolerance for drugs.

Zero tolerance may or may not be acceptable to New Mexicans under current broad prohibition of drugged driving (including OTC and prescription drugs). DUID is an issue that has not received much attention in New Mexico until recently.



Consolidated Laws of New York
Vehicle & Traffic Section 1192

Type of DUID Law: Impairment

Section 1192

4. Driving while ability impaired by drugs. No person shall operate a motor vehicle while the person's ability to operate such a motor vehicle is impaired by the use of a drug as defined in this chapter.

Type of Drugs Prohibited: Drugs and controlled substances listed in Section 3306 of the Public Health Law (very extensive listing)

Required Proof:

1. Defendant was operating a motor vehicle in New York
2. While operating the motor vehicle, Defendant was using a drug
3. The use of the drug impaired the Defendant's ability to operate the vehicle

Possible Defenses Allowed by Statute: None found

Implied Consent for Drugs: Yes

Special Circumstances: If a driver is involved in an accident involving a fatality or serious injury, he/she may be compelled to submit to a chemical test.

Arrest Required Prior to Test: Yes, but not in all situations. Arrest is one of several bases for requesting a test

Specimens to be Tested: Blood, Urine, Saliva

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in civil and criminal cases

Criminal: None

Administrative: At least 6 months revocation and \$300 civil penalty for 1st refusal; at least 1 year and \$750 civil penalty for 2nd or subsequent refusal or for a 1st refusal with a prior DUI within 5 years.

Sanctions Following Conviction:

Criminal: Not more than 1 year (no mandatory) imprisonment, \$500 (mandatory) - \$1000 fine for 1st offense; not more than 4 years (no mandatory), \$1000 (mandatory) - \$5000 for 2nd offense within 10 years (felony); not more than 7 years, \$2000 (mandatory) - \$10,000 for 3rd offense within 10 years (felony).

Court-Ordered Other: The court may order community service as a condition of probation, restitution to a victim, and may require the defendant to attend a victim impact program. The court must assess certain mandatory surcharges. Forfeiture may also be ordered in certain felony cases.

Administrative: At least 6 months revocation for 1st offense; at least 1 year revocation for 2nd or subsequent offenses within 10 years; permanent revocation for a 2nd or subsequent offense in which a personal injury occurred in each offense.

Possible Contestable Issues: New York has a relatively light burden of proof, issues stiff sentences and allows a broad prohibition of substances. These factors may indicate a willingness to consider zero tolerance for drugs at some time in the future.

NORTH CAROLINA

N.C. General Statutes

Section 20-138.1

Section 20- 138.3

Type of DUID Law: Under the influence; Zero Tolerance for Persons under 21
Section 20 -138.1

(a) Offense. – A person commits the offense of impaired driving if he drives any vehicle upon any highway, any street, or any public vehicular area within the State:

(1) While under the influence of an impairing substance...

Section 20 - 138.3 (Driving by person less than 21 years old after consuming alcohol or drugs.)

(a) Offense. - It is unlawful for a person less than 21 years old to drive a motor vehicle on a highway or public vehicular area...at any time while he has remaining in his body any...controlled substance previously consumed, but a person less than 21 years old does not violate this section if he drives with a controlled substance in his body which was lawfully obtained and taken in therapeutically appropriate amounts.

Type of Drugs Prohibited: Controlled substances as defined by N.C.G.S. Chapter 90, any other drug or psychoactive substance capable of impairing a person's physical or mental faculties, or any combination of these substances.

Required Proof:

1. Defendant was driving a vehicle in North Carolina on a highway, street, or public vehicular area and
2. Defendant was under the influence of an impairing substance OR
3. Defendant was under 21 years of age and had any controlled substance in his/her body

Possible Defenses Allowed by Statute: Legal entitlement is not a defense to Section 20 -138.1. It is a defense to the zero tolerance section if the person less than 21 drives with a controlled substance in his body which was lawfully obtained and taken in therapeutically appropriate amounts.

Implied Consent for Drugs: Yes.

Special Circumstance: A driver may be compelled to submit to a test via other lawful procedures (i.e. search warrant or court order)

Arrest Required Prior to Test: Yes, unless criminal process for the offense has been issued or before arrest only upon request of driver. Also, pre-arrest testing of unconscious people is permissible.

Specimens to be Tested: Blood, Urine or other bodily substance

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in criminal cases.

Criminal: None

Administrative: 12 month revocation for any refusal. Limited driving privileges may be granted after 6 months of revocation and certain conditions are met.

Sanctions Following Conviction:

Criminal (DWI): Driving while impaired is an impaired driving offense within the meaning of N.C.G.S. § 20-4.01(24a). DWI punishments are divided into Levels 1-5; imprisonment and fine are determined by weighing the grossly aggravating factors, aggravating factors, and mitigating factors in each case. Level One Punishment:

Fine up to \$4,000 and imprisonment (no less than 30 days and up to no more than 24 months). Imprisonment suspended only if a condition of special probation is imposed to require the defendant's imprisonment of at least 30 days. Level Two Punishment:

Fine up to (\$2,000) and imprisonment (no less than 7 days and up to no more than 12 months). Imprisonment suspended only if a condition of special probation is imposed to require the defendant's imprisonment of at least 7 days. Level Three Punishment:

Fine up to \$1,000 and imprisonment (no less than 72 hours and up to no more than 6 months). Level Four Punishment: Fine up to

\$500.00 and imprisonment (no less than 48 hours and up to no more than 120 days). Level Five Punishment: Fine up to \$200.00 and imprisonment no less than

24 hours and up to no more than 60 days). Applicable for Levels 1-5: If the defendant is placed on probation, the judge shall impose a requirement that the defendant obtain a substance abuse assessment and the education or treatment required by N.C.G.S. § 20-17.6 for the restoration of a drivers license and as a condition of probation. The judge may impose any other lawful condition of probation. Applicable for Levels 3, 4, or 5: The specified term of imprisonment may be suspended. However, the suspended sentence shall include the condition that the defendant: (1) Be imprisoned for a term of 72 hours (for Level 3); 48 hours (for Level 4); and 24 hours (for Level 5) as a condition of special probation; or (2) Perform community service for a term of 72 hours (for Level 3); 48 hours (for Level 4); and 24 hours (for Level 5); or (3) Not operate a motor vehicle for a term of 90 days (for Level 3); 60 days (for Level 4); and 30 days (for Level 5); or (4) Any combination of these conditions.

Administrative (DWI): Other than the court-ordered period of non-driving as described in the Criminal section above, a defendant may also have his license revoked by the North Carolina Division of Motor Vehicles (DMV). Revocation of License: (1st conviction) 1 year; (2nd conviction within 3 years) 4 years (may be reduced or conditionally restored after revocation for mandatory 2 years); and (3rd or more convictions where 3rd conviction was within 5 years of second) permanent (may be conditionally restored after revocation for mandatory 3 years). Once a defendant is convicted of DWI, there are restrictions placed on his license once it is finally restored including lower alcohol concentrations. Also, under some circumstances, restoration of a person's license is conditional on the use of ignition interlock devices. A judge may grant a limited driving privilege for first offenders (no impaired driving conviction within 7 years) under limited circumstances.

Possible Contestable Issues: North Carolina demands zero tolerance for driving while drugged for persons under 21, and that combined with its moderate burden and the broad prohibition of substances suggests that the state may be amenable to an across-the-board zero tolerance statute.

NORTH DAKOTA

North Dakota Century Code Section 38-08-01

Type of DUID Law: Under the influence: Incapacity

Section 38-08-01

1. A person may not drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if any of the following apply:
 - (b) That person is under the influence of any drug or substance or combination of drugs or substances to a degree which renders that person incapable of safely driving.

The fact that any person charged with violating this section is or has been legally entitled to use...drugs or substances is not a defense against any charge for violating this section, unless a drug which predominately caused impairment was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person.

Type of Drugs Prohibited: Any drug or substance

Required Proof:

1. Defendant was driving or in actual physical control of a motor vehicle in North Dakota
2. While driving, defendant was under the influence of a drug or substance
3. The influence of the drug rendered Defendant incapable of safely driving

Possible Defenses: Legal entitlement to use the drug or substance is not a defense unless the drug was used only as directed or cautioned by an attending physician or other practitioner who legally prescribed or dispensed the drug to the Defendant.

Implied Consent for Drugs: Yes

Special Circumstance: Driver may be compelled to submit to a test if involved in an accident resulting in death or serious injury and there is probable cause to believe that a DUI has occurred.

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood, Urine, and Saliva

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in criminal and civil cases

Criminal: None

Administrative: 1 year (mandatory) revocation for 1st refusal; 2 years (mandatory) for 2nd refusal within 5 years; 3 years (mandatory) revocation for 3rd or subsequent refusals within 5 years. These sanctions will not attach if a Defendant pleads guilty to a DUI offense and files an affidavit according to NDCC 39-20-04.

Sanctions Following Conviction:

Criminal: Not more than 30 days (no mandatory) imprisonment, not more than \$1000 (\$250 mandatory) fine for 1st offense; not more than 30 days (5 days mandatory), not more than \$1000 (\$500 mandatory) for 2nd offense within 5 years; not more than 1 year (60 days mandatory), not more than \$1000 (mandatory) for 3rd offense within 5 years; not more than 1 year (180 days mandatory), not more than \$1000 (mandatory) for 4th offense within 7 years; not more than 5 years (180 days mandatory), not more than \$5000 (\$1000 mandatory) for 5th or subsequent offense within 7 years (felony).

Court-Ordered Other: The court may order a Defendant into an addiction treatment program with time spend there credited as a portion of the defendant's prison sentence. The court may also order the defendant to provide community service as an alternative to jail, and/or to pay restitution to the victim

Possible Contestable Issues: North Dakota places a broad prohibition against drugs, but has the more difficult standard of incapacity and relatively light sentences. It is not clear that North Dakota would be amenable to zero tolerance legislation.



Ohio Revised Code
Section 4511.19

Type of DUID Law: Under the influence

Section 4511.19

(A) No person shall operate any vehicle, streetcar, or trackless trolley within this state, if any of the following apply:

(1) The person is under the influence of ... a drug of abuse....

Type of Drugs Prohibited: Drugs of abuse

Required Proof:

1. Defendant was operating a vehicle in Ohio
2. While operating the vehicle, Defendant was under the influence of a drug of abuse

Implied Consent for Drugs: Yes

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood, Urine

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in criminal cases

Criminal: Not more than \$100 fine for 1st refusal; 30 days imprisonment and not more than \$250 for 2nd refusal within 1 year; not more than 60 days and not more than \$500 for 3rd refusal within 1 year.

Administrative: 1 year (30 days mandatory) suspension for 1st refusal; 2 years (90 days mandatory) suspension for 2nd refusal within 5 years; 3 years (1 year mandatory) suspension for 3rd refusal within 5 years; 5 years (3 years mandatory) suspension for subsequent refusals. Occupational driving permits may be issued after mandatory periods have passed.

These suspensions will terminate if the Defendant pleads or is found guilty of a DUI but will stand if Defendant is found not guilty.

Sanctions Following Conviction:

Criminal: Not more than 6 months (3 days mandatory) imprisonment, \$200 (mandatory) - \$1000 fine for 1st offense; not more than 6 months (10 days mandatory), \$300 (mandatory) - \$1500 for 2nd offense within 6 years; 30 days (mandatory) - 1 year, \$500 (mandatory) - \$2500 for 3rd offense within 6 years; 60 days (mandatory) - 18 months, \$750 (mandatory) - \$10,000 for subsequent offenses within 6 years (felony).

Court-Ordered Other: The court may order house arrest, participation in a treatment program, work release, community service, and probation plus participation in a driver intervention program, either in combination with or in lieu of imprisonment. The court may also order restitution for property damage to a victim, and forfeiture or fines in lieu of forfeiture.

Administrative: 6 months (15 days mandatory) - 3 years suspension for 1st offense; 1 year (30 days mandatory) - 5 years suspension for 2nd offense within 6 years; 1 year (180 days mandatory) - 10 years suspension for 3rd offense within 6 years; 3 years (mandatory) - permanent revocation for subsequent offenses within 6 years.

Possible Contestable Issues: Ohio places a moderate burden on the prosecution, enjoys a broad prohibition against drugs, provides the ability to use treatment as an option, and provides many options to incarceration. These factors suggest that Ohio might be amenable to zero tolerance legislation at some time in the future.



Oklahoma Statutes
Title 47 O.S. §§ 11-902; 761, 1-140.1, 751 A(2)

Type of DUID Law: Under the influence: Incapacity, Impairment

47 Section 11-902

A. It is unlawful and punishable as provided in this section for any person to drive, operate, or be in actual physical control of a motor vehicle within this state who:

3. Is under the influence of any intoxicating substance other than alcohol which may render such person incapable of safely driving or operating a motor vehicle...

47 Section 761

1. Any person who operates a motor vehicle while his ability to operate such motor vehicle is impaired by the consumption of ... any substance other than alcohol, which is capable of being ingested, inhaled, injected or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing or other sensory or motor functions shall be subject to a fine, imprisonment, or by both.

Type of Drugs Prohibited: "Other intoxicating substance" means any controlled dangerous substance, as defined in the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. Of Title 63 of the Oklahoma Statutes, or any other substance, other than alcohol, which is capable of being ingested, inhaled, injected, or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing or other sensory or motor functions." 47 O.S. § 1-140.1. See also 47 O.S. § 751 A.(2), and 47 O.S. § 761 A.

Required Proof:

1. Defendant was driving, operating, or was in actual physical
2. control of a motor vehicle in Oklahoma
3. While driving, etc, the motor vehicle, Defendant was under the influence of an intoxicating substance other than alcohol
4. That influence rendered Defendant incapable of safely driving, etc. the vehicle OR
5. While driving, etc. Defendant's ability to operate the vehicle was impaired by the consumption of a substance that adversely affected his/her central nervous system, vision, hearing, etc.

Possible Defenses: Legal entitlement to use the intoxicating substance is not a defense to a violation of the "under the influence" provision.

Implied Consent for Drugs: Yes

Special Circumstance: A chemical test may be mandated where there is probable cause that the driver was DUI and was in an accident that caused death or serious injury, or where the driver was cited for a traffic offense. 47 O.S. § 753.

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood, Urine, Saliva

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in civil and criminal cases

Criminal: None

Administrative: 180 days revocation for 1st refusal; 1 year revocation for 2nd refusal within 5 years; 3 years revocation for subsequent refusal within 5 years. 47 O.S. § 6-205.

Sanctions Following Conviction:

Criminal: 10 days (48 hours mandatory) - 1 year imprisonment, not more than \$1000 fine for 1st offense; 1 year (mandatory) - 5 years, not more than \$2500 for 2nd offense within 10 years (felony); 1 year (mandatory) - 7 years, not more than \$5000 for 3rd offense within 100 years (felony); 1 year (mandatory) - 10 years, not more than \$5000 for 4th or subsequent offense within 10 years (felony). Fines carry no mandatory minimums. Penalties are enhanced where personal injury or great personal injury is involved.

Court-Ordered Other: The court may require Defendant to complete a treatment program or substance abuse program, order community service in lieu of imprisonment, and order restitution to a victim. The court may also defer or suspend a sentence, order electronic home monitoring, participation in a victim impact program and impose investigation, prosecution, defense and other costs.

Administrative: 180 days revocation for 1st offense; 1 year revocation for 2nd offense within 5 years; 3 years revocation for subsequent offenses within 5 years. These revocation periods have no mandatory minimum.

Possible Contestable Issues: Oklahoma provides very strict sentences, making a second offense a felony and enjoys a very broad prohibition for drugs, and it provides for a separate impairment statute. However, it adheres to an incapacity standard that makes amenability to future zero tolerance legislation unclear. Anecdotal information indicates that Oklahoma does not formally recognize DRE, experts or evaluation process, and so does not accept it in court. However, some prosecutors have been successful in utilizing DRE testimony, but it has been on a "hit or miss" basis.



Oregon Revised Statutes
Section 813.010

Type of DUID Law: Under the influence

Section 813.010

- (1) A person commits the offense of driving under the influence of intoxicants if the person drives a vehicle while the person:
- (b) Is under the influence of ...a controlled substance, or an inhalant....

Type of Drugs Prohibited: Controlled substances, inhalants

Required Proof:

1. Defendant was driving a vehicle in Oregon
2. While driving the vehicle, Defendant was under the influence of a controlled substance and/or an inhalant

Possible Defenses Allowed by Statute: None found

Implied Consent for Drugs: Yes

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood, Urine

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in civil and criminal cases

Criminal: None

Administrative: 1 year (90 days mandatory) suspension for 1st refusal; 3 years (1 year mandatory) for 2nd refusal within 5 years. Restricted driving privileges may be issued after the mandatory periods are served.

Sanctions Following Conviction:

Criminal: Not more than 1 year (48 hours mandatory) imprisonment, not more than \$5000 (\$1000 mandatory) fine for 1st offense; not more than 1 year (48 hours mandatory), not more than \$5000 (\$1500 mandatory) for 2nd offense; not more than 1 year (48 hours mandatory), not more than \$5000 (\$2000 mandatory) for 3rd offense; not more than 5 years (48 hours mandatory), not more than \$100,000 (no mandatory) for 4th offense within 10 years (felony).

Court-Ordered Other: The court may order mandatory sentences to be served in either a jail, a minimum-security facility or inpatient rehabilitation or treatment center. The court may also order home detention, community service in lieu of incarceration, restitution directly to the victim, and must impose various fees and assessments and must require defendants to complete a treatment program for drug dependency.

Administrative: 1 year (30 days mandatory) suspension for 1st offense; 3 years (90 days mandatory) suspension for 2nd offense; 3 years (1 year mandatory) suspension for a 3rd or subsequent offense.

Possible Contestable Issues: Oregon has a moderate standard for proof (under the influence), and there is anecdotal evidence that DREs are heavily relied upon, both in investigation and in prosecution of the cases. However, Oregon has a relatively limited prohibition of substances, limiting the prohibition to controlled substances and inhalants. That factor, combined with Oregon's relatively light sentences for 1st, 2nd and 3rd offenses suggests that Oregon may not be amenable to the introduction of zero tolerance legislation.



Pennsylvania Consolidated Statutes
Section 75-3731

Type of DUID Law: Under the influence: Incapacity

Section 75-3731

(A) Offense Defined. -- A person shall not drive, operate or be in actual physical control of the movement of any vehicle:

(2) While under the influence of any controlled substance, as defined in the act of April 14, 1973 (P.L. 233, No. 64) known as The Controlled Substance, Drug, Device and Cosmetic Act, to a degree which renders the person incapable of safe driving....

Type of Drugs Prohibited: Controlled substances

Required Proof:

1. Defendant was driving, operating, or in actual physical control of a vehicle in Pennsylvania
2. While driving, etc. the vehicle, Defendant was under the influence of a controlled substance
3. The influence rendered the Defendant incapable of safe driving

Possible Defenses Allowed by Statute: Legal entitlement to use the controlled substance is not a defense to a charge under Section 75-3731

Implied Consent for Drugs: Yes

Special Circumstance: Chemical tests are considered "searches" and cannot be administered without consent unless probable cause and exigent circumstances are present to validate a warrant-less search

Arrest Required Prior to Test: No, there need only be reasonable grounds to believe a DUI has occurred, or where an accident resulting in serious injury or death has occurred.

Specimens to be Tested: Blood, Urine

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in criminal cases

Criminal: None

Administrative: 12 months (mandatory) suspension for any refusal

Sanctions Following Conviction:

Criminal: Not more than 2 years (48 hours mandatory) imprisonment, not more than \$5000 (\$350 mandatory) fine for 1st offense; not more than 2 years (30 days mandatory), not more than \$5000 (\$400 mandatory) for 2nd offense within 7 years; not more than 5 years (90 days mandatory), not more than \$10,000 (\$500 mandatory) for 3rd offense within 7 years; not more than 5 years (1 year mandatory), not more than \$10,000 (\$600 mandatory) for 4th offense within 7 years.

Court-Ordered Other: The 1st time offender may be placed in the Accelerated Rehabilitation Disposition Program, the successful completion of which may lead to dismissal of charges. A 1st or 2nd time offender may also be sentenced to a residential inpatient rehabilitation program, or house arrest with electronic surveillance coupled with a drug treatment program as an alternative to mandatory imprisonment. The court may also order community service, restitution to a victim, day-time work release, or order the Defendant to pay laboratory costs associated with the BAC testing.

Administrative: 12 months (mandatory) suspension for all offenders; 1 month (mandatory) - 12 months for 1st time offenders in the Accelerated Rehabilitation Disposition program.

Possible Contestable Issues: Pennsylvania holds to the stricter standard for proof (incapacity), allows for light mandatory sentences and administrative suspensions, and views chemical tests as searches. These factors suggest that Pennsylvania is not ready to entertain zero tolerance legislation.



General Laws of Rhode Island
Section 31-27-2

Type of DUID Law: Under the influence
Zero Tolerance

Section 31-27-2

- (a) Whoever operates or otherwise drives any vehicle in the state while under the influence of any...drugs, toluene, or any controlled substance as defined in chapter 28 of title 21, or any combination thereof, shall be guilty of a misdemeanor and shall be punished as provided in subsection (d) of this section.
- (b) (2) Whoever operates or otherwise drives any vehicle in the state with a blood presence of any scheduled controlled substance as defined within chapter 28 of title 21, as shown by analysis of a blood or urine sample, shall be guilty of a misdemeanor and shall be punished as provided in subsection (d) of this section.

Type of Drugs Prohibited: Any drug, toluene, or any scheduled controlled substance

Required Proof:

1. Defendant was operating or driving a vehicle in Rhode Island
2. While driving, Defendant was under the influence of any drug, toluene, or any scheduled controlled substance, or a combination thereof OR
3. While driving, Defendant had a blood presence of a scheduled controlled substance in his body

Possible Defenses Allowed by Statute: Legal entitlement to use of a drug shall not constitute a defense

Implied Consent for Drugs: Yes

Special Circumstances: The request to submit to a chemical test must be based on "reasonable grounds" to believe defendant was driving while under the influence.

Arrest Required Prior to Test: No

Specimens to be Tested: Blood (exception allowed on religious grounds), Urine

Sanctions for Refusal to Test:

Evidentiary: No statutes or case law speak to evidentiary sanctions

Criminal: \$200 - \$500 fine and 10 hours - 60 hours of public (community) Service for 1st refusal; \$300 - \$500 for 2nd refusal within 5 years; \$400 - \$500 for 3rd and subsequent refusal within 5 years. In addition to these fines, Defendant must pay a \$500 assessment fee

Administrative: 3 months (mandatory) - 6 months suspension plus attendance at a drug treatment program (mandatory) for 1st refusal; 1 year (mandatory) - 2 years suspension plus attendance at a drug treatment program (mandatory) for 2nd refusal within 5 years; 2 years (mandatory) - 3 years suspension plus attendance at a drug treatment program (mandatory) for 3rd and subsequent refusals within 5 years.

Sanctions Following Conviction:

Criminal: Not more than 1 year (no mandatory) imprisonment and \$100 (mandatory) - \$300 fine for 1st offense; 10 days (mandatory) - 1 year and \$400 (mandatory) for 2nd offense within 5 years; 6 months (mandatory) - 1 year and \$400 (mandatory) for 3rd or subsequent offense within 5 years; 1 - 5 years and \$1000 - \$5000 for 1st Serious Injury DUI offense (felony); 2 - 15 years and \$3000 - \$10,000 for 2nd or subsequent Serious Injury DUI offense within 5 years (felony).

Court-Ordered Other: 10 - 60 hours of community service must be ordered for 1st offense. The court must order restitution payable to the Victim's Compensation Fund. Forfeiture may also be ordered.

Administrative: 3 months (mandatory) - 6 months suspension for 1st offense; 1 year (mandatory) - 2 years suspension for 2nd offense; 2 year (mandatory) - 3 years suspension for 3rd offense. 1 year revocation for conviction of a DUI Controlled Substance offense; up to 2 years revocation for 1st Serious Injury DUI offense; up to 4 years revocation for 2nd Serious Injury DUI offense; In addition, attendance at a drug education or treatment program is required.

Possible Contestable Issues: Rhode Island is one of the states with some form of a zero tolerance provision. The state's relatively light burden and the expanded abilities of police officers combined with required attendance at a drug treatment center are encouraging indications that Rhode Island is actively pursuing drugged drivers.



Code of South Carolina
Section 56-5-2930

Type of DUID Law: Under the Influence: Impairment

Section 56-5-2930

It is unlawful for a person to drive a motor vehicle within this State while:

- (1) under the influence of any other [than alcohol] drug or combination of other drugs or substances which cause impairment to the extent that the person's faculties to drive are materially and appreciably impaired....

Type of Drug Prohibited: Any drug or substance

Required Proof:

1. Defendant was driving a motor vehicle in South Carolina.
2. While driving the vehicle, Defendant was under the influence of any drug other than alcohol.
3. That the use of the drug caused the Defendant's faculties to be materially and appreciably impaired.

Possible Defenses Allowed by Statute: Section 56-5-2950(a). It is required that a breath test first be given to anyone arrested for driving under the influence of alcohol, drugs or a combination of both. If the breath test reveals a BAC level of .10 or greater, no further tests may be required by the officer. Thus, no urine or blood test to detect the presence of drugs may be required.

Implied Consent for Drugs: Yes

Special Circumstances: A person must submit if arrested for a serious Injury or death related to DUI or if there is probable cause to suspect that a serious injury or death related to DUI has occurred.

Arrest Required Prior to Test: Arrest is required for testing under 56-5-2950, but a test may be required on the basis of 'probable cause' alone under 56-5-2945 (felony DUI) and under 56-1-286 (under 21, may 'detain and test' if PC to believe the person has consumed alcohol and driven a motor vehicle.)

Specimens to be Tested: Blood, Urine

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in criminal cases

Criminal: None

Administrative: 90 day suspension for 1st refusal; 180 days suspension for subsequent refusals within 10 years. Restricted licenses may be issued for employment or educational purposes.

Sanctions Following Conviction:

Criminal: 48 hours (mandatory) - 30 days imprisonment, \$300 (mandatory) fine for 1st offense; 48 hours (mandatory) - 1 year, \$2000 (\$1000 mandatory) - \$5000 for 2nd offense within 10 years; 60 days (mandatory) - 3 years, \$3500 (mandatory) - \$6000 for 3rd offense within 10 years; 1 year (mandatory) - 5 years, no fine for 4th or subsequent offense within 10 years (felony); 30 days (mandatory) - 10 years, \$5000 (mandatory) - \$10,000 for a serious injury DUI; 1 year (mandatory) - 25 years, \$10000 (mandatory) - \$25000, and license suspension of "any term of imprisonment plus three years" if convicted of Felony DUI resulting in death.

Court-Ordered Other: The court may order out-of-jail public service work during the period of incarceration, or home detention with or without electronic monitoring or community service in lieu of incarceration. The court must also require Defendant to pay mandatory assessments in addition to the sentenced fines. The court may also order installation of an ignition interlock device following conviction of DUI, DUC, or Felony DUI.

Administrative: 6 months suspension or restricted license (with participation in a drug education or treatment program) for 1st offense; 1 year (mandatory) suspension for 2nd offense within 10 years; 2 years (mandatory) suspension for 3rd offense within 5 years; permanent (7 years mandatory) revocation for 4th or subsequent offenses. Defendant must complete a drug safety action program prior to license reinstatement.

Possible Contestable Issues: South Carolina uses the lesser standard for proof of impairment, enjoys a broad prohibition of all drugs or substances, allows testing without arrest and requires testing in certain circumstances. These factors may indicate a willingness to consider zero tolerance legislation.

SOUTH DAKOTA

South Dakota Codified Laws Section 32-23-1

Type of DUID Law: Under the Influence: Incapacity
Zero Tolerance for Persons under 21

Section 32-23-1

A person may not drive or be in actual physical control of any vehicle while...(3) Under the influence of marijuana or any controlled drug or substance to a degree which renders him incapable of safely driving....

Section 32-23-21

It is a Class 2 misdemeanor for any person under the age of 21 years to drive, operate, or be in actual physical control of any motor vehicle
(2) After having consumed marijuana or any controlled substance for as long as physical evidence of the consumption remains present in the person's body.

Type of Drugs Prohibited: Marijuana or any controlled drug or substance

Required Proof:

1. Defendant was driving or in actual physical control of a vehicle in South Dakota
2. While driving, Defendant was under the influence of a controlled drug or substance
3. The influence was to the extent that it rendered the Defendant incapable of safely driving OR
 1. If the Defendant is under the age of 21 years, he/she was driving after having consumed marijuana or a controlled substance AND
 2. There was any physical evidence of the consumption present in the Defendant's body

Possible Defenses Allowed by Statute: None found

Implied Consent for Drugs: Yes

Special Circumstance: For person arrested for a 3rd or subsequent DUI, a chemical test is required. Force may be used to obtain a blood sample

Arrest Required: Yes

Specimens to be Tested: Blood, Other bodily substances

Sanctions for Refusal to Test:

Evidentiary: Refusals can be admitted in criminal cases.

Criminal: None

Administrative: 1 year revocation possible, but not mandatory in all circumstances

Sanctions Following Conviction:

Criminal: Not more than 1 year (no mandatory) imprisonment, not more than \$1000 (no mandatory) fine for 1st offense; not more than 1 year (3 days mandatory for Defendant operating a vehicle without a license at time of offense), not more than \$1000 (no mandatory) for 2nd offense within 5 years; not more than 2 years, not more than \$2000 for 3rd offense within 5 years (felony); not more than 5 years, not more than \$5000 for 4th or subsequent offense within 5 years (felony).

For persons under 21: Not more than 30 days jail and/or not more than \$200 fine plus 6 months suspension for 1st offense and 1 year suspension for 2nd and subsequent offense.

Court-Ordered Other: Community service, restitution and cost of confinement may be ordered. For persons under 21, the court may also order participation in a counseling program.

Administrative: 30 days - 1 year revocation for 1st offense; not less than 1 year (mandatory except in special situations) revocation for 2nd offense; not less than 1 year (mandatory) revocation for 3rd offense; not less than 2 years (mandatory) revocation for 4th and subsequent offenses.

Possible Contestable Issues: South Dakota adheres to the more stringent prosecutorial standard of incapacity, yet also has a zero tolerance provision for persons under the age of 21 and establishes felony convictions for 3rd and subsequent offenses. Perhaps the existence of a zero tolerance provision for those under 21 is indicative of a willingness to consider zero tolerance for all drugged drivers.

TENNESSEE

Tennessee Code Annotated

Section 55-10-401

Section 55-10-418

Type of DUID Law: Under the influence
Impairment

Section 55-10-401

(a) It is unlawful for any person or persons to drive or to be in physical control of any automobile or other motor driven vehicle on any of the public roads and highways of the state of Tennessee, or on any streets or alleys, or while on the premises of any shopping center, trailer park or any apartment house complex, or any other premises which is generally frequented by the public at large, while:

(1) under the influence of any intoxicant, marijuana, narcotic drug, or drug producing stimulating effects in the central nervous system....

For the purpose of this section, "drug producing stimulating effects on the central nervous system" includes the salts of barbituric acid, also known as malonyl urea, or any compound, derivative, or mixture thereof that may be used for producing hypnotic or somnifacient effects, and includes amphetamine, desoxyephedrine or compounds or mixtures thereof, including all derivatives of phenylethylamine or any of the salts thereof, except preparations intended for use in the nose and unfit for internal use.

Section 55-10-418

(a) A person twenty-one (21) years of age or older who drives or is in physical control of a motor vehicle while such person's ability to safely operate the vehicle is impaired as the proximate result of the consumption or ingestion of...drugs, any other intoxicant or any combination thereof commits the offense of adult driving while impaired.

Type of Drugs Prohibited: Intoxicants, marijuana, narcotic drugs, drugs producing stimulating effects on the central nervous system

Required Proof:

1. Defendant was driving or was in actual physical control of a motor vehicle in Tennessee
2. While driving the vehicle, Defendant was under the influence of one of the above-listed prohibited drugs OR
1. While driving the vehicle, Defendant's ability to safely operate the motor vehicle was impaired due to the consumption of drugs or any other intoxicant.

Possible Defenses Allowed by Statute: Legal entitlement to use the prohibited drug is not a defense to a charge under one of these statutes

Implied Consent for Drugs: Yes

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood, Urine

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in criminal cases

Criminal: None

Administrative: 12 months suspension for any refusal; 2 years for any refusal in a case where there has been an injury-related accident; 5 years suspension for any refusal where there has been a death-related accident. Restricted licenses may be issued.

Sanctions Following Conviction:

Criminal: \$500 fine for 1st driving while impaired offense; 48 hours (mandatory) - 11 months 29 days imprisonment, \$350 (mandatory) - \$1500 fine for 1st driving under the influence offense; 45 days (mandatory) - 11 months 29 days, \$600 (mandatory) - \$3500 for any 2nd offense within 10 years; 120 days (mandatory) - 11 months 29 days, \$1100 (mandatory) - \$10,000 for 3rd offense within 10 years; 1 year (150 days mandatory) - 6 years, \$3000 - \$15,000 for 4th or subsequent offense within 10 years (felony).

Court-Ordered Other: The court may order a 2nd offender to serve not more than 28 days of his/her jail sentence in an inpatient drug treatment program and the balance of the sentence in jail. The court may also order work release, community service, restitution directly to a victim, and must order Defendant to pay a BAC test fee. Participation in a treatment program may be ordered as a condition of probation.

Administrative: 1 year (mandatory) revocation (hardship license may be issued) for 1st offense; 2 years (mandatory) revocation for 2nd offense within 10 years; 3 years (mandatory) - 10 years revocation for 3rd offense within 10 years; 5 years (mandatory) revocation for 4th or subsequent offenses within 10 years.

Possible Contestable Issues: Tennessee has a separate statute criminalizing driving while impaired although the sentence for the 1st offense is minimal, yet it prohibits a wide range of drugs. These seemingly divergent factors make it unclear as to how zero tolerance legislation might be received in Tennessee. The state to date does not have a primary seat belt law, an open container law, or repeat offender legislation.



Texas Penal Code
Section 49.01
Section 49.04

Type of DUID Law: Intoxication

Section 49.01

- (2) "Intoxicated" means not having the normal use of mental or physical faculties by reason of the introduction of ... a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body....

Section 49.04

- (a) A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place

Type of Drugs Prohibited: Drugs, controlled substances (extensive listing under Section 481.002 of the Health and Safety Code)

Required Proof:

1. Defendant was operating a motor vehicle in a public place in Texas
2. While operating the vehicle, Defendant did not have the normal use of his/her mental or physical faculties because controlled substances, drugs, dangerous drugs, a combination of two or more of those substance or any substance had been introduced into his/her body.

Mental State: Proof of a culpable mental state is not required.

Possible Defenses Allowed by Statute: Legal entitlement to use the controlled substance, drug, dangerous drug, or other substance is not a defense

Implied Consent for Drugs: Yes

Special Circumstances: A driver arrested for DUI must submit to a test where he/she was involved in an accident resulting in death or likely to result in death if:

1. The person is arrested for an offense involving the operation of a motor vehicle or watercraft while intoxicated,
2. The officer reasonably believes the accident occurred as a result of the offense,
3. The officer reasonably believes that a person has died or will die as a direct result of the accident, and
4. The person refuses to give a specimen voluntarily.

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood or breath

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in criminal cases

Criminal: None

Administrative: 180 days suspension for 1st refusal; two years suspension for 2nd refusal within 10 years. Suspensions are rescinded if the defendant is acquitted of the DWI offense involved. Restricted licenses may be issued in cases of hardship.

Sanctions Following Conviction:

Criminal: 72 hours minimum; 6 days if open container and offense involved a motor vehicle or operating an amusement park ride - 180 days imprisonment, not more than \$2000 fine for 1st offense; 30 days (minimum) - 1 year, not more than \$4000 for 2nd offense within 10 years; 2 years (minimum) - 10 years, not more than \$10,000 for 3rd or subsequent offenses within 10 years or if prior conviction for the offense of Intoxication Manslaughter (fatality-related DUI) (felony).

Court-Ordered Other: The court may order participation in community supervision (which includes participation in a drug treatment program) in lieu of all or part of the sentence of incarceration, community service in addition to other sanctions, and restitution, and must impose certain fees and costs. The court may also order work release, intermittent sentencing, or electronically monitored house arrest. In certain counties, a drug treatment program must be established as an alternative to incarceration, and each Defendant must at least be screened and assessed for participation. Felony offenders may be confined in a substance abuse treatment facility in lieu of imprisonment for 6 months - 1 year.

Administrative: 90 days to one year as determined by the court. One year if the person has a prior conviction for Intoxication Assault. From 180 days to two years depending on whether the person qualifies for criminal enhancement based on prior convictions for offenses under Chapter 49.Penal Code. If a license suspension is imposed as a result of criminal prosecution for the offense involved, the person receives credit for an administrative suspension imposed as a result of the person's refusal to give a specimen unless the person has been previously convicted of DWI, Intoxication Assault, or Intoxication Manslaughter or the person is under 21 years of age at the time of the offense. The court may restrict the person to the operation of a vehicle equipped with an ignition interlock device. Restriction is mandatory if the person has a prior conviction within the pervious 10 years. Mandatory if the person has two or more convictions. Restricted licenses may be issued under certain circumstances; does not apply to the operation of a commercial motor vehicle.

Possible Contestable Issues: Texas makes it illegal for chemically dependent persons who are a danger to themselves or others, or those who are addicted to a controlled substance or other drug, to drive (Transportation Code Sections 521.021 and 521.312), effectively providing zero tolerance for addicts. This factor combined with the broad prohibition of drugs may indicate a willingness to extend zero tolerance to all drug use. An anomaly is the relatively short periods of suspension provided upon refusal to test and upon conviction.



Utah Code Annotated
Section 41-6-44
Section 41-6-44.6

Type of DUID Law: Under the influence: Incapacity
Zero Tolerance

Section 41-6-44

A person may not operate or be in actual physical control of a vehicle within this state if the person...is under the influence of ...any drug...to a degree that renders the person incapable of safely operating a vehicle.

Section 41-6-44.6

In cases not amounting to a violation of Section 41-6-44, a person may not operate or be in actual physical control of a motor vehicle within this state if the person has any measurable controlled substance or metabolite of a controlled substance in the person's body.

Type of Drugs Prohibited: Any drug or controlled substance

Required Proof:

1. Defendant was operating or was in actual physical control of a motor vehicle in Utah
2. While operating the vehicle, Defendant was under the influence of any drug
3. That influence rendered the defendant incapable of safely operating the vehicle OR
4. While so operating the vehicle, the defendant had a measurable amount of a controlled substance in his/her body

Possible Defenses Allowed by Statute: Legal entitlement to use a drug is not a defense to the DUID provision. However, it is an affirmative defense to the per se provision that the controlled substance was involuntarily ingested by the accused or prescribed by a practitioner for use by the accused.

Implied Consent: Yes

Arrest Required Prior to Test: Not necessarily. If a police officer has "grounds to believe" that a DUID has been committed, he may request a test prior to arrest.

Specimens to be Tested: Blood or Urine

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in both civil and criminal cases

Criminal: None

Administrative: 18 months (mandatory) revocation for 1st refusal; 24 months (mandatory) revocation for subsequent refusals

Sanctions Following Conviction:

Criminal: Not more than 6 months (48 hours mandatory) imprisonment, not more than \$1000 (\$700 mandatory) fine for 1st offense; not more than 6 months (240 hours mandatory), not more than \$1000 (\$800 mandatory) for 2nd offense within 6 years; not more than 6 months (no mandatory), not more than \$1000 (no mandatory) for a per se offense; not more than 5 years (1000 hours mandatory), not more than \$5000 (\$1500 mandatory) for 3rd or subsequent offense within 6 years (felony); not more than 1 year, not more than \$1000 for a 1st or 2nd injury related DUI offense; not more than 5 years, not more than \$5000 for any serious injury DUI offense (felony).

Court-Ordered Other: The court may order community service in lieu of imprisonment, restitution either to a victim directly or to a Victims' Compensation Fund, electronic home monitoring as an alternative to imprisonment or community service, and participation in a drug education program.

Administrative: 90 days suspension for 1st per se offense; 1 year suspension for 2nd per se offense; 180 days (mandatory) suspension for 1st DUI offense; 2 years (mandatory) revocation for subsequent DUI offenses within 6 years. All drivers must complete a drug education or treatment program prior to reinstatement.

Possible Contestable Issues: Utah, like several other zero tolerance states, carries the more stringent burden of incapacity along with the per se provision. Utah is one of the states that requires participation in a drug education or treatment program in addition to any criminal or administrative penalties. Anecdotal information indicates that Utah was one of the first states to implement DRE for both investigation and prosecution purposes, although its use has declined in recent years for several reasons, including the expense of training and retaining experienced officers and prosecutors.



Vermont Statutes Annotated
23 Section 1201

Type of DUID Law: Under the influence: Incapacity

23 Section 1201

- (a) A person shall not operate, attempt to operate, or be in actual physical control of any vehicle on a highway:
- (3) when the person is under the influence of any other [than alcohol] drug ...to a degree which renders the person incapable of driving safely

Type of Drugs Prohibited: Any regulated drug as defined in 18 section 4201, to wit: narcotic, depressant or stimulant, hallucinogenic drug, or marijuana

Required Proof:

1. Defendant was operating, attempting to operate or was in actual physical control of a vehicle on a highway in Vermont
2. While operating, etc. the vehicle, Defendant was under the influence of one or more of the above-listed drugs
3. The influence of the drug rendered the Defendant incapable of driving safely

Possible Defenses Allowed by Statute: Legal entitlement to use a drug shall not constitute a defense against any charge of violating section 1201

Implied Consent for Drugs: Yes

Special Circumstances: A driver who refuses a test and who is involved in an accident resulting in bodily injury or death may be compelled to submit via a search warrant.

Arrest Required Prior to Test: No, reasonable grounds to believe a DUI occurred is sufficient

Specimens to be Tested: Blood

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in criminal cases

Criminal: None

Administrative: 6 months (mandatory) suspension for 1st refusal; 18 months (mandatory) suspension for 2nd refusal; life (3 years mandatory) suspension for 3rd or subsequent refusal. Penalties are enhanced if defendant has a prior DUI or is involved in an accident resulting in bodily injury or death.

Sanctions Following Conviction:

Criminal: Not more than 2 years imprisonment, not more than \$750 fine for 1st offense; not more than 2 years (48 hours mandatory), not more than \$1500 for 2nd offense; not more than 5 years, not more than \$2500 for 3rd or subsequent offenses (felony); 1 - 15 years, not more than \$5000 for serious injury-related DUI offense (felony).

Court-Ordered Other: The court may order community service, restitution to a victim, and must assess various surcharges and special assessments.

Administrative: 90 days (mandatory) suspension for 1st offense; 18 months (mandatory) suspension for 2nd offense; life (3 years mandatory) suspension for 3rd or subsequent offense. Completion of an educational and/or a therapy program must be shown prior to license reinstatement.

Possible Contestable Issues: Vermont has a somewhat limited list of prohibited substances, requires search warrant prior to compelling a chemical test, has relatively light sanctions for refusal, provides light mandatory sentences for 1st and 2nd time offenders, and adheres to the more stringent standard for proof (incapacity). These factors would suggest that Vermont is not likely to support zero tolerance legislation regarding drugged driving in the near future.



Code of Virginia
Section 18.2-266

Type of DUID Law: Under the Influence: Impairment

Section 18.2-266

It shall be unlawful for any person to drive or operate any motor vehicle, engine or train

(iii) while such person is under the influence of any narcotic drug or any other self-administered intoxicant or drug of whatsoever nature, or any combination of such drugs, to a degree which impairs his ability to drive or operate any motor vehicle, engine or train safely....

Type of Drugs Prohibited: Any narcotic drug, self-administered intoxicants, any other drugs of whatever nature

Required Proof:

1. Defendant was driving or operating a motor vehicle in Virginia
2. While driving or operating the vehicle, Defendant was under the influence of one or more of the above-listed prohibited drugs
3. That influence impaired Defendant's ability to drive safely

Possible Defenses Allowed by Statute: None found

Implied Consent for Drugs: Yes

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in criminal cases for purposes of rebuttal only

Criminal: None

Administrative: 1 year (mandatory) suspension for any refusal. If the defendant pleads guilty, this suspension may be dismissed.

Sanctions Following Conviction:

Criminal: Not more than 12 months (no mandatory) imprisonment, not more than \$2500 fine for 1st offense; 1 month (48 hours mandatory) - 1 year, \$200 - \$2500 for 2nd offense within 10 years; 1 year - 5 years or not more than 12 months in jail, not more than \$2500 for 3rd offense within 10 years (felony) and for a DUI while license is suspended offense (felony); 1 year (mandatory) - 5 years, not more than \$2500 for 4th or subsequent offense within 10 years (felony); 1 year - 5 years, not more than \$2500 for a serious injury-related DUI offense (felony). There is no provision for mandatory minimum fines.

Court-Ordered Other: The court may order any part or all of the jail sentence to be served via house arrest with electronic monitoring or may place a Defendant on probation in lieu thereof. The court may also order restitution to be paid directly to a victim and must impose a \$100 laboratory fee. First or second time offenders may be required to participated in driver awareness training and drug education programs.

Administrative: 1 year revocation for 1st offense; 3 years (4 months mandatory) for 2nd offense within 10 years; indefinite (3 years mandatory) revocation for 3rd offense within 10 years; 5 years (mandatory) revocation for 4th or subsequent offense.

Possible Contestable Issues: Virginia places a broad prohibition on drugs, requires a less stringent standard for proof of impairment and has relatively stiff penalties. These factors suggest that Virginia may be willing to entertain future zero tolerance legislation.



Revised Code of Washington
Section 46.61.502
Section 46.61.504
Section 46.61.5249

Type of DUID Law: Under the Influence
Negligent Driving

Section 46.61.502

- (1) A person is guilty of driving while under the influence of ...any drug if the person drives a vehicle within this state:
- (b) While the person is under the influence of or affected by ...any drug....

Section 46.61.504

- (1) A person is guilty of being in actual physical control of a motor vehicle while under the influence of...any drug if the person has actual physical control of a vehicle within this state:
- (c) While the person is under the influence of or is affected by...any drug....

Section 46.61.5249

- (1) (a) A person is guilty of negligent driving in the first degree if he or she operates a motor vehicle in a manner that is both negligent and endangers or is likely to endanger any person or property, and exhibits the effects of having consumed ...an illegal drug.

Type of Drugs Prohibited: Any drug, including controlled substances or prescription drugs

Required Proof:

1. Defendant was driving or was in actual physical control of a vehicle in Washington
2. While driving, etc. the vehicle, Defendant was under the influence of, or was affected by any drug OR
3. Defendant was operating a vehicle in a negligent manner likely to endanger persons or property
4. While so operating the vehicle, Defendant exhibited the effects of having consumed a controlled substance or a prescription drug

Possible Defenses Allowed by Statute: Legal entitlement is not a defense. If the Defendant has moved the vehicle safely off the roadway prior to being pursued by a law enforcement officer, then he/she cannot be convicted under the provision regarding "actual physical control." It is a defense to a charge of negligent driving that the defendant had a valid prescription for the drug consumed and had been consuming the drug according to the prescription directions and warnings.

Implied Consent for Drugs: Yes

Special Circumstances: A person arrested for DUI may be compelled to submit to a test when an accident resulting in serious bodily injury is involved.

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in criminal cases

Criminal: None

Administrative: 1 year (mandatory) revocation for 1st refusal; 2 years (mandatory) revocation for 2nd or subsequent refusal or for a 1st refusal with a prior DUI. Revocation for 2nd or subsequent refusals are to run consecutive to any revocation imposed following conviction of the DUI out of which the refusal arose.

Sanctions Following Conviction:

Criminal: Not more than 1 year imprisonment and/or not more than \$5000 fine for any DUID offense (gross misdemeanor); not more than 90 days in jail and/or not more than \$1000 fine for any negligent driving offense.

The Motor Vehicle Title in the Code does not enumerate penalties for DUID, but only for alcohol-related DUI. The above sanctions are found in the Penal Code of the state as the penalty for a gross misdemeanor where specific penalties are not otherwise set forth in other statutes.

Court-Ordered Other: The court may order community service, restitution directly to a victim, and must require Defendant to pay an assessment used to support the victim's compensation fund and fees to fund the State's toxicology lab, to pay for costs of incarceration, and any emergency response involved in the DUI. The court may order house arrest in lieu of jail.

Administrative: It appears that administrative suspensions or revocations are limited to alcohol-related offenses only

Possible Contestable Issues: Washington's negligent driving statute has zero tolerance implications, and that coupled with the language in the DUI statute relating to being "affected by any drug" would suggest that the state may be amenable to across-the board zero tolerance legislation.



West Virginia Code
Section 17C-5-2

Type of DUID Law: Under the Influence
Zero tolerance for habitual users

Section 17C-5-2

(d) Any person who:

(1) Drives a vehicle in this state while:

(B) He is under the influence of any controlled substance, or

(C) He is under the influence of any other drug...

(2) Is guilty of a misdemeanor....

(e) Any person who, being a habitual user of narcotic drugs or amphetamine or any derivative thereof, drives a vehicle in this state, is guilty of a misdemeanor...

(f) Any person who

(1) Knowingly permits his or her vehicle to be driven in this state by any person who is

(B) Under the influence of any controlled substance, or

(D) Under the influence of any other drug...

(2) Is guilty of a misdemeanor...

(g) Any person who:

Knowingly permits his or her vehicle to be driven in this state by any other person who is a habitual user of narcotic drugs or amphetamine or any derivative thereof, is guilty of a misdemeanor....

Type of Drugs Prohibited: Any drug or controlled substance (extensive listing)

Required Proof:

1. Defendant was driving a vehicle in West Virginia
2. While driving the vehicle, Defendant was under the influence of a controlled substance or any other drug OR
3. While driving the vehicle, the defendant was a habitual user of a narcotic drug, amphetamine or any derivative OR
4. Defendant knowingly permitted another person who was under the influence of a controlled substance or any other drug or who was a habitual user of narcotics, amphetamine or derivatives to drive his/her vehicle.

Possible Defenses Allowed by Statute: Legal entitlement to use a controlled substance or any other drug is not a defense

Implied Consent for Drugs: No

Arrest Required Prior to Test: Not applicable

Specimens to be Tested:

Evidentiary: Not applicable

Criminal: Not applicable

Administrative: Not applicable

Sanctions for Refusal to Test: Not applicable

Sanctions Following Conviction:

Criminal: 1 day (mandatory) - 6 months imprisonment, \$100 (mandatory) - \$500 fine for 1st offense; 90 days (mandatory) - 1 year, \$500 (mandatory) - \$1000 fine for 1st death-related DUI without reckless disregard offense; 6 month (mandatory) - 1 year, \$1000 (mandatory) - \$3000 for any 2nd offense; 1 year (mandatory) - 3 years, \$3000 (mandatory) - \$5000 for any 3rd or subsequent offense (felony); 1 year (mandatory) - 10 years, \$1000 (mandatory) - \$3000 for any death-related DUI with reckless disregard offense (felony); 1 day (mandatory) - 6 months, \$100 (mandatory) - \$500 for any habitual user offense.

Court-Ordered Other: The court may order electronically-monitored home incarceration, or participation in a weekend jail program, a work assignment program, or a community service program in lieu of either a fine or incarceration. The court may also order defendant's temporary release from mandatory confinement for employment, educational, medical or family needs or reasons, and may require restitution to be paid directly to a victim. Certain fees and costs that fund the Crime Victims Compensation Fund are assessed against defendants.

Administrative: 6 months (90 days mandatory) revocation for 1st offense; 10 years (5 years mandatory) revocation for 2nd offense within 10 years; life (10 years mandatory) revocation for 3rd or subsequent offense within 10 years. Revocation periods are enhanced in cases resulting in death or bodily injury. The minimum mandatory periods apply only if the defendant is participating in a drug treatment program. Revocations continue until the defendant completes the mandatory drug treatment program.

Possible Contestable Issues: West Virginia has a zero tolerance provision for habitual users of narcotics, etc., and that combined with its broad prohibition of drugs and stiff sentences suggests that the state may be willing to consider across-the-board zero tolerance legislation. However, it is one of the few states that does not extend implied consent law to DUID offenses.



Wisconsin Statutes Annotated
Section 346.63

Type of DUID Law: Under the Influence: Incapable of Safety Driving
Section 346.63

- (1) No person may drive or operate a motor vehicle while:
 - (a) Under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, a controlled substance and a controlled substance analog, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving; or
 - (2) (a) It is unlawful for any person to cause injury to another person by the operation of a vehicle while:
 1. Under the influence of an intoxicant, a controlled substance, or a controlled substance analog or any combination of an intoxicant, a controlled substance and a controlled substance analog, under the influence of any other drug to a degree which renders him or her incapable of safely driving

Type of Drugs Prohibited: Controlled substances, controlled substance analogs or any other drug

Required Proof: (See the Wisconsin Jury Instructions 2664 & 2666)

1. Defendant was driving or operating a motor vehicle on a highway held out for public use in Wisconsin
2. Defendant was under the influence of a controlled substance or controlled substance analog so that the defendant's ability to safely control the vehicle was impaired. NOTE: It is not required that impaired ability to operate be demonstrated by particular acts of unsafe driving OR
3. Defendant was under the influence of a drug to a degree which rendered him or her incapable of safely driving
4. The defendant caused injury to another person.

Possible Defenses Allowed by Statute: Defendant has a defense to a charge of causing injury to another person if he or she proves by a preponderance of the evidence that the injury would have occurred even if he/she had been exercising due care and he/she had not been under the influence of a controlled substance that impaired defendant's ability to safely control the vehicle or a drug to a degree which rendered the defendant incapable of safely driving.

Implied Consent for Drugs: Yes

Special Circumstances: Blood samples may be obtained by reasonable force under *State v. Bohling*, 494 N.W.2d 399 (1993) and *Schmerber v. California*, 384 U.S. 757 (1966) or by any other lawful means.

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood, Urine NOTE: Blood specimens taken in the hospital are not subject to the physician-patient privilege. Section 905.04(4)(f) provides, "there is no privilege concerning the results of or circumstances surrounding any chemical tests for intoxication or BAC."

Sanctions for Refusal to Test:

Evidentiary: Refusal evidence is admissible to show consciousness of guilt; unless the defendant is properly advised under the implied consent law.

Criminal: None

Administrative: 1 year revocation (after 30 days, driver is eligible for a restricted license) for 1st refusal; 2 years revocation (after 90 days, a restricted license is possible) for 2nd refusal within 10 years; 3 years (after 120 days, a restricted license is possible) revocation and possible vehicle forfeiture for 3rd or subsequent refusals.

Sanctions Following Conviction:

Criminal: No imprisonment, \$150 (mandatory) - \$300 fine for 1st offense; 5 days (mandatory) - 6 months, \$350 (mandatory) - \$1100 for 2nd offense within 10 years; 30 days (mandatory) - 1 year, \$600 (mandatory) - \$2000 for 3rd offense; 60 days (mandatory) - 1 year, \$600 (mandatory) - \$2000 for 4th offense; 6 months (mandatory) - 5 years, \$600 (mandatory) - \$2000 for 5th and subsequent offenses. A \$350 surcharge is added on all OWI offenses. Penalties are enhanced if great bodily harm under sec 940-25(1) is involved.

Court-Ordered Other: The court may order intermittent periods of confinement or electronically monitored home detention in lieu of imprisonment, and/or community service in lieu of or in addition to jail and fines. The court may also order a Defendant to pay restitution directly to a victim or to participate in a visitation program, and must assess certain surcharges against the defendants.

Administrative: 6 months - 9 months revocation for 1st offense; 1 year (60 days mandatory) - 18 months revocation for 2nd offense within 10 years; 2 years (90 days mandatory) - 3 years revocation for subsequent offenses within 10 years; 1 year (60 days mandatory) - 2 years revocation for an injury-related DUI offense; 2 years (120 days mandatory) revocation for a great injury-related DUI offense.

Possible Contestable Issues: Wisconsin's use of the incapable of safely driving standard and its sentencing structure suggests that there may be some resistance to future zero tolerance legislation for DUID.



WYOMING

Wyoming Statutes Annotated Section 31-5-233

Type of DUID Law: Under the influence: Incapacity

Section 31-5-233

(a) As used in this section:

(ii) "Controlled substance" includes:

(A) Any drug or substance defined by W.S. 35-7-1002(a)(iv);

(B) Any glue, aerosol or other toxic vapor which when intentionally inhaled or sniffed results in impairment of an individual's ability to drive safely.

(b) No person shall drive or have actual physical control of any vehicle within this state if the person:

(ii) to a degree which renders him incapable of safely driving;

(B) is under the influence of a controlled substance....

Type of Drugs Prohibited: Controlled substances, which include any drug or substance, any glue, aerosol or other toxic vapor

Required Proof:

1. Defendant was driving or had actual physical control of a vehicle in Wyoming
2. While driving, etc. the vehicle, Defendant was under the influence of a controlled substance
3. That influence rendered the defendant incapable of safely driving

Possible Defenses Allowed by Statute: None found

Implied Consent for Drugs: Yes

Special Circumstances: A test may be required in cases where there has been death or serious bodily injury

Arrest Required Prior to Test: Yes

Specimens to be Tested: Blood, Urine

Sanctions for Refusal to Test:

Evidentiary: Refusal is admissible in criminal and in civil cases.

Criminal: None

Administrative: 6 months (mandatory) suspension for 1st refusal; 18 months (mandatory) suspension for 2nd or subsequent refusal. If a person refuses a test, then pleads guilty to a DUI within 10 days of arraignment, these suspensions will not take effect.

Sanctions Following Conviction:

Criminal: Not more than 6 months (no mandatory) imprisonment, not more than \$750 fine for 1st offense; 7 days (mandatory) - 6 months, \$200 - \$750 for 2nd offense within 5 years; 30 days (mandatory or 15 days if Defendant completes an inpatient treatment program) - 6 months, \$750 - \$3000 for 3rd or subsequent offense within 5 years; 6 months - 1 year, \$2000 - \$5000 for 1st serious injury-related DUI offense; not more than 20 years, not more than \$10,000 for subsequent serious bodily injury-related DUI offenses (felony)

Court-Ordered Other: The court may order Defendant to a work/school release program during the incarceration period, community service as a condition of probation, restitution to a victim, and/or assess the costs of incarceration against a defendant.

Administrative: 90 days suspension for 1st offense; 1 year (mandatory) suspension for 2nd offense within 5 years; 3 years (mandatory) revocation for a 3rd or subsequent offense within 5 years. These suspensions or revocations may be reduced by 90 days if defendant has had his/her license suspended due to a refusal to take a test. Restricted licenses may be available based on "undue hardship".

Possible Contestable Issues: Wyoming sends some mixed messages in that it adheres to the more stringent incapacity standard in the statutory language used to describe the DUI prohibited behavior, yet uses the less stringent standard of impairment when describing what kinds of substances will be included in the prohibition of drugs. Wyoming also seems to be rather lenient in sentencing. It is unclear how well future zero tolerance legislation would be received in Wyoming.

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Appendix I

State by State Comparison Summary

Summary of U.S. DUID Laws – The Walsh Group

State	DUID Legislation Exist	Impairment or Analytical	Implied Consent Law for drugs	Per Se law exist for drugs	Types of drugs that are basis of law	Arrest required prior to testing	Specimens that may be tested			Other circumstances that may require testing	Mandatory Licensing sanctions for refusal to test		Admin Lic Sanctions for Pre conviction	Mand. Lic Sanctions Following Conviction		Sanctions For CDL holders	Eval or Treatment Avail
							BI	U	Other		1 st	2 nd		1 st	2 nd		
AL	YES	BOTH	NO	NO	Any controlled substance	YES	X	X		“shall” Acc Inv Serious phys injury	90 dys	1yr	YES	S-90d	R-1y	Disqualification from operating a motor vehicle	YES
AK	YES	BOTH	NO	NO	Any controlled substance	YES	*1 X	X		“may” acc inv death or serious phys inj	90 dys	?		R-30d	R-1R	Disqualification from operating a motor vehicle	NO
AZ *2	YES	BOTH	YES	YES	Any Drug	YES	X	X	X OBS	“can request” acc inv death or serious phys injury	12mo	2yr	YES	S-90d	R-1y	Disqualification from operating a motor vehicle	YES
AR	YES	BOTH		NO	Any controlled substance	NO	*4 X	X		*5 See Pg 3-33	180dy	2yr	*6 YES	?	?	See Page 3-35	NO
CA	YES	BOTH	YES	NO	Any Drug	YES	X	X			1yr	2yr	YES	-	-	Disqualified from operating a motor vehicle	NO
CO	YES	BOTH	YES	NO	Any Drug	NO	X	X	X* Saliva	*7	R-1y	R-2y	YES	R-1y		CDL is revoked for one year	NO
CT	YES	BOTH	YES	NO	Any Drug	NO	X	X			S-6mo	S-1y		1yr	2yr	Disqualified from operating a CMV for 1 year	NO
DE	YES	BOTH	?	NO	Any Drug	NO	X	X		“must” be a death related DWI offense	R-1y	R-18m	YES	1yr	1yr	Disqualified from operating a CMV for 1 year	NO
DC	YES	BOTH	YES	NO	Any Drug	YES	X	X		“required to submit” if inv in any acc or if arrested for any DWI offense	S-12mo		YES	R-6mo	1yr	SEE Pg. 3-91	NO
FL	YES	BOTH	YES *10	NO	*11	*12 YES	*13 X	*14 X		“may accidents that result in death or serious bodily injury	S-1yr	S-18mo	YES	180dys	5yrs	Disqualified from operating a CMV for 1 year	YES
GA	YES	?	YES	YES	Any Controlled Substance	*15 NO	*16 X	X	X OBS	“Not mandatory” acc that result in death or serious	S-1yr		YES	12mos	3yrs	Disqualified from operating a CMV for 1 year	NO
HI	YES	BOTH	YES	NO	A Controlled Substance	*18 YES	X	X		“May” a collision” resulting in eith. Injury or death to any person.	R-1yr	R-2yr				Disqualified from operating a CMV for 1 year	YES

Summary of U.S. DUID Laws – The Walsh Group

State	DUID Legislation Exist	Impairment or Analytical	Implied Consent Law for drugs	Per Se law exist for drugs	Types of drugs that are basis of law	Arrest required prior to testing	Specimens that may be tested			Other circumstances that may require testing	Mandatory Licensing sanctions for refusal to test		Admin Lic Sanctions for Pre conviction	Mand. Lic Sanctions Following Conviction		Sanctions For CDL holders	Eval or Trtment Avail
ID	YES	BOTH	YES	NO	Any Drug	NO	X	X		“may” DUI if aggravated or homicide offen.	S-180dys	S-1yr	YES			Disqualified from operating a CMV for one year	NO
IL	YES	BOTH	YES	YES	Any Drug	YES	X	X		“may” DUI related death or injury to person	SEE Page 3-147		YES	R-1 yr	R-5yr	Disqualified from operating a CMV for one year	NO
IN	YES	BOTH	YES	YES	Any Drug	NO *20	X	X	X OBS	“may” fatality or serious injury	SEE Page 3-158		YES	S-90dys – 1yr	180dys	Disqualified from operating a CMV for one year	NO
IA	YES	BOTH	YES	YES	Any Drug	NO	X	X		*21	90dys	1yr	YES	R-180dys – 1yr	R – 2yrs	Disqualified from operating a CMV for one year	NO
KS	YES	BOTH	YES	NO	Any Drug	YES *22	X	X	X OBS	“may” serious injury or death	S-1yr		YES	S-30dys	1yr	Disqualified from operating a CMV for one year	YES
KY	YES	BOTH	YES	NO	Any Substance	YES	X	X		“allows” death or phys. injury	S-6mos	S-18mo		90 dys	12mo	Disqualified from operating a CMV for one year	YES
LA	YES	BOTH	YES	NO	Any Controlled Dangerous Substance	YES	X	X	X OBS	“may” traffic fatality or accident resulting in serious bodily injury	S-180dys	S-545dys	YES	S-90dys	12mo	Disqualified from operating a CMV for One year	YES
ME	YES	BOTH	YES	NO	*24	*25 NO	X	X		“shall” traffic accident that results in death to other person	275dys	18mos	YES	90 dys	18mo	CDL is Suspended	YES
MD	YES	BOTH	YES	NO	Any Drug	YES	*26 X			“shall” accident that results in death or life threatening injury	120dys	1 yr	YES	60 dys	120 dys	Disqualified from operating a CMV for One year	NO
MA	YES	BOTH	NO	NO	*27	YES	*28				120dys	180dy	YES	3mos	6mos	Disqualified from operating a CMV for 1 year	YES
MI	YES	BOTH	YES	NO	Any Controlled Substance	YES	X	X			S-6mos	S-1yr	YES	*30		Privilege to operate a CMV is suspended for 1 yr	NO
MN	YES	BOTH	YES	*31	A Controlled Substance	NO	X	X		*32	90dys	1yr	YES	30 dys	180dys	Disqualified from operating a CMV for 1 year	YES
MS	YES	BOTH	YES	NO	Any Substance	NO	X	X		*33	90dys	1yr	YES	90 dys	2 yrs	Privilege to operate CMV is suspended for one year	YES

Summary of U.S. DUID Laws – The Walsh Group

State	DUID Legislation Exist	Impairment or Analytical	Implied Consent Law for drugs	Per Se law exist for drugs	Types of drugs that are basis of law	Arrest required prior to testing	Specimens that may be tested			Other circumstances that may require testing	Mandatory Licensing sanctions for refusal to test		Admin Lic Sanctions for Pre conviction	Mand. Lic Sanctions Following Conviction		Sanctions For CDL holders	Eval or Trtment Avail
MO	YES	BOTH	YES	NO	A Controlled Substance	YES	X	X	X Saliva	“may” exigent circumstances” “probabl cause”	R-1 yr	R- 1yr	YES	30 dys	5 yrs	Disqualified from operating a CMV for one year	YES
MT	YES	BOTH	YES	NO	Any Drug	YES	X				S-6 mos	R-1 yr	NO	S-6mos	R-1yr	A person is suspended from operating a CMV for 1 year	YES
NE	YES	BOTH	YES	NO	Any Drug	YES	X	X		“may” any accident where there is reason. Grounds that the driver is DWI	R-6mos	R-1 yr	YES	R-6mos	R-1yr	Disqualified from operating a CMV for 1 Year	YES
NV	YES	BOTH	YES	NO	A Controlled Substance	NO	*34 X	X	X OBS	SEE *35			YES	R-90dys	R –1yr	Disqualified from operating a CMV for 1 Year	NO
NH	YES	BOTH	YES	NO	Any Controlled drug	YES	X	X		“shall” collision resulting in death or serious injury	S-180dys	S-2yrs	YES	90dys-2yrs	1yr-2yrs	Privilege to operate CMV is suspended for one year	YES
NJ	YES	BOTH	NO	NO	*36	Probably YES					R-6mos	R-2yrs	NO	6mos-1yr	2 yrs	Privilege is suspended for one year	NO
NM	YES	BOTH	YES	NO	Any Drug	YES	X			“may” A driver has killed or greatly injured another person	R-1yr		YES	R-1yr	R-1yr	Disqualified from operating a CMV for One year	YES
NY	YES	BOTH	YES	NO	A controlled Substance	NO SEE pg. 3-339	X	X	X Saliva	“may” an acc. involving a fatality or serious physical injury	6 mos	1 yr	YES			Privilege to operate CMV is revoked for one year	NO
NC	YES	BOTH	YES	YES	Any Impairing Substance	YES	X	X	X OBS				YES	1yr	4yr	Disqualified from operating a CMV for One year	YES
ND	YES	BOTH	YES	NO	Any drug or substance	YES	X	X	*39 X Saliva	“may” acc where there is death or serious injury	R-1yr	R-2yr	YES	S-91dys	S-365dys	Disqualified from operating a CMV for 1 year	YES
OH	YES	BOTH	YES	NO	A Drug of Abuse	YES	X	X			S-1yr	S-2yr	YES	6mos-3yrs	1-5yrs	Disqualified from operating a CMV for 1 year	YES
OK	YES	BOTH	YES	NO	*40 Intoxicating substances	YES	X	X	X Saliva	“may” traffic offense, acc inv serious physical injury or death	R-180 days	R-1 yr	YES	30 dys	6 mos	Disqualified from operating a CMV for 1 year	YES
OR	YES	BOTH	*41 YES	YES	A controlled substance	YES	X	X	SEE pg. 3-390	*41	S-1yr	S-3yr	YES	1yr	3yr	Suspended from driving a CMV for 1 year	YES

Summary of U.S. DUID Laws – The Walsh Group

State	DUID Legislation Exist	Impairment or Analytical	Implied Consent Law for drugs	Per Se law exist for drugs	Types of drugs that are basis of law	Arrest required prior to testing	Specimens that may be tested			Other circumstances that may require testing	Mandatory Licensing sanctions for refusal to test		Admin Lic Sanctions for Pre conviction	Mand. Lic Sanctions Following Conviction		Sanctions For CDL holders	Eval or Trtment Avail
PA	YES	BOTH	YES	NO	A Controlled Substance	NO	X	X		Acc that results in a death or injury that req. med. Treatment	12 mos		NO	S-12mos		Disqualified from operating a CMV for one year	YES
RI	YES	BOTH	YES	YES	Any Drug	NO	X	X			S- 3-6 months	S- 1-2 years	NO	3-6mos	1-2 yrs	Privilege is suspended for 1 yr	YES
SC	YES	BOTH	YES	NO	Any Drug	YES	X	X		“must” bodily injury or death while in violation of the DD law	90dys	180 dys	YES	6mos	1yr	Disqualified from operating a CMV for 1 Year	YES
SD	YES	BOTH	YES	NO	A Controlled Substance	YES	X		X OBS	Required for persons arrested for a 3 rd or subsequent DWI offense	R-1yr		NO	R-30dy-1yr	R – 1yr	Disqualified from operating a CMV for 1 Year	YES
TN	YES	BOTH	YES	NO	*42	YES	X	X			S-12mos		NO	1 yr	2yrs	A persons CDL is suspended for 1 yr	YES
TX	YES	BOTH	NO	NO	*43	YES	X			“shall require” inv in acc that either resulted in death or will likely result in one	S-90dys	S-120 days	YES	90-1year	180 dys-2yrs	A person is disqualified from operating a CMV for 1 year	YES
UT	YES	BOTH	YES	YES	Any Drug	YES	X	X			R-1yr		YES	180dys	2yrs	A person is disqualified from operating a CMV for one year	YES
VT	YES	BOTH	YES	NO	Any related drug	NO	*44 X			“are” required Fatal incident or collision, bodily injury or death	S-6mos	S-18mo	YES	90dys	18mo	Disqualified from operating a CMV for 1 year	YES
VA	YES	BOTH	YES	NO	Any Drug	YES	X				S-1yr		YES	1yr	3 yr	Disqualified from operating a CMV for One year	YES
WA	YES	BOTH	YES	NO	Any Drug	YES	*45 X			*46 “may” acc where there is serious bodily injury	R-1yr	R-2yr	YES			A person is disqualified from operating a CMV for 1 year	NO
WV	YES	BOTH	NO	NO	Any Drug	YES					R-1yr	R-10yr				A person is disqualified from operating a CMV for 1 year	YES
WI	YES	BOTH	YES	NO	Any Drug	YES	X	X			1 yr	2 yrs	YES	6-9 mos	1yr – 18 mos	A person is disqualified from operating a CMV for 1 year	NO
WY	YES	BOTH	YES	NO	Controlled Substance	YES	X	X		“may” serious bodily injury or death	6 mos	1yr & 6 mos	YES	90 dys	1 yr	A person is disqualified from operating a CMV for 1 year	NO

Summary of U.S. DUID Laws – The Walsh Group

- *1 – Blood and urine can be submitted for a chemical test of controlled substance if there is “reasonable grounds to believe that the person was operating or driving a motor vehicle in this state that was involved in an accident causing death or serious physical injury to another person.”
- *2 – Arizona’s Implied Consent Law applies to drugs and illegal per se law : ≥ 0.10 and any controlled substance in a persons body
- *4 – The Implied Consent Laws only apply to a test to determine the alcohol or controlled substances content of a persons blood.
- *6 – A person under 18 years old, who is convicted of a DWI offense (including driving while under the influence of a controlled substance), must have their license suspended for either 12 months or until they reach 18, whichever is the longer period.
- *7 – A persons blood may be taken from them by force if there is probable cause that they committed criminally negligent homicide with a motor vehicle, vehicular homicide, assault in the third degree with a motor vehicle or vehicle assault.
- *10 – Limited to the testing of urine
- *11 – Under the influence of a controlled substance or chemical substance. See page 3-97.
- *12 – An arrest is not a prerequisite to the taking of a blood sample if the driver is taken to a medical facility for treatment as a result of an accident.
- *13 – A blood test, for the purposes of implied consent, may be taken only if the driver appears for treatment at a medical facility and the administration of a breath/urine test is impractical or impossible.
- *14 – There is an implied consent to submit to a urine test for the purpose of detecting the presence of controlled substances.
- *15 – It appears that an arrest is not required if there are “reasonable grounds” to believe that a person was DWI and they were involved in an accident that resulted in either serious injury or death.
- *16 – The law further provides that a blood test with a “drug screen” be administered to drivers involved in accidents that either result in a serious injury or death. This requirement, however, is not “mandatory”.
- *18 – An arrest is needed before licensing action can be taken for a refusal to submit to a chemical test
- *20 – An actual arrest is not required. Nevertheless, a request for a test must still be based on probable cause.
- *21 – A person may be required to submit to a chemical test via a search warrant issued pursuant to an investigation of involuntary manslaughter where a traffic accident has resulted in a death or personal injury likely to cause death and there is evidence of a DWI offense.
- *22 – No arrest is required if the person is involved in a motor vehicle accident resulting in property damage, personal injury or death
- *24 – “Under the influence of intoxicants” means being under the influence of alcohol, a drug other than alcohol, a combination of drugs or a combination of alcohol and drugs. The term “drug” refers to either “scheduled drugs” (i.e. controlled substances) or to “any natural or artificial chemical substances that, when taken into the human body, can impair the ability of the person to safely operate a motor vehicle.”
- *25 – An actual “arrest” as it required. However, the police must still have “probable” cause before a suspected drunk driver has to submit to a chemical test.
- *26 – A test for alcohol content via blood cannot be administered unless 1) the driver is unconscious and incapable of refusing a test, 2) the driver, because of injuries has been taken to a medical facility or 3) breath test equipment is not available (pg. 3-222).
- *27 – Under the influence of, 1) Marijuana, narcotic drugs, depressants or stimulant substances or 2) vapors or glue
- *28 – Unless the defendant is brought in for treatment.
- *30 – The law makes the distinction between driving while visibly impaired, driving while under the influence/illegal per se, and any DWI offense. (SEE pg. B-5).
- *31 – Applies to controlled substances listed in schedule I & II except marijuana or tetrahydrocannabinols. It is an affirmative defense to a violation of this provision if the defendant can show that the controlled substance was being used according to the terms of a valid prescription.
- *32 – A test can be requested if one of the following exists: 1) A person has been lawfully placed under arrest, 2) a person has refused to take a preliminary screening test, 3) a person refused to submit to a PBT of they submitted to such a test and the test indicated a $BrAC \geq 0.10$ or 4) a person is involved in an accident resulting in property damage, personal injury or death.
- *34 – Following a traffic accident where persons are killed, the driver can be tested if at least 16 years old and died within four hours of the accident.
- *35 – A person may be directed to submit to a blood test for controlled substances. In addition, a law enforcement officer may “direct” a person to submit to a blood test if there is “reasonable grounds to believe” the person, while operating a vehicle, either 1) caused either a death or serious injury while under the influence of intoxicating liquor or a controlled substance or 2) has been stopped for a subsequent drunk driving offense w/n 7yrs. A urine test can only be requested under 2 conditions: 1) a driver had been arrested for an alcohol driving offense and it is determined that they have hemophilia or a heart condition which would exempt them from a blood test or 2) a driver had been stopped for driving under the influence of a controlled substance.
- *36 – 1) A narcotic 2) a hallucinogen drug 3) a habit producing drug

Summary of U.S. DUID Laws – The Walsh Group

***39** – Saliva

***40** – “Intoxicating substance” means any controlled dangerous substance or any other substance, except alcohol, which can be “injected, inhaled, injected, or absorbed into the human body” and which can adversely affect “the central nervous system, vision, or other sensory or motor functions.”

***41** – A law enforcement officer may request a person to submit to a chemical test of their urine to determine the presence of a controlled substance. However, this requirement only applies to either 1) a breath test disclosed a concentration of ≤ 0.08 or 2) the person was involved in an accident that resulted in either a personal injury or property damage. Nevertheless, in the case of either injury or property related accidents, a law enforcement officer may request a urine test following a breath test regardless of the results of the breath test.

***42** – Any intoxicant, marijuana, narcotic drug, drugs producing stimulating effects on the nervous system: the salts of barbituric acid, also known as malonyl urea, or any compound, derivatives, or mixtures thereof that may be used for producing hypnotic or somnifacient effects, and includes amphetamines, desoxyephedrine or compounds or mixtures thereof, including all derivatives of phenylethylamine or any of the salts thereof, except preparations intended for use in the nose and unfit of internal use.

***43** – Not having normal use of mental or physical facilities by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug or a combination of two or more of these substances into the body.

***44** – A blood sample may be requested 1) if breath testing equipment is not available to determine alcoholic content or 2) if the law enforcement officer believes that the driver was under the influence of drugs.

***45** – A person arrested for a DWI offense may be compelled.

***46** – The implied consent law provides for a blood test only in situations where a person has been arrested for either 1) vehicle homicide, 2) vehicle assault or 3) a DWI offense and where the offense involved an accident in which there was serious bodily injury to another person.

OBS – Other Bodily Substances