

LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

# DRUGGED DRIVING: SUMMARY OF STATE LAWS

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# DRUGGED DRIVING: SUMMARY OF STATE LAWS

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## SUMMARY

Between September 2019 and March 2020, just over half of drivers seriously injured or killed in car accidents tested positive for at least one drug.<sup>1</sup> By July of 2020, that number was up to nearly two-thirds, with opioid use nearly doubling and marijuana use increasing 50 percent.<sup>2</sup> Drug use among Americans is on the rise, with a majority of states having legalized marijuana in some form.<sup>4</sup>

Alcohol's impairing effects on drivers have been well documented, and public education efforts have long stressed the dangers of drinking and driving. However, there is less scientific consensus and public awareness about the effects of other drugs and driving. While studies showing that drugs contribute to the risk of car accidents exist, there is little if any consensus on the effects of various drugs on driving impairment.<sup>5</sup> New research suggests that increasing levels of tetrahydrocannabinol (THC) in marijuana do not correlate with increased impairment, like increased alcohol does, complicating the task of identifying unsafe drivers.<sup>6</sup> Meanwhile, fewer Americans believe that drugged driving is dangerous: in a 2019 survey, 95 percent of Americans agreed that drinking and driving is "very or extremely dangerous," compared with 70 percent for driving under the influence of marijuana.<sup>7</sup>

The combination of scientific uncertainty and limited public knowledge affects enforcement of drugged driving laws. Drivers under the influence of drugs behave differently than drunk drivers, but those behaviors are less commonly known. Identifying the effects of different drugs requires additional training that most law enforcement officers do not receive.<sup>8</sup> Drug testing is also more complicated and more expensive than most alcohol screening. It is more difficult to be sure that a driver is impaired by drugs, to the point that when officers encounter someone who has consumed both alcohol and another drug, they are often discouraged from investigating the drugs.<sup>9</sup> Similarly, when prosecutors can charge a defendant with driving under the influence of alcohol or drugs, they often pursue the alcohol charge alone.<sup>10</sup> Proving drugged driving charges requires presenting more technical evidence and convincing skeptical juries, who expect the trial to fit into a pattern of drunk driving cases.<sup>11</sup> Many prosecutors avoid

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<sup>1</sup> "Drug-Impaired Driving." *National Highway Transit Safety Administration*. Accessed May 17, 2021.

<https://www.nhtsa.gov/risky-driving/drug-impaired-driving>.

<sup>2</sup> *Id.*

<sup>3</sup> James Hedlund. "Drug Impaired Driving: A Guide for States." *Governors Highway Safety Association*. April 2017. [https://www.ghsa.org/sites/default/files/2017-07/GHSA\\_DruggedDriving2017\\_FINAL\\_revised.pdf](https://www.ghsa.org/sites/default/files/2017-07/GHSA_DruggedDriving2017_FINAL_revised.pdf).

<sup>4</sup> Jeremy Berke, Shayanne Gal, and Yeji Jesse Lee. "Marijuana legalization is sweeping the US. See every state where cannabis is legal." *Business Insider*. April 14, 2021. <https://www.businessinsider.com/legal-marijuana-states-2018-1>.

<sup>5</sup> Hedlund, *supra* note 3.

<sup>6</sup> "Field Sobriety Tests and THC Levels Unreliable Indicators of Marijuana Intoxication." National Institute of Justice. April 5, 2021. <https://nij.ojp.gov/topics/articles/field-sobriety-tests-and-thc-levels-unreliable-indicators-marijuana-intoxication>.

<sup>7</sup> "2018 Traffic Safety Culture *AAA Foundation for Traffic Safety*. June 2019. [https://aaafoundation.org/wp-content/uploads/2019/06/2018-TSCI-FINAL-061819\\_updated.pdf](https://aaafoundation.org/wp-content/uploads/2019/06/2018-TSCI-FINAL-061819_updated.pdf).

<sup>8</sup> Hedlund, *supra* note 3.

<sup>9</sup> "Enhancing Drugged Driving Data: State-Level Recommendations." *AAA Foundation for Traffic Safety*. December 2019. <https://aaafoundation.org/enhancing-drugged-driving-data-state-level-recommendations/>.

<sup>10</sup> Hedlund, *supra* note 3.

<sup>11</sup> *Id.*

that additional challenge if they can, but it means that fewer drug-impaired drivers face consequences.

In this survey, the Legislative Analysis and Public Policy Association (LAPPA) examines the state-level legislative response to drugged driving. It presents the existing laws on driving under the influence of drugs in the 50 states and the District of Columbia. They can be divided into three groups: general “under the influence” laws, zero-tolerance laws prohibiting any trace of drugs, and *per se* laws prohibiting drug amounts over certain thresholds. Findings are presented jurisdiction by jurisdiction for easy comparison between the states.

Every state and the District of Columbia have statutes criminalizing driving under the influence of alcohol (DUI) or under the influence of drugs (DUID). Drunk driving laws target drivers who show signs of impairment regardless of the amount of alcohol consumed and drivers with more than a specified amount of alcohol in their system regardless of behavior. That limit is almost universally 0.08 percent alcohol in breath or blood. DUID statutes are generally similar. All states and the District of Columbia have laws prohibiting driving while impaired by controlled substances, intoxicating drugs, and the like, regardless of the amounts of drugs consumed. A smaller number of states have additional laws criminalizing particular quantities of drugs detected in drivers’ bodies. These laws can be divided into two groups: zero-tolerance laws and *per se* laws. Zero tolerance prohibits driving if a test of one’s blood, breath, urine, or saliva reveals any detectable traces of a prohibited substance. *Per se* laws operate like the maximum legal limits for alcohol: for a particular drug, it is unlawful to drive if the amount detected is above a certain threshold set by law. States’ standards differ based on the substance in question.

For marijuana/THC, 12 states have a zero-tolerance law (Arizona, Delaware, Georgia, Indiana, Iowa, Michigan, Montana, Oklahoma, Pennsylvania, Rhode Island, South Dakota, and Utah). Six states set *per se* limits (Colorado, Illinois, Nevada, Ohio, Washington, and Wisconsin). For a visual overview, see Figure 1.

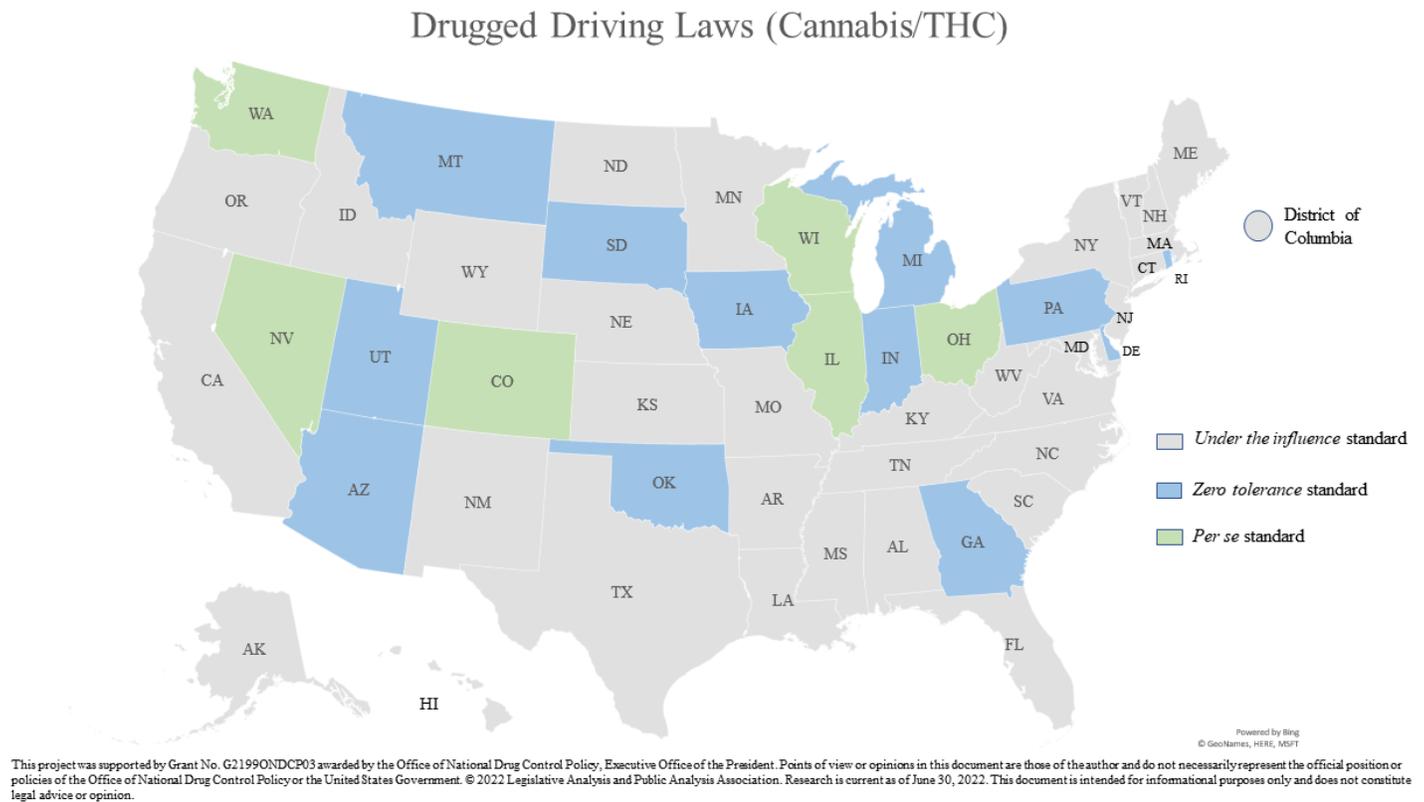


Fig. 1: State laws on driving under the influence of marijuana/THC

For other illegal drugs, such as methamphetamine or cocaine, the breakdown is slightly different. Sixteen states have zero-tolerance standards for these substances (Arizona, Delaware, Georgia, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Utah, and Wisconsin), compared to three with *per se* standards (Nevada, Ohio, and Virginia). For a visual overview, see Figure 2, and for more detail, see the tables below for each state.

### Drugged Driving Laws (Other Schedule I Substances)

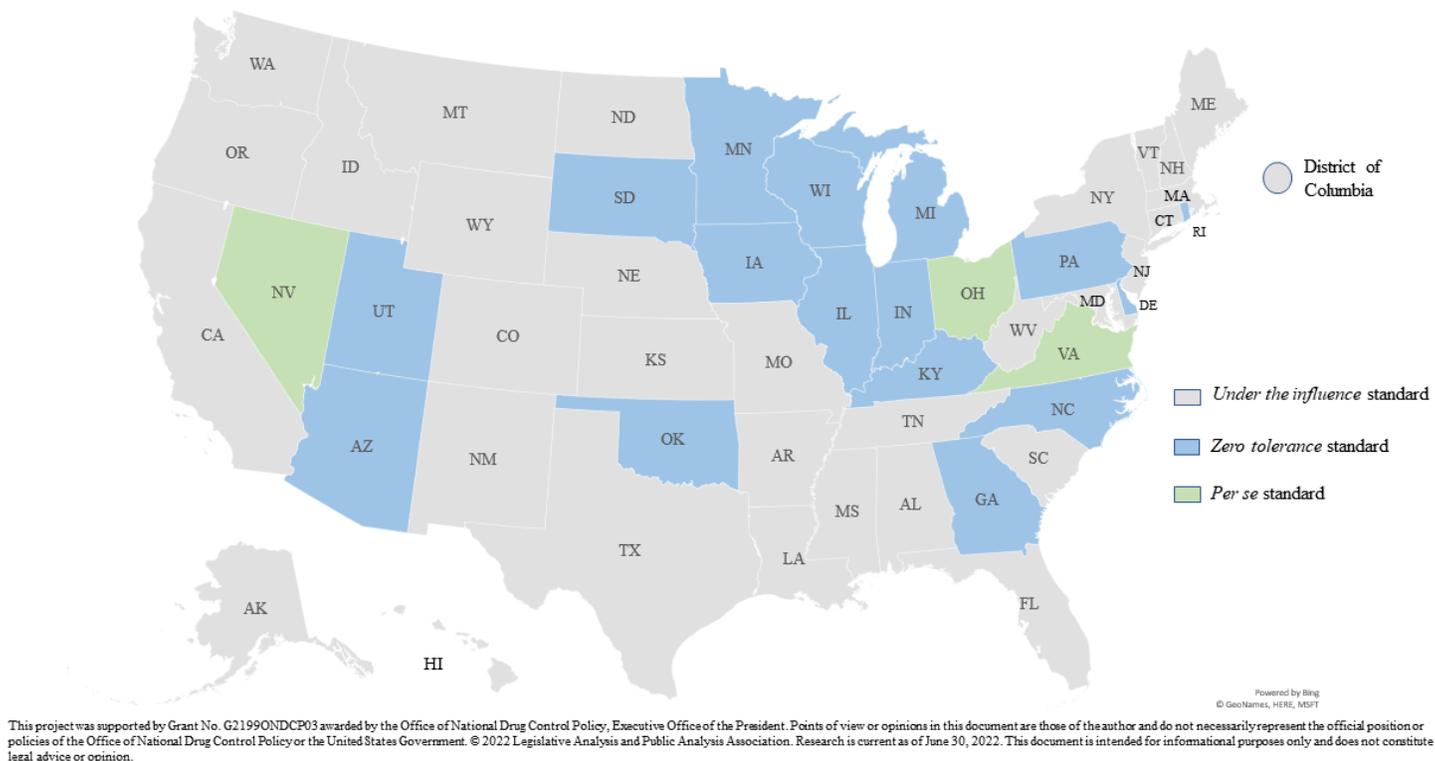


Fig. 2: State laws on driving under the influence of other Schedule I substances

Following the state-by-state tables is a selection of additional resources for policymakers on drugged driving research and policy proposals in the United States. These resources include scientific studies, such as the latest research on the physiological effects of certain substances on drivers and the effectiveness of new testing methods and policy analysis, including recommendations from the U.S. Department of Justice on how to effectively detect and prosecute drugged driving. Together they illuminate the evolving landscape of drugged driving in the United States and the potential remedies that can keep Americans safe on the roads.<sup>12</sup>

<sup>12</sup> The goal of this research document is to provide accurate and complete information that is free of omissions or errors. If you believe that this document contains misinformation, omissions, or errors, please email LAPPa at [info@thelappa.org](mailto:info@thelappa.org).

<b><u>ALABAMA</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Alabama, a person shall not “shall not drive or be in actual physical control of any vehicle” while 1) “under the influence of alcohol,” 2) “under the influence of a controlled substance to a degree which renders him or her incapable of safely driving, or 3) “under the combined influence of alcohol and a controlled substance to a degree which renders him or her incapable of safely driving.” <sup>13</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	One cannot drive while there is “0.08 percent or more by weight of alcohol in his or her blood.” <sup>14</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	For alcohol, drivers give implied consent to test their “blood, breath or urine.” <sup>15</sup>  Blood tests for amphetamines, opiates, or cannabis are only authorized if a driver is “involved in an accident that results in death or a serious physical injury to any person.” <sup>16</sup>
<b>Are there any affirmative defenses?</b>	No.

<sup>13</sup> ALA. CODE § 32-5A-191(a) (West 2022).

<sup>14</sup> ALA. CODE § 32-5A-191(a)(1) (West 2022).

<sup>15</sup> ALA. CODE § 32-5-192(a) (West 2022).

<sup>16</sup> ALA. CODE § 32-5-200(a) (West 2022).

<b><u>ALASKA</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Alaska, it is unlawful to operate a motor vehicle “while under the influence of an alcoholic beverage, intoxicating liquor, inhalant, or any controlled substance, singly or in combination.” <sup>17</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	One cannot drive if “as determined by a chemical test taken within four hours after the alleged operating or driving, there is 0.08 percent or more by weight of alcohol in the person's blood or 80 milligrams or more of alcohol per 100 milliliters of blood, or if there is 0.08 grams or more of alcohol per 210 liters of the person's breath.” <sup>18</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	For alcohol, drivers give implied consent to a test of their breath. <sup>19</sup>  Blood and urine tests for all substances are only authorized when the driver is “involved in a motor vehicle accident that causes death or serious physical injury to another person.” <sup>20</sup>
<b>Are there any affirmative defenses?</b>	No.

<sup>17</sup> ALASKA STAT. ANN. § 28.35.030(a)(1) (West 2022).

<sup>18</sup> ALASKA STAT. ANN. § 28.35.030(a)(2) (West 2022).

<sup>19</sup> ALASKA STAT. ANN. § 28.35.031(a) (West 2022).

<sup>20</sup> ALASKA STAT. ANN. § 28.35.031(g) (West 2022).

<b><u>ARIZONA</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Arizona, it is unlawful to operate a motor vehicle “While under the influence of intoxicating liquor, 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.” <sup>21</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	A driver is in violation if he or she “has an alcohol concentration of 0.08 or more within two hours of driving or being in actual physical control of the vehicle and the alcohol concentration results from alcohol consumed either before or while driving or being in actual physical control of the vehicle.” <sup>22</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	Yes.  It is unlawful to operate a motor vehicle “while there is any [dangerous drug] or its metabolite in the person's body.” <sup>23</sup>
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	If arrested, drivers give implied consent to “tests of the person's blood, breath, urine or other bodily substance for the purpose of determining alcohol concentration or drug content.” <sup>24</sup>
<b>Are there any affirmative defenses?</b>	Yes.  Any person “using a drug as prescribed” by a licensed medical practitioner is not guilty of a violation under the zero-tolerance standard. <sup>25</sup> That person would still be guilty of a violation if impaired to the slightest degree.

<sup>21</sup> ARIZ. REV. STAT. ANN. § 28-1381(a)(1) (West 2022).

<sup>22</sup> ARIZ. REV. STAT. ANN. § 28-1381(a)(2) (West 2022).

<sup>23</sup> ARIZ. REV. STAT. ANN. § 28-1381(A)(3) (West 2022).

<sup>24</sup> ARIZ. REV. STAT. ANN. § 28-1321(A) (West 2022).

<sup>25</sup> ARIZ. REV. STAT. ANN. § 28-1381(D) (West 2022).

<u><b>ARKANSAS</b></u>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Arkansas, it is unlawful to operate a motor vehicle while “intoxicated,” <sup>26</sup> defined as “influenced or affected by the ingestion of alcohol, a controlled substance, any intoxicant, or any combination of alcohol, a controlled substance, or an intoxicant, 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 or herself or another person.” <sup>27</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	A driver is in violation if “at that time the alcohol concentration in the person's breath or blood was eight hundredths (0.08) or more.” <sup>28</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	If arrested for an act committed driving while driving intoxicated or involved in an accident, drivers give implied consent to “one (1) or more chemical tests of his or her breath, saliva, or urine for the purpose of determining the alcohol concentration or controlled substance content of his or her breath or blood.” <sup>29</sup>
<b>Are there any affirmative defenses?</b>	No.

<sup>26</sup> ARK. CODE ANN. § 5-65-103(a)(1) (West 2022).

<sup>27</sup> ARK. CODE ANN. § 5-65-102(4) (West 2022).

<sup>28</sup> ARK. CODE ANN. § 5-65-103(a)(2) (West 2022).

<sup>29</sup> ARK. CODE ANN. § 5-65-202(a) (West 2022).

<b><u>CALIFORNIA</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In California, it is unlawful for any person who is 1) “under the influence of any alcoholic beverage,” 2) “addicted to the use of any drug,” 3) “under the influence of any drug,” or 4) “under the combined influence of any alcoholic beverage and drug” to drive a vehicle. <sup>30</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	It is unlawful for “a person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle.” <sup>31</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	For all substances, when lawfully arrested for driving under the influence, drivers give implied consent to tests. For alcohol, this is a test of blood or breath, with a urine test authorized if neither blood nor breath tests are available. <sup>32</sup> For determining “drug content,” this is a blood test, with a urine test authorized if a blood test is unavailable. <sup>33</sup>
<b>Are there any affirmative defenses?</b>	Yes.  Persons who are addicted to the use of a drug but are “participating in [an approved] narcotic treatment program” are not prohibited from driving a vehicle. <sup>34</sup>

<sup>30</sup> CAL. VEH. CODE § 23152.

<sup>31</sup> CAL. VEH. CODE § 23152(b) (West 2022).

<sup>32</sup> CAL. VEH. CODE § 23612(a)(1)(A) (West 2022).

<sup>33</sup> CAL. VEH. CODE § 23612(a)(1)(B) (West 2022).

<sup>34</sup> CAL. VEH. CODE § 23152(c) (West 2022).

<b><u>COLORADO</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	<p>Yes.</p> <p>In Colorado, a person who “drives a motor vehicle or vehicle under the influence of alcohol or one or more drugs, or a combination of both alcohol and one or more drugs, commits driving under the influence.”<sup>35</sup> Under the influence is defined as “driving a motor vehicle or vehicle when a person has consumed alcohol or one or more drugs, or a combination of alcohol and one or more drugs, that 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.”<sup>36</sup></p> <p>In addition, a person who “drives a motor vehicle or vehicle while impaired by alcohol or by one or more drugs, or by a combination of alcohol and one or more drugs, commits driving while ability impaired.”<sup>37</sup> Ability impaired is defined as “driving a motor vehicle or vehicle when a person has consumed alcohol or one or more drugs, or a combination of both alcohol and one or more drugs, that 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, or both mentally and physically, to exercise clear judgment, sufficient physical control, or due care in the safe operation of a vehicle.”<sup>38</sup></p>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	A person who “drives a motor vehicle or vehicle when the person's BAC is 0.08 or more at the time of driving or within two hours after driving commits DUI <i>per se</i> .” <sup>39</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.

<sup>35</sup> COLO. REV. STAT. ANN. § 42-4-1301(1)(a) (West 2022).

<sup>36</sup> COLO. REV. STAT. ANN. § 42-4-1301(1)(f) (West 2022).

<sup>37</sup> COLO. REV. STAT. ANN. § 42-4-1301(1)(b) (West 2022).

<sup>38</sup> COLO. REV. STAT. ANN. § 42-4-1301(1)(g) (West 2022).

<sup>39</sup> COLO. REV. STAT. ANN. § 42-4-1301(2)(a) (West 2022).

<b><u>COLORADO</u></b>	
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	<p>Yes.</p> <p>If, “at the time of the commission of the alleged offense or within a reasonable time thereafter,” the driver’s blood “contained five nanograms or more of delta 9-tetrahydrocannabinol per milliliter in whole blood,” there is a “permissible inference” that the defendant was under the influence of one or more drugs.<sup>40</sup></p> <p>Colorado’s “permissible inference” standard is unique among the states. All other states with maximum blood drug levels set by statute consider drivers unambiguously under the influence and in violation of DUID laws if they are over the legal limit.</p>
<b>What tests are used to detect alcohol or other substances?</b>	<p>For all substances, when a law enforcement officer has probable cause to believe a person was driving a motor vehicle while impaired or under the influence, drivers give implied consent to tests of “blood, saliva, and urine.”<sup>41</sup></p>
<b>Are there any affirmative defenses?</b>	No.

<sup>40</sup> COLO. REV. STAT. ANN. § 42-4-1301(6)(a)(IV) (West 2022).

<sup>41</sup> COLO. REV. STAT. ANN. §§ 42-4-1301.1(2)(a)(I), (2)(b)(I) (West 2022).

<b><u>CONNECTICUT</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Connecticut, no person “shall operate a motor vehicle while under the influence of intoxicating liquor or any drug or both.” <sup>42</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	It is unlawful to operate a motor vehicle with an “elevated blood alcohol content,” or “a ratio of alcohol in the blood of such person that is eight-hundredths of one per cent or more of alcohol, by weight.” <sup>43</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	For all substances, drivers give implied consent to “a chemical analysis of such person's blood, breath or urine.” <sup>44</sup>
<b>Are there any affirmative defenses?</b>	No.

<sup>42</sup> CONN. GEN. STAT. ANN. § 14-227a(a) (West 2022).

<sup>43</sup> *Id.*

<sup>44</sup> CONN. GEN. STAT. ANN. § 14-227b(a) (West 2022).

<b><u>DELAWARE</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Delaware, no person shall drive a vehicle when 1) “under the influence of alcohol,” 2) “under the influence of any drug,” or “under the influence of a combination of alcohol and any drug.” <sup>45</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	It is unlawful to drive when “the person's alcohol concentration is, within 4 hours after the time of driving .08 or more.” <sup>46</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	Yes.  No person may drive a vehicle if, within four hours of driving, his or her blood contains “any amount of an illicit or recreational drug that is the result of the unlawful use or consumption of such illicit or recreational drug or any amount of a substance or compound that is the result of the unlawful use or consumption of an illicit or recreational drug prior to or during driving.” <sup>47</sup>
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	For all substances, when a law enforcement officer has probable cause to believe that a person was driving under the influence, drivers give implied consent to “a chemical test or tests of that person's blood, breath and/or urine for the purpose of determining the presence of alcohol or a drug or drugs.” <sup>48</sup>
<b>Are there any affirmative defenses?</b>	Yes.  There is no violation under the zero-tolerance standard if 1) the driver consumed an illicit or recreational drug only after driving, such that it was detected in his or her blood within four hours of driving, or 2) the driver consumed the drug “according to the directions and terms of a lawfully obtained prescription.” <sup>49</sup>

<sup>45</sup> DEL. CODE ANN. tit. 21, § 4177(a) (West 2022).

<sup>46</sup> DEL. CODE ANN. tit. 21, § 4177(a)(5) (West 2022).

<sup>47</sup> DEL. CODE ANN. tit. 21, § 4177(a)(6) (West 2022).

<sup>48</sup> DEL. CODE ANN. tit. 21, § 2740(a) (West 2022).

<sup>49</sup> DEL. CODE ANN. tit. 21, § 4177(b)(3) (West 2022).

<b><u>DISTRICT OF COLUMBIA</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In the District of Columbia, no person shall operate a motor vehicle either “While the person is under the influence of alcohol or any drug or any combination thereof” <sup>50</sup> or “while the person's ability to operate or be in physical control of a vehicle is impaired by the consumption of alcohol or any drug or any combination thereof.” <sup>51</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	“Intoxicated” is defined as “An alcohol concentration at the time of testing of 0.08 grams or more per 100 milliliters of the person's blood or per 210 liters of the person's breath, or of 0.10 grams or more per 100 milliliters of the person's urine.” <sup>52</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	For all substances, when a law enforcement officer has reasonable grounds to believe a person was driving while intoxicated or impaired, drivers give implied consent to submit “2 specimens for chemical testing of the person's blood, breath, or urine, for the purpose of determining alcohol or drug content,” and the same samples may be taken whenever a driver “is involved in a collision in the District.” <sup>53</sup>
<b>Are there any affirmative defenses?</b>	No.

<sup>50</sup> D.C. CODE ANN. § 50-2206.11(2) (West 2022).

<sup>51</sup> D.C. CODE ANN. § 50-2206.14 (West 2022).

<sup>52</sup> D.C. CODE ANN. § 50-2206.01(9)(A)(i) (West 2022).

<sup>53</sup> D.C. CODE ANN. § 50-1904.02(a) (West 2022).

<b><u>FLORIDA</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Florida, it is unlawful to operate a motor vehicle when “under the influence of alcoholic beverages, any [harmful] chemical substance . . . , or any [controlled substance], when affected to the extent that the person's normal faculties are impaired.” <sup>54</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	The legal limits are a “blood-alcohol level of 0.08 or more grams of alcohol per 100 milliliters of blood; or . . . a breath-alcohol level of 0.08 or more grams of alcohol per 210 liters of breath.” <sup>55</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	For all substances, when a law enforcement officer conducts a lawful arrest and has “reasonable cause to believe” a driver was driving under the influence, drivers give implied consent to certain tests. <sup>56</sup>  For alcohol, this test is “an infrared light test of his or her breath for the purpose of determining the alcoholic content of his or her blood or breath.” <sup>57</sup> For other substances, this is a urine test. <sup>58</sup>  If a breath or urine test is “impractical or impossible” and the driver is at a medical facility, a blood test is authorized for all substances. <sup>59</sup> Also, when the driver has caused the “death or serious bodily injury of a human,” a blood test is required. <sup>60</sup>
<b>Are there any affirmative defenses?</b>	No.

<sup>54</sup> FLA. STAT. ANN. § 316.193(1)(a) (West 2022).

<sup>55</sup> FLA. STAT. ANN. § 316.193(1)(b), (c) (West 2022).

<sup>56</sup> FLA. STAT. ANN. § 316.1932(1)(a)(1) (West 2022).

<sup>57</sup> *Id.*

<sup>58</sup> FLA. STAT. ANN. § 316.1932(1)(b) (West 2022).

<sup>59</sup> FLA. STAT. ANN. § 316.1932(1)(c) (West 2022).

<sup>60</sup> FLA. STAT. ANN. § 316.193(1)(a) (West 2022).

<b><u>GEORGIA</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Georgia, it is unlawful to operate a motor vehicle under the influence of alcohol, any drug, or any combination “to the extent that it is less safe for the person to drive.” <sup>61</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	“The person's alcohol concentration is 0.08 grams or more at any time within three hours after such driving or being in actual physical control from alcohol consumed before such driving or being in actual physical control ended.” <sup>62</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	Yes.  No driver may have “any amount of marijuana or a controlled substance . . . present in the person's blood or urine, or both, including the metabolites and derivatives of each or both.” <sup>63</sup>
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	For all substances, if lawfully arrested for a violation of the DUI statute, drivers give implied consent to “a chemical test or tests of his or her blood, breath, urine, or other bodily substances for the purpose of determining the presence of alcohol or any other drug.” <sup>64</sup> These tests may also be taken if involved in any traffic accident that results in serious injuries or fatalities.
<b>Are there any affirmative defenses?</b>	Yes.  By statute, a person does not violate the zero-tolerance standard unless “such person is rendered incapable of driving safely as a result of using a drug . . . which such person is legally entitled to use.” <sup>65</sup> Those legally entitled to use marijuana, for instance, would only be in violation if they are incapable of driving safely, while those legally unable to use marijuana would be in violation if any marijuana or metabolites were found in their breath or blood. However, the Georgia Supreme Court found this distinction unconstitutional in <i>Love v. State</i> . <sup>66</sup>

<sup>61</sup> GA. CODE ANN. § 40-6-391(a) (West 2022).

<sup>62</sup> GA. CODE ANN. § 40-6-391(a)(5) (West 2022).

<sup>63</sup> GA. CODE ANN. § 40-6-391(a)(6) (West 2022).

<sup>64</sup> GA. CODE ANN. § 40-5-55(a) (West 2022).

<sup>65</sup> GA. CODE ANN. § 40-6-391(b) (West 2022).

<sup>66</sup> *Love v. State*, 271 Ga. 398, 517 S.E.2d 53 (1999).

<b><u>HAWAII</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Hawaii, it is unlawful to operate a motor vehicle while “under the influence of alcohol in an amount sufficient to impair the person's normal mental faculties or ability to care for the person and guard against casualty” or “under the influence of any drug that impairs the person's ability to operate the vehicle in a careful and prudent manner.” <sup>67</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	It is unlawful to drive with “.08 or more grams of alcohol per two hundred ten liters of breath” or “.08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.” <sup>68</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	For all substances, drivers give implied consent to “a test or tests approved by the director of health of the person's breath, blood, or urine for the purpose of determining alcohol concentration or drug content of the person's breath, blood, or urine, as applicable,” and such tests may be conducted when a law enforcement officer has “probable cause to believe” the driver is under the influence of an intoxicant and makes a lawful arrest. <sup>69</sup>  The test must also be requested in the event of “collision resulting in injury or death and if a law enforcement officer has probable cause to believe that a person involved in the collision has” violated the DUI statute. <sup>70</sup>
<b>Are there any affirmative defenses?</b>	No.

<sup>67</sup> HAW. REV. STAT. ANN. § 291E-61(a) (West 2022).

<sup>68</sup> HAW. REV. STAT. ANN. § 291E-61(a)(3) to (4) (West 2022).

<sup>69</sup> HAW. REV. STAT. ANN. § 291E-11(a) (West 2022).

<sup>70</sup> HAW. REV. STAT. ANN. § 291E-21(c) (West 2022).

<b><u>IDAHO</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Idaho, it is unlawful for “any person who is under the influence of alcohol, drugs or any other intoxicating substances, or any combination of alcohol, drugs and/or any other intoxicating substances . . . 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.” <sup>71</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	“An alcohol concentration of 0.08.” <sup>72</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	For all substances, drivers give implied consent to “evidentiary testing” for alcohol or drugs or other intoxicating substances, and these tests may be administered when a peace officer has “reasonable grounds to believe” that a driver had violated the DUI statute. <sup>73</sup> “Evidentiary testing” includes blood, breath, and urine tests. <sup>74</sup>
<b>Are there any affirmative defenses?</b>	No.

<sup>71</sup> IDAHO CODE ANN. § 18-8004(1)(a) (West 2022).

<sup>72</sup> *Id.*

<sup>73</sup> IDAHO CODE ANN. § 18-8002(1) (West 2022).

<sup>74</sup> IDAHO CODE ANN. § 18-8002A(1)(e) (West 2022).

<b><u>ILLINOIS</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	<p>Yes.</p> <p>In Illinois, it is unlawful to operate a motor vehicle while under the influence of alcohol or “any other drug or combination of drugs” or “under the combined influence of alcohol, other drug or drugs, or intoxicating compound or compounds to a degree that renders the person incapable of safely driving.”<sup>75</sup></p>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	<p>It is unlawful to drive while “the alcohol concentration in the person's blood, other bodily substance, or breath is 0.08 or more.”<sup>76</sup></p>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	<p>Yes.</p> <p>A person is in violation if there is “any amount of a drug, substance, or compound in the person's breath, blood, other bodily substance, or urine resulting from the unlawful use or consumption of a controlled substance listed in the Illinois Controlled Substances Act, an intoxicating compound listed in the Use of Intoxicating Compounds Act, or methamphetamine as listed in the Methamphetamine Control and Community Protection Act.”<sup>77</sup></p>
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	<p>Yes.</p> <p>For cannabis specifically, a violation occurs if, within two hours of driving, a person has a “tetrahydrocannabinol concentration in the person's whole blood or other bodily substance.”<sup>78</sup> That maximum concentration is “either 5 nanograms or more of delta-9-tetrahydrocannabinol per milliliter of whole blood or 10 nanograms or more of delta-9-tetrahydrocannabinol per milliliter of other bodily substance.”<sup>79</sup></p>

<sup>75</sup> 625 ILL. COMP. STAT. ANN. 5/11-501(a) (West 2022).

<sup>76</sup> 625 ILL. COMP. STAT. ANN. 5/11-501(a)(1) (West 2022).

<sup>77</sup> 625 ILL. COMP. STAT. ANN. 5/11-501(a)(6) (West 2022).

<sup>78</sup> 625 ILL. COMP. STAT. ANN. 5/11-501(a)(7) (West 2022).

<sup>79</sup> 625 ILL. COMP. STAT. ANN. 5/11-501.2(a)(6) (West 2022).

<b><u>ILLINOIS</u></b>	
<p>What tests are used to detect alcohol or other substances?</p>	<p>For all substances, drivers give implied consent to “a chemical test or tests of blood, breath, other bodily substance, or urine for the purpose of determining the content of alcohol, other drug or drugs, or intoxicating compound or compounds or any combination thereof in the person's blood,” if lawfully arrested and the law enforcement officer has “probable cause to believe” the person was under the influence.<sup>80</sup></p>
<p>Are there any affirmative defenses?</p>	<p>Yes.</p> <p>The per se standard for THC “does not apply to the lawful consumption of cannabis by a qualifying patient licensed under the Compassionate Use of Medical Cannabis Program Act who is in possession of a valid registry card issued under that Act, unless that person is impaired by the use of cannabis.”<sup>81</sup></p>

<sup>80</sup> 625 ILL. COMP. STAT. ANN. 5/11-501.1(a) (West 2022).

<sup>81</sup> 625 ILL. COMP. STAT. ANN. 5/11-501(a)(7) (West 2022).

<b><u>INDIANA</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Indiana, it is unlawful to “operate a vehicle while intoxicated,” <sup>82</sup> defined as under the influence of alcohol, a controlled substance, a drug other than a controlled substance, or a combination, such that there is “an impaired condition of thought and action and the loss of normal control of a person's faculties.” <sup>83</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	It is prima facie evidence of intoxication that a person has “an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per: (1) one hundred (100) milliliters of the person's blood; or (2) two hundred ten (210) liters of the person's breath.” <sup>84</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	Yes.  Any person who “operates a vehicle with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's blood” is in violation. <sup>85</sup>
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	Drivers give implied consent to chemical tests, defined as “an analysis of a person's blood, breath, urine, or other bodily substance for the determination of the presence of alcohol, a controlled substance or its metabolite, or a drug or its metabolite.” <sup>86</sup> Such a test may be requested by a law enforcement officer within three hours of having probable cause to believe a driver is violating the DUI statute. <sup>87</sup>
<b>Are there any affirmative defenses?</b>	Yes.  It is a defense to the zero-tolerance standard that the accused driver “consumed the controlled substance in accordance with a valid prescription or order of a practitioner . . . who acted in the course of the practitioner's professional practice.” <sup>88</sup>

<sup>82</sup> IND. CODE ANN. § 9-30-5-2.

<sup>83</sup> IND. CODE ANN. § 9-13-2-86.

<sup>84</sup> IND. CODE ANN. § 9-13-2-131.

<sup>85</sup> IND. CODE ANN. § 9-30-5-1(c) (West 2022).

<sup>86</sup> IND. CODE ANN. § 9-13-2-22 (West 2022).

<sup>87</sup> IND. CODE ANN. § 9-30-6-2 (West 2022).

<sup>88</sup> IND. CODE ANN. § 9-30-5-1(d) (West 2022).

<b><u>IOWA</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Iowa, it is unlawful to operate a motor vehicle while “under the influence of an alcoholic beverage or other drug or a combination of such substances.” <sup>89</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	It is unlawful to drive “While having an alcohol concentration of .08 or more.” <sup>90</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	Yes.  A driver commits a violation “While any amount of a controlled substance is present in the person, as measured in the person's blood or urine.” <sup>91</sup>
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	Drivers who give “reasonable ground to believe” that they are operating a motor vehicle in violation of the DUI statute give implied consent to “withdrawal of specimens of the person's blood, breath, or urine and to a chemical test or tests of the specimens for the purpose of determining the alcohol concentration or presence of a controlled substance or other drugs.” <sup>92</sup> Such tests may be requested by a peace officer after making a lawful arrest or when the driver has been involved in an accident resulting in personal injury or death. <sup>93</sup>

<sup>89</sup> IOWA CODE ANN. § 321J.2(1)(a) (West 2022).

<sup>90</sup> IOWA CODE ANN. § 321J.2(1)(b) (West 2022).

<sup>91</sup> IOWA CODE ANN. § 321J.2(1)(c) (West 2022).

<sup>92</sup> IOWA CODE ANN. § 321J.6(1) (West 2022).

<sup>93</sup> *Id.*

<b><u>IOWA</u></b>	
<b>Are there any affirmative defenses?</b>	<p>Yes.</p> <p>The under the influence standard does not apply if the substance “was prescribed for the person and was taken under the prescription and in accordance with the directions of a medical practitioner . . . or if the substance was dispensed by a pharmacist without a prescription pursuant to the rules of the board of pharmacy, if there is no evidence of the consumption of alcohol and the medical practitioner or pharmacist had not directed the person to refrain from operating a motor vehicle.”<sup>94</sup></p> <p>For the zero-tolerance standard, it is a defense if the substance “was prescribed or dispensed for the person and was taken in accordance with the directions of a practitioner and the labeling directions of the pharmacy.”<sup>95</sup></p>

<sup>94</sup> IOWA CODE ANN. § 321J.2(11)(a) (West 2022).

<sup>95</sup> IOWA CODE ANN. § 321J.2(11)(b) (West 2022).

<b><u>KANSAS</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Kansas, it is unlawful to operate a motor vehicle under the influence of alcohol, a drug or combination of drugs, or a combination of alcohol and any drug or drugs “to a degree that renders the person incapable of safely driving a vehicle.” <sup>96</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	A person drives under the influence when “the alcohol concentration in the person's blood or breath, as measured within three hours of the time of operating or attempting to operate a vehicle, is 0.08 or more.” <sup>97</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	Drivers may be requested to submit to “one or more tests of the person's blood, breath, urine or other bodily substance to determine the presence of alcohol or drugs,” following a lawful arrest or an accident involving property damage, personal injury, or death. <sup>98</sup>
<b>Are there any affirmative defenses?</b>	No.

<sup>96</sup> KAN. STAT. ANN. § 8-1567(a) (West 2022).

<sup>97</sup> KAN. STAT. ANN. § 8-1567(a)(2) (West 2022).

<sup>98</sup> KAN. STAT. ANN. § 8-1001 (West 2022).

<b><u>KENTUCKY</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Kentucky, a person shall not operate a motor vehicle while under the influence of alcohol, “any other substance or combination of substances which impairs one’s driving ability,” or a combination of the above. <sup>99</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	It is unlawful to drive with “an alcohol concentration of 0.08 or more as measured by a scientifically reliable test or tests of a sample of the person’s breath or blood taken within two (2) hours of cessation of operation or physical control of a motor vehicle.” <sup>100</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	Yes.  A driver is in violation “While the presence of a controlled substance listed in subsection (12) of this section is detected in the blood, as measured by a scientifically reliable test, or tests, taken within two (2) hours of cessation of operation or physical control of a motor vehicle.” <sup>101</sup> This list of controlled substances includes all Schedule I substances except marijuana. <sup>102</sup>
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	Drivers give implied consent to “one (1) or more tests of his or her blood, breath, and urine, or combination thereof, for the purpose of determining alcohol concentration or presence of a substance which may impair one’s driving ability, if an officer has reasonable grounds to believe that a violation of [the DUI statute] has occurred.” <sup>103</sup>
<b>Are there any affirmative defenses?</b>	Yes.  A lab test for a controlled substance is inadmissible in a prosecution under the zero-tolerance standard “upon a finding by the court that the defendant consumed the substance under a valid prescription from a practitioner . . . acting in the course of his or her professional practice.” <sup>104</sup>

<sup>99</sup> KY. REV. STAT. ANN. § 189A.010(1) (West 2022).

<sup>100</sup> KY. REV. STAT. ANN. § 189A.010(1)(a) (West 2022).

<sup>101</sup> KY. REV. STAT. ANN. § 189A.010(1)(d) (West 2022).

<sup>102</sup> KY. REV. STAT. ANN. § 189A.010(12) (West 2022).

<sup>103</sup> KY. REV. STAT. ANN. § 189A.103(1) (West 2022).

<sup>104</sup> KY. REV. STAT. ANN. § 189A.010(4)(b) (West 2022).

<b><u>LOUISIANA</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Louisiana, it is unlawful to operate a motor vehicle if under the influence of alcoholic beverages, “any controlled dangerous substance listed in Schedule I, II, III, IV, or V,” a combination of alcohol and one or more drugs that are not controlled substances, or one or more drugs that are not controlled substances. <sup>105</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	“The operator's blood alcohol concentration is 0.08 percent or more by weight based on grams of alcohol per one hundred cubic centimeters of blood.” <sup>106</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	Drivers give implied consent to “a chemical test or tests of his blood, breath, urine, or other bodily substance for the purpose of determining the alcoholic content of his blood, and the presence of any abused substance or controlled dangerous substance . . . in his blood if arrested for any offense arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle while believed to be under the influence of alcoholic beverages or any abused substance or controlled dangerous substance.” <sup>107</sup>
<b>Are there any affirmative defenses?</b>	Yes.  It is a defense if the driver used a legal drug and “the label on the container of the prescription drug or the manufacturer's package of the drug does not contain a warning against combining the medication with alcohol” <sup>108</sup> or “did not knowingly consume quantities of the drug or drugs that substantially exceed the dosage prescribed by the physician or the dosage recommended by the manufacturer of the drug.” <sup>109</sup>

<sup>105</sup> LA. STAT. ANN. § 14:98(A)(1) (West 2022).

<sup>106</sup> LA. STAT. ANN. § 14:98(A)(1)(b) (West 2022).

<sup>107</sup> LA. STAT. ANN. § 32:661(A)(1) (West 2022).

<sup>108</sup> LA. STAT. ANN. § 14:98(A)(1)(d)(ii) (West 2022).

<sup>109</sup> LA. STAT. ANN. § 14:98(A)(1)(e)(ii) (West 2022).

<b><u>MAINE</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Maine, it is unlawful to operate a motor vehicle under the influence of “intoxicants,” <sup>110</sup> which consist of “alcohol, a drug other than alcohol, a combination of drugs or a combination of alcohol and drugs.” <sup>111</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	A driver is considered operating under the influence with “an alcohol level of 0.08 grams or more of alcohol per 100 milliliters of blood or 210 liters of breath.” <sup>112</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	When there is probable cause to believe a person is driving under the influence of intoxicants, that person “shall submit to and complete a test to determine an alcohol level and the presence of a drug or drug metabolite by analysis of blood, breath or urine.” <sup>113</sup>
<b>Are there any affirmative defenses?</b>	No.

<sup>110</sup> ME. REV. STAT. tit. 29-A, § 2411(1-A)(A)(1) (West 2022).

<sup>111</sup> ME. REV. STAT. tit. 29-A, § 2401(13) (West 2022).

<sup>112</sup> ME. REV. STAT. tit. 29-A, § 2411(1-A)(A)(2) (West 2022).

<sup>113</sup> ME. REV. STAT. tit. 29-A, § 2521(1) (West 2022).

<b><u>MARYLAND</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Maryland, a person may not drive a vehicle “under the influence of alcohol” <sup>114</sup> while “so far impaired by any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person cannot drive a vehicle safely,” <sup>115</sup> or while “impaired by any controlled dangerous substance . . . if the person is not entitled to use the controlled dangerous substance under the laws of this State.” <sup>116</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	Driving under the influence of alcohol <i>per se</i> is “an alcohol concentration at the time of testing of 0.08 or more as measured by grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.” <sup>117</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	For all substances, drivers give implied consent, when detained on suspicion of driving under the influence, to take “a test.” <sup>118</sup>  To determine alcohol concentration, this is a “test of a person's breath or of 1 specimen of a person's blood.” <sup>119</sup> For drugs or controlled dangerous substances, it is a “test or tests of 1 specimen of a person's blood.” <sup>120</sup>
<b>Are there any affirmative defenses?</b>	Yes.  If the driver is legally entitled to use a controlled dangerous substance, the “impaired” standard does not apply and there would have to be a showing that the driver was so far impaired that the person cannot drive a vehicle safely. <sup>121</sup>

<sup>114</sup> MD. CODE ANN., TRANSP. § 21-902(a)(1)(i) (West 2022).

<sup>115</sup> MD. CODE ANN., TRANSP. § 21-902(c)(1)(i) (West 2022).

<sup>116</sup> MD. CODE ANN., TRANSP. § 21-902(d)(1)(i) (West 2022).

<sup>117</sup> MD. CODE ANN., CRIM. LAW § 2-501 (West 2022).

<sup>118</sup> MD. CODE ANN., TRANSP. § 16-205.1(a)(2) (West 2022).

<sup>119</sup> MD. CODE ANN., TRANSP. § 16-205.1(a)(1)(iii)(1) (West 2022).

<sup>120</sup> MD. CODE ANN., TRANSP. § 16-205.1(a)(1)(iii)(2) (West 2022).

<sup>121</sup> MD. CODE ANN., TRANSP. § 21-902(d)(1)(i) (West 2022).

<b><u>MASSACHUSETTS</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Massachusetts, it is unlawful to operate a motor vehicle “while under the influence of intoxicating liquor, or of marijuana, narcotic drugs, depressants or stimulant substances.” <sup>122</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	Operating a motor vehicle “with a percentage, by weight, of alcohol in their blood of eight one-hundredths or greater.” <sup>123</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	For alcohol, drivers give implied consent to “a chemical test or analysis of his breath or blood in the event that he is arrested for operating a motor vehicle while under the influence of intoxicating liquor.” <sup>124</sup>  There is currently no law authorizing similar tests for the presence of other substances.
<b>Are there any affirmative defenses?</b>	No.

<sup>122</sup> MASS. GEN. LAWS ANN. ch. 90, § 24(1)(a)(1) (West 2022).

<sup>123</sup> *Id.*

<sup>124</sup> MASS. GEN. LAWS ANN. ch. 90, § 24(1)(f)(1) (West 2022).

<b><u>MICHIGAN</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	<p>Yes.</p> <p>In Michigan, no person shall operate a motor vehicle if “operating while intoxicated,” that is, “under the influence of alcoholic liquor, a controlled substance, or other intoxicating substance or a combination of alcoholic liquor, a controlled substance, or other intoxicating substance.”<sup>125</sup></p> <p>Nor shall a person operate a motor vehicle when “due to the consumption of alcoholic liquor, a controlled substance, or other intoxicating substance, or a combination of alcoholic liquor, a controlled substance, or other intoxicating substance, the person's ability to operate the vehicle is visibly impaired.”<sup>126</sup></p>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	Currently, no one may operate a motor vehicle with “an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine,” but beginning October 1, 2021, that threshold will be raised to 0.10 grams. <sup>127</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	<p>Yes.</p> <p>A person shall not operate a motor vehicle “if the person has in his or her body any amount of a controlled substance listed in schedule 1 under section 7212 of the public health code . . . or of a controlled substance described in section 7214(a)(iv) of the public health code.”<sup>128</sup> This list does not include medical marijuana, which is a Michigan Schedule II substance.<sup>129</sup></p>
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.

<sup>125</sup> MICH. COMP. LAWS ANN. § 257.625(1)(a) (West 2022).

<sup>126</sup> MICH. COMP. LAWS ANN. § 257.625(3) (West 2022).

<sup>127</sup> MICH. COMP. LAWS ANN. § 257.625(1)(b) (West 2022).

<sup>128</sup> MICH. COMP. LAWS ANN. § 257.625(8) (West 2022).

<sup>129</sup> MICH. COMP. LAWS ANN. § 214(a)(iv) (West 2022).

<b><u>MICHIGAN</u></b>	
<b>What tests are used to detect alcohol or other substances?</b>	Drivers give implied consent to “chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance or other intoxicating substance, or any combination of them, in his or her blood or urine or the amount of alcohol in his or her breath” when lawfully arrested for a violation of the DUI statute or for causing the death of another person while driving. <sup>130</sup>
<b>Are there any affirmative defenses?</b>	No.

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<sup>130</sup> MICH. COMP. LAWS ANN. § 257.625c(1) (West 2022).

<b><u>MINNESOTA</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Minnesota, it is unlawful to operate a motor vehicle when a person is under the influence of 1) alcohol, 2) a controlled substance, 3) “an intoxicating substance and the person knows or has reason to know that the substance has the capacity to cause impairment,” or any combination of the above. <sup>131</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	A driver may not operate a motor vehicle when “the person's alcohol concentration at the time, or as measured within two hours of the time, of driving, operating, or being in physical control of the motor vehicle is 0.08 or more.” <sup>132</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	Yes.  It is illegal for a driver to operate a motor vehicle “the person's body contains any amount of a controlled substance listed in Schedule I or II, or its metabolite, other than marijuana or tetrahydrocannabinols.” <sup>133</sup>
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	Drivers give implied consent to a “chemical test of that person's blood, breath, or urine for the purpose of determining the presence of alcohol, a controlled substance or its metabolite, or an intoxicating substance,” which may be given when there is probable cause and either a lawful arrest has been made or the driver was involved in an accident resulting in property damage, personal injury, or death. <sup>134</sup>
<b>Are there any affirmative defenses?</b>	Yes.  It is a defense to the zero-tolerance standard if, by a preponderance of the evidence, it is shown that the driver “used the controlled substance according to the terms of a prescription issued for the defendant.” <sup>135</sup>

<sup>131</sup> MINN. STAT. ANN. § 169A.20(1) (West 2022).

<sup>132</sup> MINN. STAT. ANN. § 169A.20(1)(5) (West 2022).

<sup>133</sup> MINN. STAT. ANN. § 169A.20(1)(7) (West 2022).

<sup>134</sup> MINN. STAT. ANN. § 169A.51(1) (West 2022).

<sup>135</sup> MINN. STAT. ANN. § 169A.46(2) (West 2022).

<b><u>MISSISSIPPI</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Mississippi, it is unlawful to operate a motor vehicle while under the influence of intoxicating liquor, “any other substance that has impaired the person's ability to operate a motor vehicle,” or “any drug or controlled substance, the possession of which is unlawful under the Mississippi Controlled Substances Law.” <sup>136</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	It is unlawful to drive with “an alcohol concentration in the person's blood, based upon grams of alcohol per one hundred (100) milliliters of blood, or grams of alcohol per two hundred ten (210) liters of breath, as shown by a chemical analysis of the person's breath, blood or urine administered as authorized by this chapter, of: (i) Eight one-hundredths percent (.08%) or more for a person who is above the legal age to purchase alcoholic beverages under state law.” <sup>137</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	For all substances, drivers give implied consent to “a chemical test or tests of his breath, blood or urine” to determine alcohol concentration or the presence of other substances in the body that would impair one’s ability to operate a motor vehicle. The test may be administered when an officer has “reasonable grounds and probable cause” to believe the driver was driving while impaired. <sup>138</sup>
<b>Are there any affirmative defenses?</b>	No.

<sup>136</sup> MISS. CODE. ANN. § 63-11-30(1) (West 2022).

<sup>137</sup> MISS. CODE. ANN. § 63-11-30(1)(d) (West 2022).

<sup>138</sup> MISS. CODE. ANN. § 63-11-5(1)(a) (West 2022).

<b><u>MISSOURI</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Missouri, it is unlawful to operate a motor vehicle while “in an intoxicated condition,” <sup>139</sup> defined as “when a person is under the influence of alcohol, a controlled substance, or drug, or any combination thereof.” <sup>140</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	A person commits the offense of driving with excessive blood alcohol content by driving with “eight-hundredths of one percent or more by weight of alcohol in his or her blood.” <sup>141</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	Drivers give implied consent to “a chemical test or tests of the person's breath, blood, saliva, or urine for the purpose of determining the alcohol or drug content of the person's blood,” if the driver was lawfully arrested by an officer with reason to believe the driver was operating a vehicle in an intoxicated condition or if the driver was involved in an accident that resulted in a fatality or “readily apparent serious physical injury.” <sup>142</sup>
<b>Are there any affirmative defenses?</b>	No.

<sup>139</sup> MO. ANN. STAT. § 577.010(1) (West 2022).

<sup>140</sup> MO. ANN. STAT. § 577.001(13) (West 2022).

<sup>141</sup> MO. ANN. STAT. § 577.012(1)(1) (West 2022).

<sup>142</sup> MO. ANN. STAT. § 577.020(1) (West 2022).

<b><u>MONTANA</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Montana, it is unlawful for a person under the influence of alcohol, a dangerous drug, any other drug, or any combination of the above to drive or be in actual physical control of a vehicle. <sup>143</sup> “Under the influence” is defined as “that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a vehicle has been diminished.” <sup>144</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	There is a rebuttable inference that a person is under the influence if he or she has “an alcohol concentration of 0.08 or more.” <sup>145</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	Yes.  It is unlawful to operate a motor vehicle “upon the ways of this state open to the public while the person's delta-9-tetrahydrocannabinol level, excluding metabolites, as shown by analysis of the person's blood, is 5 ng/ml or more.” <sup>146</sup>
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	For all substances, drivers give implied consent to “a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body.” <sup>147</sup> The test must be administered if a law enforcement officer has reasonable grounds to believe the person has been driving under the influence and has been placed under arrest or has been involved in an accident that resulted in property damage or serious bodily injury or death. <sup>148</sup>
<b>Are there any affirmative defenses?</b>	No.

<sup>143</sup> MONT. CODE ANN. § 61-8-401(1) (West 2022).

<sup>144</sup> MONT. CODE ANN. § 61-8-401(3)(a) (West 2022).

<sup>145</sup> MONT. CODE ANN. § 61-8-401(4)(c) (West 2022).

<sup>146</sup> MONT. CODE ANN. § 61-8-411(1)(a) (West 2022).

<sup>147</sup> MONT. CODE ANN. § 61-8-402(1) (West 2022).

<sup>148</sup> MONT. CODE ANN. § 61-8-402(2)(a) (West 2022).

<b><u>NEBRASKA</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Nebraska, it is unlawful to operate a motor vehicle “While under the influence of alcoholic liquor or of any drug.” <sup>149</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	When a person has a concentration of “eight-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood” or “eight-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath.” <sup>150</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	Drivers give implied consent to “a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine.” <sup>151</sup> The test may be administered if a law enforcement officer has “reasonable grounds to believe” the driver was operating under the influence and has lawfully arrested him or her or if the driver was involved in an accident. <sup>152</sup>
<b>Are there any affirmative defenses?</b>	No.

<sup>149</sup> NEB. REV. STAT. ANN. § 60-6,196(1)(a) (West 2022).

<sup>150</sup> NEB. REV. STAT. ANN. § 60-6,196(1)(b), (c) (West 2022).

<sup>151</sup> NEB. REV. STAT. ANN. § 60-6,197(1) (West 2022).

<sup>152</sup> NEB. REV. STAT. ANN. § 60-6,197(2), (4) (West 2022).

<b><u>NEVADA</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Nevada, it is unlawful for any person who is under the influence of “intoxicating liquor,” “a controlled substance,” or a combination of both “to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access.” <sup>153</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	It is unlawful for a driver to have “a concentration of alcohol of 0.08 or more in his or her blood or breath.” <sup>154</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	Yes.  It is unlawful to operate a motor vehicle with any of a list of prohibited substances in one’s urine or blood at or above certain amounts, given in nanograms per milliliter. These substances and amounts are amphetamine (500 ng/ml urine, 100 ng/ml blood), cocaine (150/50), cocaine metabolite (150/50), heroin (2,000/50), heroin metabolite—morphine (10/10), heroin metabolite—6-monoacetyl morphine (10/10), LSD (25/10), marijuana (10/2), marijuana metabolite (15/5), methamphetamine (500/100), and phencyclidine (25/10). <sup>155</sup>

<sup>153</sup> NEV. REV. STAT. ANN. § 484C.110(1), (2) (West 2022).

<sup>154</sup> NEV. REV. STAT. ANN. § 484C.110(1)(b) (West 2022).

<sup>155</sup> NEV. REV. STAT. ANN. § 484C.110(3) (West 2022).

<b><u>NEVADA</u></b>	
<b>What tests are used to detect alcohol or other substances?</b>	<p>For all substances, drivers give implied consent to “an evidentiary test of his or her blood, urine, breath or other bodily substance to determine the concentration of alcohol in his or her blood or breath or to determine whether a controlled substance, chemical, poison, organic solvent or another prohibited substance is present, if such a test is administered at the request of a police officer having reasonable grounds to believe that the person to be tested was . . . [d]riving or in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance or with a prohibited substance in his or her blood or urine; or . . . [e]ngaging in any other conduct prohibited by” drunk or drugged driving laws.<sup>156</sup></p> <p>If the presence of a “controlled substance, chemical, poison, organic solvent or another prohibited substance in the blood or urine of the person” is at issue, the officer may request a blood or urine test, or both.<sup>157</sup></p>
<b>Are there any affirmative defenses?</b>	No.

<sup>156</sup> NEV. REV. STAT. ANN. § 484C.160(1) (West 2022).

<sup>157</sup> NEV. REV. STAT. ANN. § 484C.160(6) (West 2022).

<b><u>NEW HAMPSHIRE</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In New Hampshire, no person shall operate a vehicle “While such person is under the influence of intoxicating liquor or any controlled drug, prescription drug, over-the-counter drug, or any other chemical substance, natural or synthetic, which impairs a person's ability to drive or any combination of intoxicating liquor and controlled drugs, prescription drugs, over-the-counter drugs, or any other chemical substances, natural or synthetic, which impair a person's ability to drive.” <sup>158</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	Driving with “an alcohol concentration of 0.08 or more.” <sup>159</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	For all substances, drivers give implied consent to “physical tests and examinations for the purpose of determining whether such person is under the influence of intoxicating liquor or controlled drugs, prescription drugs, over-the-counter drugs, or any other chemical substances, natural or synthetic, which impair a person's ability to drive and to a chemical, infrared molecular absorption, or liquid or gas chromatograph test or tests of any or all of any combination of the following: blood, urine, or breath, for the purpose of determining the controlled drug, prescription drug, over-the-counter drug, or any other chemical substance, natural or synthetic, which impairs a person's ability to drive content of such person's blood or alcohol concentration” if arrested for an impaired driving offense or involved in an accident that resulted in death or bodily injury. <sup>160</sup> A law enforcement officer must have “reasonable grounds to believe” the driver was driving under the influence. <sup>161</sup>
<b>Are there any affirmative defenses?</b>	No.

<sup>158</sup> N.H. REV. STAT. ANN. § 265-A:2(I)(a) (West 2022).

<sup>159</sup> N.H. REV. STAT. ANN. § 265-A:2(I)(b) (West 2022).

<sup>160</sup> N.H. REV. STAT. ANN. § 265-A:4 (West 2022).

<sup>161</sup> *Id.*

<b><u>NEW JERSEY</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In New Jersey, it is unlawful to operate a motor vehicle “under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug.” <sup>162</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	It is unlawful to “[operate] a motor vehicle with a blood alcohol concentration of 0.08% or more by weight of alcohol in the defendant's blood.” <sup>163</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	For alcohol alone, drivers give implied consent to “the taking of samples of his breath for the purpose of making chemical tests to determine the content of alcohol in his blood,” provided a law enforcement officer has “reasonable grounds to believe” the driver has been driving in violation of the DUI statute. <sup>164</sup>  There is no similar test authorized for other substances.
<b>Are there any affirmative defenses?</b>	No.

<sup>162</sup> N.J. STAT. ANN. § 39:4-50(a) (West 2022).

<sup>163</sup> *Id.*

<sup>164</sup> N.J. STAT. ANN. § 39:4-50.2(a) (West 2022).

<b><u>NEW MEXICO</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In New Mexico, it is unlawful for a person under the influence of intoxicating liquor or any drug “to a degree that renders the person incapable of safely driving a vehicle to drive a vehicle within this state.” <sup>165</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	It is unlawful for “a person to drive a vehicle in this state if the person has an alcohol concentration of eight one hundredths or more in the person's blood or breath within three hours of driving the vehicle and the alcohol concentration results from alcohol consumed before or while driving the vehicle.” <sup>166</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	For all substances, drivers give implied consent to “chemical tests of his breath or blood or both . . . for the purpose of determining the drug or alcohol content of his blood if arrested for any offense arising out of the acts alleged to have been committed while the person was driving a motor vehicle while under the influence of an intoxicating liquor or drug” or when a law enforcement officer has “reasonable grounds to believe the person to have been driving a motor vehicle within this state while under the influence of intoxicating liquor or drug.” <sup>167</sup>
<b>Are there any affirmative defenses?</b>	No.

<sup>165</sup> N.M. STAT. ANN. § 66-8-102(A), (B) (West 2022).

<sup>166</sup> N.M. STAT. ANN. § 66-8-102(C)(1) (West 2022).

<sup>167</sup> N.M. STAT. ANN. § 66-8-107 (West 2022).

<b><u>NEW YORK</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In New York, a person shall not operate a motor vehicle 1) “while the person's ability to operate such motor vehicle is impaired by the consumption of alcohol,” 2) “while in an intoxicated condition,” 3) “while the person's ability to operate such a motor vehicle is impaired by the use of a drug,” or 4) “while the person's ability to operate such motor vehicle is impaired by the combined influence of drugs or of alcohol and any drug or drugs.” <sup>168</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	No person shall operate a motor vehicle “while such person has .08 of one per centum or more by weight of alcohol in the person's blood.” <sup>169</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	For all substances, drivers give implied consent to “a chemical test of one or more of the following: breath, blood, urine, or saliva, for the purpose of determining the alcoholic and/or drug content of the blood,” at the direction of a law enforcement officer “having reasonable grounds to believe such person to have been operating in violation of [the DUI statute] and within two hours after such person has been placed under arrest for any such violation; or having reasonable grounds to believe such person to have been operating in violation [the DUI statute] and within two hours after the stop of such person for any such violation.” <sup>170</sup>
<b>Are there any affirmative defenses?</b>	No.

<sup>168</sup> N.Y. VEH. & TRAF. LAW § 1192.

<sup>169</sup> N.Y. VEH. & TRAF. LAW § 1192(2) (West 2022).

<sup>170</sup> N.Y. VEH. & TRAF. LAW § 1194(2) (West 2022).

<b><u>NORTH CAROLINA</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	<p>Yes.</p> <p>In North Carolina, it is unlawful to operate a motor vehicle “While under the influence of an impairing substance,”<sup>171</sup> that is, under the influence of “Alcohol, controlled substance . . . , any other drug or psychoactive substance capable of impairing a person's physical or mental faculties, or any combination of these substances.”<sup>172</sup></p>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	<p>It is unlawful to drive with “an alcohol concentration of 0.08 or more.”<sup>173</sup></p>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	<p>Yes.</p> <p>Driving “with any amount of a Schedule I controlled substance, as listed in G.S. 90-89, or its metabolites in his blood or urine” is also impaired driving.<sup>174</sup> This does not include marijuana, as that is a Schedule VI drug in North Carolina.</p> <p>For drivers younger than 21, the restrictions are greater, and it is unlawful to operate a motor vehicle “at any time while he has remaining in his body any alcohol or controlled substance previously consumed.”<sup>175</sup></p>
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	<p>No.</p>
<b>What tests are used to detect alcohol or other substances?</b>	<p>For all substances, drivers give implied consent to “a chemical analysis if charged with an implied-consent offense. Any law enforcement officer who has reasonable grounds to believe that the person charged has committed the implied-consent offense may obtain a chemical analysis of the person.”<sup>176</sup> A “chemical analysis” includes “a test or tests of the breath, blood, or other bodily fluid or substance.”<sup>177</sup></p>

<sup>171</sup> N.C. GEN. STAT. ANN. § 20-138.1(a)(1) (West 2022).  
<sup>172</sup> N.C. GEN. STAT. ANN. § 20-4.01(14)(a) (West 2022).  
<sup>173</sup> N.C. GEN. STAT. ANN. § 20-138.1(a)(2) (West 2022).  
<sup>174</sup> N.C. GEN. STAT. ANN. § 20-138.1(a)(3) (West 2022).  
<sup>175</sup> N.C. GEN. STAT. ANN. § 20-138.3(a) (West 2022).  
<sup>176</sup> N.C. GEN. STAT. ANN. § 20-16.2(a) (West 2022).  
<sup>177</sup> N.C. GEN. STAT. ANN. § 20-4.01(3a) (West 2022).

<b><u>NORTH CAROLINA</u></b>	
<b>Are there any affirmative defenses?</b>	<p>Yes.</p> <p>For drivers younger than 21, there is no violation of the zero-tolerance standard “if he drives with a controlled substance in his body which was lawfully obtained and taken in therapeutically appropriate amounts.”<sup>178</sup></p>

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<sup>178</sup> N.C. GEN. STAT. ANN. § 20-138.3(a) (West 2022).

<b><u>NORTH DAKOTA</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In North Dakota, a person may not operate a motor vehicle if under the influence of “intoxicating liquor,” “any drug or substance or combination of drugs or substances to a degree which renders that person incapable of safely driving,” or a combination of “alcohol and any other drugs or substances to a degree which renders that person incapable of safely driving.” <sup>179</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	It is unlawful to drive with “an alcohol concentration of at least eight one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a vehicle.” <sup>180</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	For all substances, drivers give implied consent to “a chemical test, or tests, of the blood, breath, saliva, or urine for the purpose of determining the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, saliva, or urine,” <sup>181</sup> administered after a valid arrest for driving under the influence or if the driver is “involved in a crash resulting in the death of another individual, and there is probable cause to believe that” he or she was under the influence. <sup>182</sup>
<b>Are there any affirmative defenses?</b>	Yes.  It is a defense if “a drug was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person.” <sup>183</sup>

<sup>179</sup> N.D. CENT. CODE ANN. § 39-08-01(a) (West 2022).

<sup>180</sup> N.D. CENT. CODE ANN. § 39-08-01(1)(a) (West 2022).

<sup>181</sup> N.D. CENT. CODE ANN. § 39-20-01(1) (West 2022).

<sup>182</sup> N.D. CENT. CODE ANN. § 39-20-01.1(1) (West 2022).

<sup>183</sup> N.D. CENT. CODE ANN. § 39-08-01(1) (West 2022).

<b><u>OHIO</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	<p>Yes.</p> <p>In Ohio, no person may operate a motor vehicle who is “under the influence of alcohol, a drug of abuse, or a combination of them.”<sup>184</sup></p>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	<p>Ohio sets several maximum levels of alcohol in the body, depending on which test is administered. It is unlawful to operate a motor vehicle with the following concentrations of alcohol: 1) “eight-hundredths of one per cent or more . . . by weight per unit volume of alcohol in the person's whole blood,” 2) “ninety-six-thousandths of one per cent or more . . . by weight per unit volume of alcohol in the person's blood serum or plasma,” 3) “eight-hundredths of one gram or more . . . by weight of alcohol per two hundred ten liters of the person's breath,” or 4) eleven-hundredths of one gram or more . . . by weight of alcohol per one hundred milliliters of the person's urine.”<sup>185</sup></p>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	<p>No.</p>
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	<p>Yes.</p> <p>It is unlawful to drive with the following substances in one’s body at the specified levels:</p> <ol style="list-style-type: none"> <li>1. Amphetamine: 500 nanograms [ng] per ml of urine, 100ng/ml whole blood, blood serum, or plasma</li> <li>2. Cocaine: 150ng/ml urine, 50ng/ml whole blood, blood serum, or plasma</li> <li>3. Cocaine metabolite: 150/50</li> <li>4. Heroin: 2000/50</li> <li>5. Heroin metabolite (6-monoacetyl morphine): 10/10</li> <li>6. LSD: 25/10</li> <li>7. Marijuana: 10/2</li> <li>8. Marijuana metabolite: 35/50</li> <li>9. Methamphetamine: 500/100</li> <li>10. Phencyclidine: 25/10</li> <li>11. Salvia divinorum or savinorin A: per rules adopted by the state board of pharmacy<sup>186</sup></li> </ol>

<sup>184</sup> OHIO REV. CODE ANN. § 4511.19(A)(1)(a) (West 2022).

<sup>185</sup> *Id.*

<sup>186</sup> OHIO REV. CODE ANN. § 4511.19(A)(1) (West 2022).

<b><u>OHIO</u></b>	
<b>What tests are used to detect alcohol or other substances?</b>	For all substances, drivers give implied consent to “a chemical test or tests of the person's whole blood, blood serum or plasma, breath, or urine to determine the alcohol, drug of abuse, controlled substance, metabolite of a controlled substance, or combination content of the person's whole blood, blood serum or plasma, breath, or urine if arrested for a violation of [the DUI statute],” which shall be administered “at the request of a law enforcement officer having reasonable grounds to believe the person was operating or in physical control of a vehicle” while under the influence. <sup>187</sup>
<b>Are there any affirmative defenses?</b>	Yes.  The per se standards for non-alcohol substances do not apply if the person “obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs” and “injected, ingested, or inhaled the controlled substance in accordance with the health professional's directions.” <sup>188</sup>

<sup>187</sup> OHIO REV. CODE ANN. § 4511.191(A) (West 2022).

<sup>188</sup> OHIO REV. CODE ANN. § 4511.19(K) (West 2022).

<b><u>OKLAHOMA</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Oklahoma, it is unlawful to operate a motor vehicle while under the influence of alcohol, “any intoxicating substance other than alcohol which may render such person incapable of safely driving or operating a motor vehicle,” or “under the combined influence of alcohol and any other intoxicating substance which may render such person incapable of safely driving or operating a motor vehicle.” <sup>189</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	A person may not operate a motor vehicle with “a blood or breath alcohol concentration . . . of eight-hundredths (0.08) or more at the time of a test of such person's blood or breath administered within two (2) hours after the arrest of such person.” <sup>190</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	Yes.  A person may not operate a motor vehicle with “any amount of a Schedule I chemical or controlled substance, as defined in Section 2-204 of Title 63 of the Oklahoma Statutes, or one of its metabolites or analogs in the person's blood, saliva, urine or any other bodily fluid at the time of a test of such person's blood, saliva, urine or any other bodily fluid administered within two (2) hours after the arrest of such person.” <sup>191</sup>
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.

<sup>189</sup> OKLA. STAT. ANN. tit. 47, § 11-902(A) (West 2022).

<sup>190</sup> OKLA. STAT. ANN. tit. 47, § 11-902(A)(1) (West 2022).

<sup>191</sup> OKLA. STAT. ANN. tit. 47, § 11-902(A)(3) (West 2022).

<b><u>OKLAHOMA</u></b>	
<b>What tests are used to detect alcohol or other substances?</b>	<p>For alcohol, drivers give implied consent to “a test or tests of such person's blood or breath.”<sup>192</sup></p> <p>For other substances, drivers consent to a test of “such person's blood, saliva or urine for determining the presence or concentration of any other intoxicating substance therein.”<sup>193</sup></p> <p>In either case, the driver must have been arrested for an offense arising out of driving while under the influence of alcohol or another intoxicating substance or involved in a traffic accident that resulted in the immediate death or serious injury of any person.<sup>194</sup></p>
<b>Are there any affirmative defenses?</b>	No.

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<sup>192</sup> OKLA. STAT. ANN. tit. 47, § 751(A)(1) (West 2022).

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<b><u>OREGON</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Oregon, it is unlawful to drive a vehicle while “under the influence of intoxicating liquor, cannabis, a controlled substance or an inhalant” or “under the influence of any combination of intoxicating liquor, cannabis, a controlled substance and an inhalant.” <sup>195</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	“0.08 percent or more by weight of alcohol in the blood of the person as shown by chemical analysis of the breath or blood of the person.” <sup>196</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	Drivers give implied consent to “a chemical test of the person's breath, or of the person's blood if the person is receiving medical care in a health care facility immediately after a motor vehicle accident, for the purpose of determining the alcoholic content of the person's blood if the person is arrested for driving a motor vehicle while under the influence of intoxicants.” <sup>197</sup>  For substances other than alcohol, law enforcement officers may seek a test of urine if the driver has already taken a breath test that has disclosed a BAC of less than 0.08 percent or the driver is involved in an accident resulting in injury or property damage. <sup>198</sup>
<b>Are there any affirmative defenses?</b>	No.

<sup>195</sup> OR. REV. STAT. ANN. § 813.010(1) (West 2022).

<sup>196</sup> OR. REV. STAT. ANN. § 813.010(1)(a) (West 2022).

<sup>197</sup> OR. REV. STAT. ANN. § 813.100(1) (West 2022).

<sup>198</sup> OR. REV. STAT. ANN. § 813.131(2) (West 2022).

<b><u>PENNSYLVANIA</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Pennsylvania, a person may not operate a motor vehicle “after imbibing a sufficient amount of alcohol such that the individual is rendered incapable of safely driving, operating or being in actual physical control of the movement of the vehicle,” <sup>199</sup> if the driver is “under the influence of a drug or combination of drugs,” or if the driver is “under the combined influence of alcohol and a drug or combination of drugs to a degree which impairs the individual's ability to safely drive, operate or be in actual physical control of the movement of the vehicle.” <sup>200</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	It is unlawful to drive “after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is at least 0.08% . . . within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.” <sup>201</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	Yes.  A person may not operate a motor vehicle when his or her blood contains any amount of a Schedule I-III controlled substance or its metabolites. <sup>202</sup>
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	For all substances, drivers give implied consent to “one or more chemical tests of breath or blood for the purpose of determining the alcoholic content of blood or the presence of a controlled substance if a police officer has reasonable grounds to believe the person to have been driving [while operating privilege is suspended or revoked, under the influence, or illegally without an ignition interlock].” <sup>203</sup>
<b>Are there any affirmative defenses?</b>	Yes.  The zero-tolerance standard does not apply if the substance was “medically prescribed” to the driver. <sup>204</sup>

<sup>199</sup> 75 PA. STAT. AND CONS. STAT. ANN. § 3802(a)(1) (West 2022).

<sup>200</sup> 75 PA. STAT. AND CONS. STAT. ANN. § 3802(d) (West 2022).

<sup>201</sup> 75 PA. STAT. AND CONS. STAT. ANN. § 3802(a)(2) (West 2022).

<sup>202</sup> 75 PA. STAT. AND CONS. STAT. ANN. § 3802(d)(1) (West 2022).

<sup>203</sup> 75 PA. STAT. AND CONS. STAT. ANN. § 1547(a) (West 2022).

<sup>204</sup> 75 PA. STAT. AND CONS. STAT. ANN. § 3802(d)(1) (West 2022).

<b><u>RHODE ISLAND</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Rhode Island, it is unlawful to operate a motor vehicle “while under the influence of any intoxicating liquor, drugs, toluene, or any controlled substance . . . , or any combination of these.” <sup>205</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	A driver is considered under the influence with a “blood alcohol concentration is eight one-hundredths of one percent (.08%) or more by weight, as shown by a chemical analysis of a blood, breath, or urine sample.” <sup>206</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	Yes.  It is unlawful to operate a motor vehicle “with a blood presence of any scheduled controlled substance . . . , as shown by analysis of a blood or urine sample.” <sup>207</sup>
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	For all substances, drivers give implied consent to “chemical tests of his or her breath, blood, and/or urine for the purpose of determining the chemical content of his or her body fluids or breath.” <sup>208</sup> When a law enforcement officer has “reasonable grounds to believe” the person was driving while intoxicated, no more than two complete tests may be administered, “one for the presence of intoxicating liquor and one for the presence of toluene or any controlled substance.” <sup>209</sup>
<b>Are there any affirmative defenses?</b>	No.

<sup>205</sup> 31 R.I. GEN. LAWS ANN. § 31-27-2(a) (West 2022).

<sup>206</sup> 31 R.I. GEN. LAWS ANN. § 31-27-2(b)(1) (West 2022).

<sup>207</sup> 31 R.I. GEN. LAWS ANN. § 31-27-2(b)(2) (West 2022).

<sup>208</sup> 31 R.I. GEN. LAWS ANN. § 31-27-2.1(a) (West 2022).

<sup>209</sup> *Id.*

<b><u>SOUTH CAROLINA</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In South Carolina, it is unlawful to drive a motor vehicle while under the influence of alcohol, any other drug or a combination of other drugs or substances which cause impairment, or under the combined influence of alcohol and any other drug or drugs or substances which cause impairment “to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired.” <sup>210</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	It is unlawful to drive a motor vehicle while “alcohol concentration is eight one-hundredths of one percent or more.” <sup>211</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	For all substances, drivers give implied consent to “chemical tests of the person's breath, blood, or urine for the purpose of determining the presence of alcohol, drugs, or the combination of alcohol and drugs, if arrested for an offense arising out of acts alleged to have been committed while the person was driving a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs.” <sup>212</sup>  A breath test is given first (or if this is impossible or impractical, a blood test), but if the law enforcement officer has “reasonable suspicion” that the driver is under the influence of a substance other than alcohol, or a combination of drugs and alcohol, he or she may request a urine sample be taken. <sup>213</sup>
<b>Are there any affirmative defenses?</b>	No.

<sup>210</sup> S.C. CODE ANN. § 56-5-2930(A) (West 2022).

<sup>211</sup> S.C. CODE ANN. § 56-5-2933(A) (West 2022).

<sup>212</sup> S.C. CODE ANN. § 56-5-2950(A) (West 2022).

<sup>213</sup> *Id.*

<b><u>SOUTH DAKOTA</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	<p>Yes.</p> <p>In South Dakota, no person may operate a motor vehicle under the influence of “an alcoholic beverage, marijuana, or any controlled drug or substance not obtained pursuant to a valid prescription, or any combination of an alcoholic beverage, marijuana, or such controlled drug or substance,” “any controlled drug or substance obtained pursuant to a valid prescription, or any other substance, to a degree which renders the person incapable of safely driving,” or under the combined influence of “an alcoholic beverage and or any controlled drug or substance obtained pursuant to a valid prescription, or any other substance, to a degree which renders the person incapable of safely driving.”<sup>214</sup></p>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	<p>No person may drive a vehicle if “There is 0.08 percent or more by weight of alcohol in that person's blood as shown by chemical analysis of that person's breath, blood, or other bodily substance.”<sup>215</sup></p>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	<p>Yes, with limitations.</p> <p>No person under the age of 21 may drive a vehicle “After having consumed marijuana or any controlled drug or substance, other than a controlled drug or substance lawfully prescribed for the person, for as long as physical evidence of the consumption remains present in the person's body.”<sup>216</sup></p>
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	<p>No.</p>

<sup>214</sup> S.D. CODIFIED LAWS § 32-23-1.

<sup>215</sup> S.D. CODIFIED LAWS § 32-23-1(1) (West 2022).

<sup>216</sup> S.D. CODIFIED LAWS § 32-23-21(2) (West 2022).

<b><u>SOUTH DAKOTA</u></b>	
<b>What tests are used to detect alcohol or other substances?</b>	For all substances, drivers give implied consent to “withdrawal of blood or other bodily substance and chemical analysis of the person's blood, breath, or other bodily substance to determine the amount of alcohol in the person's blood and to determine the presence of marijuana or any controlled drug or substance or any substance ingested, inhaled, or otherwise taken into the body . . . that may render a person incapable of safely driving. The arresting law enforcement officer may, subsequent to the arrest of any operator for a violation of [the DUI statute], require the operator to submit to the withdrawal of blood or other bodily substances as evidence.” <sup>217</sup>
<b>Are there any affirmative defenses?</b>	No.

<sup>217</sup> S.D. CODIFIED LAWS § 32-23-10.

<b><u>TENNESSEE</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Tennessee, it is unlawful for any person to operate a motor vehicle while “Under the influence of any intoxicant, marijuana, controlled substance, controlled substance analogue, drug, substance affecting the central nervous system, or combination thereof that impairs the driver's ability to safely operate a motor vehicle by depriving the driver of the clearness of mind and control of oneself that the driver would otherwise possess.” <sup>218</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	“The alcohol concentration in the person's blood or breath is eight-hundredths of one percent (0.08%) or more.” <sup>219</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	For all substances, drivers give implied consent to “breath tests, blood tests, or both tests, for the purpose of determining the alcohol or drug content of that operator's blood. However, no such tests may be administered pursuant to this section unless conducted at the direction of a law enforcement officer having probable cause to believe the operator [was driving under the influence or committed a vehicular assault or homicide] and the operator signs a standardized waiver developed by the department of safety and made available to law enforcement agencies.” <sup>220</sup>
<b>Are there any affirmative defenses?</b>	No.

<sup>218</sup> TENN. CODE ANN. § 55-10-401(1) (West 2022).

<sup>219</sup> TENN. CODE ANN. § 55-10-401(2) (West 2022).

<sup>220</sup> TENN. CODE ANN. § 55-10-406(d)(1) (West 2022).

<b><u>TEXAS</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Texas, it is unlawful to operate a motor vehicle while “intoxicated,” <sup>221</sup> defined as “not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body.” <sup>222</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	A person is considered intoxicated from alcohol by “having an alcohol concentration of 0.08 or more.” <sup>223</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	“If a person is arrested for an offense arising out of acts alleged to have been committed while the person was operating a motor vehicle in a public place, or a watercraft, while intoxicated . . . the person is deemed to have consented . . . to submit to the taking of one or more specimens of the person's breath or blood for analysis to determine the alcohol concentration or the presence in the person's body of a controlled substance, drug, dangerous drug, or other substance.” <sup>224</sup>
<b>Are there any affirmative defenses?</b>	No.

<sup>221</sup> TEX. PENAL CODE ANN. § 49.04(a) (West 2022).

<sup>222</sup> TEX. PENAL CODE ANN. § 49.01(2)(A) (West 2022).

<sup>223</sup> TEX. PENAL CODE ANN. § 49.01(2)(B) (West 2022).

<sup>224</sup> TEX. TRANSP. CODE ANN. § 724.011(a) (West 2022).

<b><u>UTAH</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	<p>Yes.</p> <p>In Utah, a person may not operate a motor vehicle when “under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle.”<sup>225</sup></p>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	<p>A person may not operate a motor vehicle when “sufficient alcohol in the person's body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of .05 grams or greater at the time of the test.”<sup>226</sup></p>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	<p>Yes.</p> <p>It is unlawful to operate a vehicle with “any measurable controlled substance or metabolite of a controlled substance” in the person’s body.<sup>227</sup></p> <p>If the only controlled substance present is the marijuana metabolite 11-Nor-9-carboxy-tetrahydrocannabinol, this standard does not apply.<sup>228</sup></p>
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	<p>No.</p>
<b>What tests are used to detect alcohol or other substances?</b>	<p>For all substances, drivers give implied consent to “a chemical test or tests of the person's breath, blood, urine, or oral fluids” to determine whether the driver is “under the influence of alcohol, any drug, or combination of alcohol and any drug” or operating with “any measurable controlled substance or metabolite of a controlled substance in the person's body.”<sup>229</sup> These tests “must be administered at the direction of a peace officer having grounds to believe that person to have been operating or in actual physical control of a motor vehicle while in violation of [the DUI statute].”<sup>230</sup></p>

<sup>225</sup> UTAH CODE ANN. § 41-6a-502(1)(b) (West 2022).

<sup>226</sup> UTAH CODE ANN. § 41-6a-502(1)(a) (West 2022).

<sup>227</sup> UTAH CODE ANN. § 41-6a-517(2)(a) (West 2022).

<sup>228</sup> UTAH CODE ANN. § 41-6a-517(2)(b) (West 2022).

<sup>229</sup> UTAH CODE ANN. § 41-6a-520(1)(a) (West 2022).

<sup>230</sup> UTAH CODE ANN. § 41-6a-520(1)(b) (West 2022).

<b><u>UTAH</u></b>	
<b>Are there any affirmative defenses?</b>	<p>Yes.</p> <p>The zero-tolerance standard does not apply if the controlled substance was involuntarily ingested, prescribed by a practitioner for the accused's use, is medicinal cannabis ingested according to state regulations, or was otherwise legally ingested.<sup>231</sup></p>

<sup>231</sup> UTAH CODE ANN. § 41-6a-517(3) (West 2022).

<b><u>VERMONT</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Vermont, a person shall not operate a motor vehicle “when the person is under the influence of alcohol; or . . . when the person is under the influence of any other drug or under the combined influence of alcohol and any other drug.” <sup>232</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	A person shall not operate a motor vehicle “when the person's alcohol concentration is . . . 0.08 or more.” <sup>233</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	For all substances, drivers give implied consent to “an evidentiary test of that person's breath for the purpose of determining the person's alcohol concentration or the presence of other drug in the blood.” <sup>234</sup> The test may be administered when a law enforcement officer has “reasonable grounds to believe” that the person was driving in violation of the DUI statute or if the driver was involved in a fatal accident or one involving serious bodily injury. <sup>235</sup>  If a breath test is not reasonably available or the law enforcement officer “has reasonable grounds to believe that the person is under the influence of a drug other than alcohol,” the driver gives implied consent to a blood test. <sup>236</sup> Similarly, if the officer has reasonable grounds to believe the driver was under the influence of a drug other than alcohol, the driver gives implied consent to a saliva test. <sup>237</sup>
<b>Are there any affirmative defenses?</b>	No.

<sup>232</sup> VT. STAT. ANN. tit. 23, § 1201(a) (West 2022).

<sup>233</sup> VT. STAT. ANN. tit. 23, § 1201(a)(1) (West 2022).

<sup>234</sup> VT. STAT. ANN. tit. 23, § 1202(a)(1) (West 2022).

<sup>235</sup> VT. STAT. ANN. tit. 23, § 1202(a)(4), (5) (West 2022).

<sup>236</sup> VT. STAT. ANN. tit. 23, § 1202(a)(2) (West 2022).

<sup>237</sup> VT. STAT. ANN. tit. 23, § 1202(a)(3) (West 2022).

<b><u>VIRGINIA</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Virginia, it is unlawful for any person to drive a motor vehicle while under the influence of alcohol, “any narcotic drug or any other self-administered intoxicant or drug of whatsoever nature, or any combination of such drugs,” or “while such person is under the combined influence of alcohol and any drug or drugs to a degree which impairs his ability to drive or operate any motor vehicle . . . safely.” <sup>238</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	It is unlawful to drive a motor vehicle “while such person has a blood alcohol concentration of 0.08 percent or more by weight by volume or 0.08 grams or more per 210 liters of breath as indicated by a chemical test.” <sup>239</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	Yes.  It is unlawful to drive a vehicle when the following amounts of substances are present in the body, in milligrams per liter of blood: cocaine (0.02), methamphetamine (0.1), phencyclidine (0.01), or 3,4-methylenedioxymethamphetamine (0.1). <sup>240</sup>
<b>What tests are used to detect alcohol or other substances?</b>	For all substances, drivers give implied consent to “samples of his blood, breath, or both blood and breath taken for a chemical test to determine the alcohol, drug, or both alcohol and drug content of his blood, if he is arrested” for impaired driving. <sup>241</sup>
<b>Are there any affirmative defenses?</b>	No.

<sup>238</sup> VA. CODE ANN. § 18.2-266.

<sup>239</sup> VA. CODE ANN. § 18.2-266(i) (West 2022).

<sup>240</sup> VA. CODE ANN. § 18.2-266(v) (West 2022).

<sup>241</sup> VA. CODE ANN. § 18.2-268.2(A) (West 2022).

<b><u>WASHINGTON</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Washington, no person may drive a vehicle “While the person is under the influence of or affected by intoxicating liquor, marijuana, or any drug; or . . . [w]hile the person is under the combined influence of or affected by intoxicating liquor, marijuana, and any drug.” <sup>242</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	One cannot drive with “an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood.” <sup>243</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	Yes.  One cannot drive with “a THC concentration of 5.00 or higher as shown by analysis of the person's blood.” <sup>244</sup>
<b>What tests are used to detect alcohol or other substances?</b>	For all substances, drivers consent to “a test or tests of his or her breath for the purpose of determining the alcohol concentration in his or her breath if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug.” <sup>245</sup>  Although this appears only to authorize breath tests, there is also language indicating that nothing in the section “precludes a law enforcement officer from obtaining a person's blood to test for alcohol, marijuana, or any drug, pursuant to a search warrant, a valid waiver of the warrant requirement, when exigent circumstances exist, or under any other authority of law.” <sup>246</sup>

<sup>242</sup> WASH. REV. CODE ANN. § 46.61.502(1) (West 2022).

<sup>243</sup> WASH. REV. CODE ANN. § 46.61.502(1)(a) (West 2022).

<sup>244</sup> WASH. REV. CODE ANN. § 46.61.502(1)(b) (West 2022).

<sup>245</sup> WASH. REV. CODE ANN. § 46.20.308(1) (West 2022).

<sup>246</sup> WASH. REV. CODE ANN. § 46.20.308(4) (West 2022).

<b><u>WASHINGTON</u></b>	
<b>Are there any affirmative defenses?</b>	<p>Yes.</p> <p>For the <i>per se</i> alcohol and THC limits, it is a defense if the driver consumed alcohol or marijuana after driving such that he or she is over the legal limits at the time of the test.<sup>247</sup></p>

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<sup>247</sup> WASH. REV. CODE ANN. § 46.61.502(3) (West 2022).

<b><u>WEST VIRGINIA</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In West Virginia, it is unlawful to drive in an “impaired state,” which includes driving under the influence of alcohol, any controlled substance, any other drug or inhalant substance, or a combination of alcohol and any controlled substance or other drug. <sup>248</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	“Impaired state” also includes having “an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight.” <sup>249</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	For all substances, drivers give implied consent to “a preliminary breath analysis and a secondary chemical test of either his or her blood or breath to determine the alcohol concentration in his or her blood, or the concentration in the person's body of a controlled substance, drug, or any combination thereof,” which may be administered when a law enforcement officer “has reasonable cause to believe” the person is driving while impaired. <sup>250</sup>
<b>Are there any affirmative defenses?</b>	No.

<sup>248</sup> W. VA. CODE ANN. § 17C-5-2(a)(1) (West 2022).

<sup>249</sup> W. VA. CODE ANN. § 17C-5-2(a)(1)(E) (West 2022).

<sup>250</sup> W. VA. CODE ANN. § 17C-5-4 (West 2022).

<b><u>WISCONSIN</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	<p>Yes.</p> <p>In Wisconsin, no person may drive a motor vehicle while “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.”<sup>251</sup></p>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	<p>One cannot drive with a “prohibited alcohol concentration,”<sup>252</sup> which is “an alcohol concentration of 0.08 or more.”<sup>253</sup></p>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	<p>Yes.</p> <p>One cannot drive with “a detectable amount of a restricted controlled substance in his or her blood.”<sup>254</sup> Those substances are Schedule I controlled substances other than THC, the heroin metabolite 6-monoacetylmorphine, a controlled substance analog, cocaine or any of its metabolites, and methamphetamine.<sup>255</sup></p>
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	<p>Yes.</p> <p>“Restricted substance” also includes “Delta-9-tetrahydrocannabinol, excluding its precursors or metabolites,” but only if present in the body at a concentration of 1 nanogram per milliliter of a person’s blood.<sup>256</sup></p>

<sup>251</sup> WIS. STAT. ANN. § 346.63(1)(a) (West 2022).

<sup>252</sup> WIS. STAT. ANN. § 346.63(1)(b) (West 2022).

<sup>253</sup> WIS. STAT. ANN. § 340.01(46m)(a) (West 2022).

<sup>254</sup> WIS. STAT. ANN. § 346.63(1)(am) (West 2022).

<sup>255</sup> WIS. STAT. ANN. § 340.01(50am) (West 2022).

<sup>256</sup> WIS. STAT. ANN. § 340.01(50m)(e) (West 2022).

<b><u>WISCONSIN</u></b>	
<b>What tests are used to detect alcohol or other substances?</b>	For all substances, drivers give implied consent to “one or more tests of his or her breath, blood or urine, for the purpose of determining the presence or quantity in his or her blood or breath, of alcohol, controlled substances, controlled substance analogs or other drugs, or any combination of alcohol, controlled substances, controlled substance analogs and other drugs,” as requested by a law enforcement officer when the driver has been arrested for impaired driving or has been involved in an accident that causes substantial bodily harm. <sup>257</sup>
<b>Are there any affirmative defenses?</b>	Yes.  It is a defense to the zero-tolerance and per se standards if the driver proves “by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.” <sup>258</sup>

<sup>257</sup> WIS. STAT. ANN. § 343.305(2), (3) (West 2022).

<sup>258</sup> WIS. STAT. ANN. § 346.63(1)(d) (West 2022).

<b><u>WYOMING</u></b>	
<b>Does this jurisdiction have a Driving Under the Influence (DUI/DUID) statute?</b>	Yes.  In Wyoming, no person shall drive a motor vehicle is under the influence of alcohol, a controlled substance, or either, “To a degree which renders him incapable of safely driving.” <sup>259</sup>
<b>What is the <i>per se</i> standard for alcohol impairment?</b>	No person shall drive a vehicle who “Has an alcohol concentration of eight one-hundredths of one percent (0.08%) or more.” <sup>260</sup>
<b>Does the DUID statute have a zero-tolerance standard for other substances?</b>	No.
<b>Does the DUID statute have a <i>per se</i> standard for other substances?</b>	No.
<b>What tests are used to detect alcohol or other substances?</b>	For all substances, drivers give implied consent to “a chemical test or tests of his blood, breath or urine for the purpose of determining the alcohol concentration or controlled substance content of his blood,” provided that these tests are incidental to a lawful arrest, given as promptly as possible, and administered at the direction of a peace officer with “cause to believe” the person was driving in violation of the DUI statute. <sup>261</sup>
<b>Are there any affirmative defenses?</b>	No.

<sup>259</sup> WYO. STAT. ANN. § 31-5-233(b)(iii) (West 2022).

<sup>260</sup> WYO. STAT. ANN. § 31-5-233(b)(i) (West 2022).

<sup>261</sup> WYO. STAT. ANN. § 31-6-102(a)(i) (West 2022).

## ADDITIONAL RESOURCES

Years of study have produced a wealth of data on the science and laws of driving under the influence of alcohol, and examination of these subjects continues today. Similar breakthroughs concerning drugs and substances other than alcohol are relatively recent. These substances' effects on the human body, as well as the legal landscape governing them, are significantly different. Such research is particularly valuable as some states seek to combat the relative under-enforcement and under-prosecution of drugged driving offenses. Here is a selection of additional sources with more in-depth guidance that may be useful to policymakers seeking to address the challenges of drugged driving.

### Government Sources

#### Food and Drug Administration (FDA)

- [Some Medicines and Driving Don't Mix](#). Illegal drugs are not the only substances that can cause impairment while driving. This guide examines when certain prescription or over-the-counter medicines can put drivers at risk. It lists which medicines can affect driving, when impairment can occur, and how to avoid impaired driving.

#### National Highway Transit Safety Administration (NHTSA)

- The NHTSA has resources on both [Drunk Driving](#) and [Drug-impaired Driving](#). The drunk-driving guidance includes statistics on the human and monetary cost of drunk driving accidents, awareness campaigns, and a description of the typical effects of increasing levels of blood-alcohol concentration on the body. The drug-impaired driving guidance includes the *If You Feel Different, You Drive Different* education campaign and research on the rise in drug-impairment-linked car accidents, especially focused on marijuana.

#### Governors Highway Safety Association (GHSA)

- [Drug-Impaired Driving: A Guide for States](#). This 2017 report is an excellent single-volume source on current issues with drugged driving and the legal landscape in the United States. The report covers the chemistry and epidemiology of drug-impaired driving, gives an overview of state laws and prosecutorial practices, and policy recommendations for state governments.
- The GHSA also maintains a [database](#) with quick facts on state drugged driving laws. U.S. Department of Justice, National Institute of Justice (NIJ)
- NIJ, the research agency of the Department of Justice, has a significant collection of [Driving Under the Influence \(DUI\)](#) resources, focused largely on new technology for testing and detecting drug- and alcohol impairment.

- [Drug-Impaired Driving: NIJ-Sponsored Panel Points to Priority Needs for Addressing Complex Enforcement Challenges](#). As an example, here is an April 2021 panel that identified that top 13 needs for law enforcement, forensic toxicology, and prosecutors to combat drug-impaired driving more effectively.
- [Field Sobriety Tests and THC Levels Unreliable Indicators of Marijuana Intoxication](#). This April 2021 article detailed a recent NIJ study on the relationship between specific amounts of THC in the body and actual impairment, finding there is no correlation like that between blood-alcohol content and impairment.

## Others

### AAA Foundation for Traffic Safety

- [Enhancing Drugged Driving Data: State-Level Recommendations](#). This December 2019 report applies a list of drugged driving policy recommendations with a detailed state-by-state analysis of laws and law enforcement practices. The policy recommendations focus on how and when to best test drivers for the presence of drugs.
- [Roadwise](#). To better inform drivers about impairment caused by medicines, the AAA Foundation created an interactive tool in which one can create a list of medications and receive information about which, alone or in combination, can create risks when driving.

### Stop Drugged Driving

- [This organization](#), focused on reducing the use of illegal drugs generally, has useful data on the specific affects different illegal drugs have on the human body, the rates of drugged driving, and the number of drug-related car crashes, injuries, and deaths.

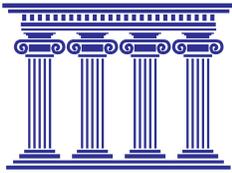
### Stop DUID

- [This site](#) contains a helpful collection of drugged driving data at the state level. Each state page includes information on current laws, statistics on the frequency of DUID testing in traffic accidents, and any relevant pending legislation.

## ABOUT THE LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

Based in Washington D.C., and led by and comprised of experienced attorneys, the Legislative Analysis and Public Policy Association is a 501(c)(3) nonprofit organization whose mission is to conduct legal and legislative research and analysis and draft legislation on effective law and policy in the areas of public safety and health, substance use disorders, and the criminal justice system.

LAPPA produces timely model laws and policies that can be used by national, state, and local public health, public safety, and substance use disorder practitioners who want the latest comprehensive information on law and policy as well as up-to-the-minute comparative analyses, publications, educational brochures, and other tools ranging from podcasts to fact sheets. Examples of topics on which LAPPA has assisted stakeholders include naloxone laws, law enforcement/community engagement, alternatives to incarceration for those with substance use disorders, medication-assisted treatment in correctional settings, and the involuntary commitment and guardianship of individuals with alcohol or substance use disorders.



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