



Drug Per Se Laws: A Review of Their Use in the States

Research has indicated that per se laws for alcohol have been effective in reducing alcohol-related fatalities. A difficulty in prosecuting drivers for driving impaired by drugs other than alcohol is that there is no scientific basis for specifying a bodily fluid concentration that is indicative of impairment. Successful prosecution has typically involved establishing behavioral evidence of impairment coupled with evidence of drug use, with the opinion that the drug use is likely to have caused the impairment.

Several States have implemented per se laws for drugs. Drug per se laws are not quite analogous to the alcohol impaired-driving per se laws now in effect in every State which make it illegal to operate a motor vehicle with a blood alcohol concentration (BAC) of .08 grams per deciliter (g/dL) or greater. Alcohol-impaired-driving per se laws are based on evidence that all drivers are impaired at a BAC of .08 g/dL. Drug per se laws are more analogous to zero-tolerance laws that make it illegal to drive with certain drugs in the system.

The objective of this project was to determine the extent to which States that have drug per se laws use them, and document any special concerns that arise when making and prosecuting an arrest under a drug per se law.

The National Highway Traffic Safety Administration was also interested in determining whether these laws are effective in increasing driving under the influence of drugs (DUID) arrests and convictions. To learn about drug per se laws, NHTSA contracted with the Pacific Institute for Research and Evaluation (PIRE).

DUID Laws

Several States have drug per se laws, which prohibit specified substances in drivers. The full research report contains a summary of each State's per se DUID law and State code, including a list of any specified prohibited drugs. These States' criminal, court-ordered, and administrative sanctions for DUID sanctions are also noted.

DUID Laws		
Drug per se - Prohibits presence of specified drugs while person is driving/ in control of vehicle	AZ	NV
	DE	OH
	GA	PA
	IL	RI
	IN	UT
	IA	VA
	MI	WI
	MN	
Illegal for person under 21 to drive with any amount of prohibited substance	NC	
	SD	
Illegal for a drug addict or habitual user to drive	CA	KS
	CO	WV
	ID	

In addition to the States with drug per se laws; two additional States have per se laws for drivers under 21 years old and five States prohibit a drug addict or habitual user from driving a vehicle.

DUID Arrest Process

When a driver is pulled over for probable cause for impaired driving, an officer will typically first conduct the SFST (Standardized Field Sobriety Tests). If the SFST and other indicators, such as a preliminary breath test, suggest that the driver is impaired but has either a low BAC or has not consumed alcohol, a drug recognition expert (DRE) may be called to examine the suspect for signs of drug use. In many instances, a DRE is not available and the arresting officer pursues the case without this assistance. If the person is arrested for DUID, a blood sample is taken and sent to a lab for analysis.

Methods

To obtain more in-depth information on whether the laws are believed to be working well and accomplishing their goals,

PIRE met with groups of State officials, prosecutors, and law enforcement officers in a few States with drug per se laws. To also examine the DUID arrest and prosecution process in States without drug per se laws, PIRE met with representatives from one State without a per se law but with a strong drug evaluation and classification (DEC) program, and one State with no per se law and no DEC program.

Study Sites	Per se law	DEC Program
Arizona	yes	yes
Iowa	yes	yes
Wisconsin	yes	yes
Michigan	yes	no
Colorado	no	yes
West Virginia	no	no

Where possible, PIRE obtained States' DUID arrest and conviction data. Our study design called for this data to be compared pre- and post-enactment of each State's per se law, and also between States with per se laws and States without these laws.

Findings

Although a key objective of this project was to determine whether drug per se laws increase DUID arrests and convictions, a main finding was that for many States, the DUID

offense is a component within the State's existing impaired-driving offense, and there is no indication in the records whether the arrest is for alcohol or drugs. Additionally, some States were not able to provide overall impaired-driving-arrest data, or information on convictions. At this time, there is not sufficient available data to determine whether drug per se laws increase arrests or convictions.

Most of the prosecutors and officers included in this study believed that a drug per se law was beneficial. The prosecutors tended to believe that the DUID cases had high conviction rates, and with blood analysis evidence, typically few cases required going to trial. However, the officers and prosecutors interviewed in a State without a per se law did not feel hindered without that law and believed that most DUID cases, especially ones involving officers trained in drug recognition, are pled guilty.

Across States, many noted that in arrests where both alcohol and a drug were involved, the prosecutor will only pursue the case for alcohol, as there is often no additional sanction for the use of the drug.

How to Order

To order the report *Drug Per Se Laws: A Review of Their Use in States*, prepared by the Pacific Institute for Research and Evaluation, write to the Office of Behavioral Safety Research, NHTSA, NTI-130, 1200 New Jersey Avenue SE, Washington, DC 20590, fax 202-366-7394, or download from www.nhtsa.gov. Amy Berning was the project manager for this study.



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