

HOUSE BILL 350

E1
HB 651/18 – JUD

9lr2229
CF 9lr2993

By: Delegates Valentino-Smith, Anderson, Atterbeary, and Jackson
Introduced and read first time: January 28, 2019
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Vehicle Laws – Smoking Marijuana in Vehicles – Prohibition**

3 FOR the purpose of prohibiting a driver of a motor vehicle from smoking or consuming
4 marijuana in a passenger area of a motor vehicle on a highway; prohibiting an
5 occupant of a motor vehicle from smoking marijuana in a passenger area of a motor
6 vehicle on a highway; and generally relating to smoking marijuana in a motor
7 vehicle.

8 BY repealing and reenacting, with amendments,
9 Article – Transportation
10 Section 21-903
11 Annotated Code of Maryland
12 (2012 Replacement Volume and 2018 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
14 That the Laws of Maryland read as follows:

15 **Article – Transportation**

16 21-903.

17 (a) (1) In this section the following words have the meanings indicated.

18 (2) “Alcoholic beverage” means a spirituous, vinous, malt, or fermented
19 liquor, liquid, or compound that contains at least 0.5% alcohol by volume and is fit for
20 beverage purposes.

21 (3) (i) “Passenger area” means an area that:

22 1. Is designed to seat the driver and any passenger of a motor
23 vehicle while the motor vehicle is in operation; or

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 2. Is readily accessible to the driver or a passenger of a motor
2 vehicle while in their seating positions.

3 (ii) "Passenger area" does not include:

4 1. A locked glove compartment;

5 2. The trunk of a motor vehicle; or

6 3. If a motor vehicle is not equipped with a trunk, the area
7 behind the rearmost upright seat or an area that is not normally occupied by the driver or
8 a passenger of the motor vehicle.

9 (b) This section applies to a motor vehicle that is driven, stopped, standing, or
10 otherwise located on a highway.

11 (c) A driver of a motor vehicle may not consume an alcoholic beverage in a
12 passenger area of a motor vehicle on a highway.

13 (D) A DRIVER OF A MOTOR VEHICLE MAY NOT SMOKE OR OTHERWISE
14 CONSUME MARIJUANA IN A PASSENGER AREA OF A MOTOR VEHICLE~~[ON A HIGHWAY.]~~

15 (E) AN OCCUPANT OF A MOTOR VEHICLE MAY NOT SMOKE MARIJUANA IN A
16 PASSENGER AREA OF A MOTOR VEHICLE~~[ON A HIGHWAY.]~~

17 [(d)] (F) Notwithstanding § 6-320, § 6-321, or § 6-322 of the Alcoholic
18 Beverages Article, or any other provision of law, the prohibition contained in this section
19 applies throughout the State.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2019.

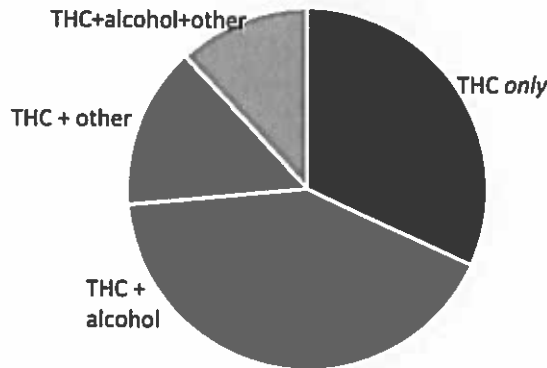
Summary of 2021 report “Driving Under the Influence of Drugs and Alcohol”

DUI is not just about alcohol, and DUID is not just about marijuana

Over 100 different impairing drugs were found in drivers in 2019. The most common drugs found were alcohol followed by marijuana’s THC, methamphetamine, and alprazolam (Xanax). [Appendix A p73ff]

Most THC-positive drivers were impaired by multiple drugs (polydrug impairment)

68% of THC-positive drivers arrested for DUI also tested positive for other drugs. [Table 21, p44]



Colorado convicts about 700 drivers impaired by THC each year

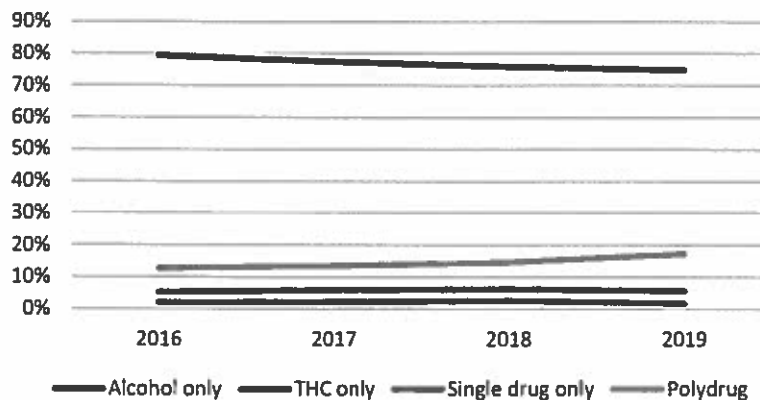
Colorado convicts ~700 drivers per year of impaired driving when THC was the *only* impairing substance found in their blood. This is convincing evidence that THC impairs drivers. These drivers were convicted and sentenced for their crimes. [Table 35, p57]

The conviction rate of stoned drivers is lower than that of drunk drivers (74% vs 92%)

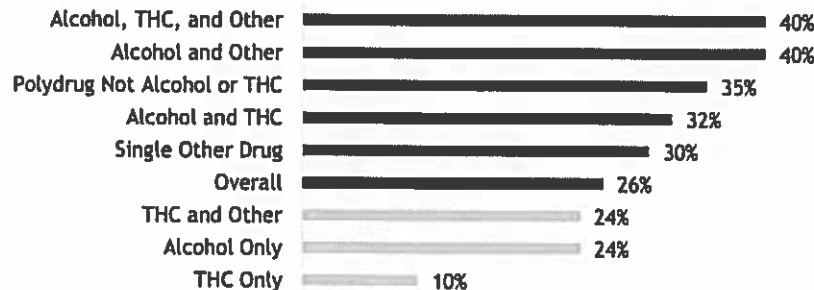
The conviction rate of drivers impaired by THC *only* is lower than the conviction rate of drivers impaired by alcohol *only*. The conviction rate of drivers impaired by THC *only* has improved from 69% in 2016 to 78% in 2019. [Table 35, p57]

Polydrug use is more common, more dangerous, and faster growing than other drugs

Polydrug impairment is more common than impairment from drugs other than alcohol and it is growing more rapidly than any other cause of impairment. [Table 21, p44]



Polydrug impairment is far more dangerous than impairment from either alcohol *only* or THC *only* [Table 35, p57]. Only 2.9% of Colorado's non-impaired drivers are involved in a crash each year. Crash involvement for convicted impaired drivers was much higher, regardless of cause:



A toxicology test is not needed to convict a driver of DUI

A drug toxicology test is not needed to convict a driver of DUI. 37% of the reported cases had no toxicology test yet had an 84% conviction rate vs a 90% conviction rate for those with a toxicology test. [Table 28, p51]

Stoned drivers don't necessarily drive more slowly than sober drivers

25% of stoned drivers were also charged with speeding. That's a higher speeding rate than any other impairing drug or combination of drugs. Drunk drivers were second at 14%. So much for the myth that stoned drivers are careful drivers because they go more slowly. [Appendix G, p96]

Drugged drivers are undercounted

Approximately one-third of all Colorado drivers arrested for DUI refuse to submit to a toxicology test, despite the state's expressed consent law. We have no drug data on those drivers. If an arresting officer believes that a driver's observed impairment is caused by alcohol, the driver may choose to be tested by an evidentiary breath testing device. We have no other drug data on those drivers. Until July 2019, drug testing was only done when an arresting officer believed it was essential and the law enforcement agency had the budget for it. Beginning July 2019, all blood samples drawn for DUI forensic testing included a state-funded full drug panel. As a result, THC-positive cases jumped from 36% of all tested drivers in the first half of 2019 to 42% in the second half. Polydrug cases jumped from 30% to 44%. [Table 15, p37]

Colorado's 5 ng/mL THC permissible inference law is ineffective

In 2013 Colorado passed its 5 ng/mL THC law. There is a permissible inference that the driver was impaired by THC when the toxicology test was at least 5 nanograms of THC per milliliter of whole blood. The law was passed for the same reason that alcohol .08 gm/dL *per se* laws were passed – to make it easier to convict drivers of DUI.

Alcohol's maximum .08 gm/dL *per se* laws are supported with scientific evidence of a very high correlation between blood alcohol levels and risk of traffic crashes.

Unlike with alcohol, there is no correlation between blood THC levels and risk of traffic crashes or levels of impairment. The same is true with all other drugs except alcohol. Alcohol is the exception.

The results are now in. The 5 ng law is a failure. Conviction rates of drivers arrested for THC impairment remain lower than other causes. The law makes conviction harder for drivers impaired by THC when the forensic toxicology results are below 5 ng/mL.

Colorado unwittingly launched a natural experiment to test the utility of a THC 5 ng law since the state uniquely has two impaired driving infractions:

- DWAI – impaired to the slightest degree, and
- DUI – incapable of safe driving

The 5 ng/mL law applies only to DUI, not to DWAI.

The 2021 Driving Under the Influence of Drugs and Alcohol analysis revealed that:

1. Overall THC DUI convictions are dramatically lower than overall alcohol DUI convictions, or convictions of drivers impaired by other drugs,
2. The 5 ng/mL law prevented most DUI convictions of drivers who tested below that level, even though drivers with any level of THC were nearly always impaired,
3. Most impaired driving convictions were for DWAI without the aid of the 5 ng law, not for DUI, and
4. The overwhelming majority (93%) of drivers testing below the 5 ng/mL THC level were convicted of DWAI, not DUI.

THC only

Charge	Charges	Convictions	Conviction %
DUI 5ng+	221	155	70%
DUI <5ng	98	8	8%
DWAI 5ng+	372	370	99%
DWAI <5ng	56	52	93%

Contrary to the language of the law, a driver convicted of DWAI is not necessarily less impaired than a driver convicted of DUI. That is because DWAI is commonly used as a plea bargain tool. This can be confirmed by studying the comparable data for drivers arrested for DUI where alcohol was the only drug found forensically. 45% of drivers with a BAC greater than the alcohol *per se* level were still convicted of DWAI, not of DUI.

Alcohol only

Charge	Charges	Convictions	Conviction %
DUI .08+	5,397	5,032	93%
DUI .05-.079	91	24	26%
DWAI .08+	4,096	4,094	100%
DWAI .05-.079	790	670	85%

For THC-impaired drivers, most convictions were for DWAI. For alcohol and polydrug-impaired drivers, most convictions were for DUI.

Polydrug with THC

Charge	Charges	Convictions	Conviction %
DUI 5ng+	496	370	75%
DUI <5ng	394	327	83%
DWAI 5ng+	267	267	100%
DWAI <5ng	218	217	100%

ddaggett@mdsaa.org

From: TSRP-Forum@groups.io on behalf of Jennifer Tibbitts Knudsen <jen@cdac.state.co.us>
Sent: Thursday, January 20, 2022 12:08 PM
To: TSRP-Forum@groups.io
Subject: [TSRP-Forum] Report: Driving Under the Influence of Drugs and Alcohol
Attachments: 2021-DUI_HB17-1315.pdf; ATT00001.htm; DCJ 2021 analysis.pdf; ATT00002.htm

FYI- for those of you needing data related to cannabis (and or DUI generally), from a local victim group (see attachments too):

The latest report, "Driving Under the Influence of Drugs and Alcohol: A Report Pursuant to C.R.S. 24-33.5-520" covering data for calendar year 2019 has been released: https://cdpsdocs.state.co.us/ORS/Docs/Reports/2021-DUI_HB17-1315.pdf. This is the fourth such report produced by DCJ for judiciary committee members. From my perspective as a DUI victim, President of DUI Victim Voices, and the author of HB17-1315 that created the process culminating in these reports, I must say that this is the best report yet. It is the best report yet for many reasons, including: the learning process in creating the reports, we now have a history of four years of reports to understand trends better, and the inclusion of data from CBI's greatly improved testing process described in the report.

It is easy to peruse the Executive Summary and then simply put the report in an archive file. I hope you don't stop there.

I encourage you to also read my attached analysis of the report and then choose to educate others and do something about about analysis issue number 9 below, the fact that the 5 ng/mL THC bill passed in 2013 is not working as intended. I suggest an interim study committee may be the best way to craft improved legislation to replace that portion of the law (42-4-1301 (6) (a) (IV)).

Analysis of DCJ 2021 report headlines:

1. DUI is not just about alcohol and DUI is not just about marijuana.
2. Most THC-positive drivers arrested for DUI were impaired by multiple drugs.
3. Colorado convicts nearly 700 drivers each year for being impaired by THC *only* (yes, marijuana causes DUI).
4. The conviction rate for THC-impaired driving is much lower than the conviction rate of drunk driving (74% vs 92%).
5. Polydrug use is more common, more dangerous, and faster growing than other drugs.
6. A toxicology test is not needed to convict a driver of DUI (therefore, there is little merit in refusing a drug test).
7. THC-impaired drivers don't necessarily drive more slowly than other drivers (another busted myth).
8. Drugged drivers are undercounted (but Colorado may be better than any other state).
9. Colorado's 5 ng/mL permissible inference law is ineffective.

If you choose to establish an interim study committee to address these issues, I am ready to support your efforts.

EO Wood