

July 9, 2018

TO: Members, Subcommittee on Digital Commerce and Consumer Protection

FROM: Committee Majority Staff

RE: Hearing entitled “Examining Drug-Impaired Driving.”

I. INTRODUCTION

The Subcommittee on Digital Commerce and Consumer Protection will hold a hearing on Wednesday, July 11, 2018, at 1:00 p.m. in 2123 Rayburn House Office Building. The hearing is entitled “Examining Drug-Impaired Driving.”

II. WITNESSES

- Robert L. DuPont, MD, President, Institute for Behavior and Health;
- Jennifer Harmon, Assistant Director, Forensic Chemistry, Orange County Crime Lab;
- Erin Holmes, Director, Traffic Safety Programs and Technical Writer, Foundation for Advancing Alcohol Responsibility; and,
- Colleen Sheehey-Church, National President, Mothers Against Drunk Driving.

III. BACKGROUND

Drug use and abuse have increasingly become central social issues in the United States, as the current opioid crisis is claiming more than 100 lives every day.¹ Prescription drugs, over-the-counter drugs, and illegal drugs, alone or in combination, can cause impairment and put the driver, their passengers, and others on the road at risk.² The number of American drivers killed in car crashes in which drugs were detected has surpassed those killed in crashes where only alcohol was found according to a report by the Governors Highway Safety Association (GHSA) and the Foundation for Advancing Alcohol Responsibility. According to the report, 43 percent of fatal crashes in 2015 involved drugs, compared to approximately 37 percent who tested positive for alcohol.

Based on more recent data, GHSA and the Foundation for Advancing Alcohol Responsibility found that the issue of drug-impaired driving has not slowed. In 2016, 44 percent

¹ Governors Highway Safety Association, Drug-Impaired Driving: Marijuana and Opioids Raise Critical Issues for States (2018).

² <https://www.nhtsa.gov/risky-driving/drug-impaired-driving>

of fatally-injured drivers with known results tested positive for drugs.³ Additionally, 51 percent of drug-positive fatally-injured drivers tested positive for two or more drugs and 41 percent also tested positive for alcohol. The ten-year trend demonstrates that drug-impaired driving has increased while driving under the influence of alcohol has decreased. Specifically, in 2006, 28 percent of fatally-injured drivers were drug-positive compared to 44 percent in 2016, whereas 41 percent of fatally-injured drivers were alcohol-positive in 2006 compared to 38 percent in 2016.⁴

A. Driving Under the Influence of Drugs

There are a number of drugs and substances that impair an individual's ability to drive. However, data indicates the following three drugs are most prevalent in drug-impaired driving cases: benzodiazepines, opioids, and marijuana.⁵ According to two analyses, benzodiazepines, more commonly known as medicine used to treat anxiety, are associated with greater risks of traffic accidents.⁶ Opioids are a class of drugs that includes heroin, synthetic opioids such as fentanyl, and pain relievers available legally by prescription including oxycodone, hydrocodone, codeine, morphine, and many others.⁷ Opioid prescriptions grew from "107 million in 1992 to nearly 277 million in 2012" and in 2015, nearly 40 percent of the U.S. population reported they had taken a legitimately prescribed opioid.⁸ Opioids can impair a driver's ability to operate the vehicle and, according to a 2017 study, there was a sevenfold increase from 1975 to 2015 in the prevalence of opioids in the blood of drivers fatally-injured in car accidents based on data from a number of states.⁹

Marijuana is the "illicit drug most frequently found in the blood of drivers who have been involved in vehicle crashes, including fatal ones."¹⁰ Marijuana significantly impairs driver judgment, motor coordination, and reaction time.¹¹ In fact, studies have found there is a direct relationship between blood tetrahydrocannabinol concentration (THC) and impaired driving ability.¹² Polydrug use, as the name suggests, is when individuals mix multiple drugs, whether illicit or legal, with each other or alcohol. Polydrug use is most common in the case of alcohol and marijuana.¹³ Mixing alcohol and marijuana "can have an additive effect on a driver," which may leave "him incapable of driving safely even though neither drug alone might impair his

³ <https://www.ghsa.org/resources/DUID18>

⁴ Governors Highway Safety Association, *supra* at 7.

⁵ *Id.*

⁶ *Id.*; see also Tharaka L. Dassanayake et al., Effects of Benzodiazepines, Antidepressants and Opioids on Driving: A Systematic Review and Meta-analysis of Epidemiological and Experimental Evidence, 34 Drug Safety 125 (2011).

⁷ Governors Highway Safety Association, *supra* at 18.

⁸ *Id.*

⁹ <https://www.heritage.org/public-health/report/the-need-treat-driving-under-the-influence-drugs-seriously-driving-under-the>

¹⁰ <https://www.drugabuse.gov/publications/research-reports/marijuana/does-marijuana-use-affect-driving>

¹¹ *Id.*

¹² *Id.*

¹³ <https://www.heritage.org/public-health/report/the-need-treat-driving-under-the-influence-drugs-seriously-driving-under-the>

ability to handle a vehicle.”¹⁴ Despite consensus that polydrug use negatively impacts an individual’s ability to drive, the “extent of current polysubstance use...is unknown.”¹⁵

B. Federal and State Action

NHTSA Drug-Impaired Driving Initiative

On January 25, 2018, National Highway Traffic Safety Administration (NHTSA) announced a new initiative to “combat drugged driving, a growing problem on U.S. roads.”¹⁶ With the national opioid epidemic, NHTSA “is making the drugged-driving problem a top priority to ensure U.S. roads, communities and families are safe from impaired drivers.”¹⁷ On March 15, 2018, NHTSA held a summit with stakeholders—including safety partners, state and local elected officials, data and policy experts, law enforcement and criminal justice professionals, toxicologists, and drug recognition experts—joined the Department of Transportation to set a course of action to take measurable steps to address the nation’s drugged-driving problem.¹⁸

Over the next 12 months, NHTSA will examine the operation of new oral fluid screening devices and will update its fatality data collection system to ensure better data on drug-related fatal crashes.¹⁹ Additionally, over the next six months, NHTSA will work with partners on this issue to “develop robust and effective public education tools and campaigns,” will “pilot-test a training course for prosecutors and toxicologists” and will “launch an online introductory training course to help highway safety professionals understand drug-impaired driving.”²⁰ Lastly, NHTSA plans to work to explore and leverage “innovative approaches to prevent driving under the influence of drugs through improved tools for law enforcement.”²¹

State Action

All states have two types of driving under the influence (DUI) charges: a per se charge and an impairment charge.²² A per se charge is based on the amount of drugs or alcohol in the driver’s system.²³ For example, if a driver has a blood alcohol content of .08 percent or more, the driver is per se driving under the influence. An impairment DUI charge, however, is “based on the actual effects that the drugs or alcohol” has on the driver.²⁴ States vary as to their approach to an impairment DUI, but most require the drug or alcohol have a “substantial effect” on the

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ <https://www.nhtsa.gov/press-releases/nhtsa-launches-drugged-driving-initiative-and-announces-march-15-summit>

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ <https://www.nhtsa.gov/risky-driving/drug-impaired-driving#32451>

²⁰ *Id.*

²¹ *Id.*

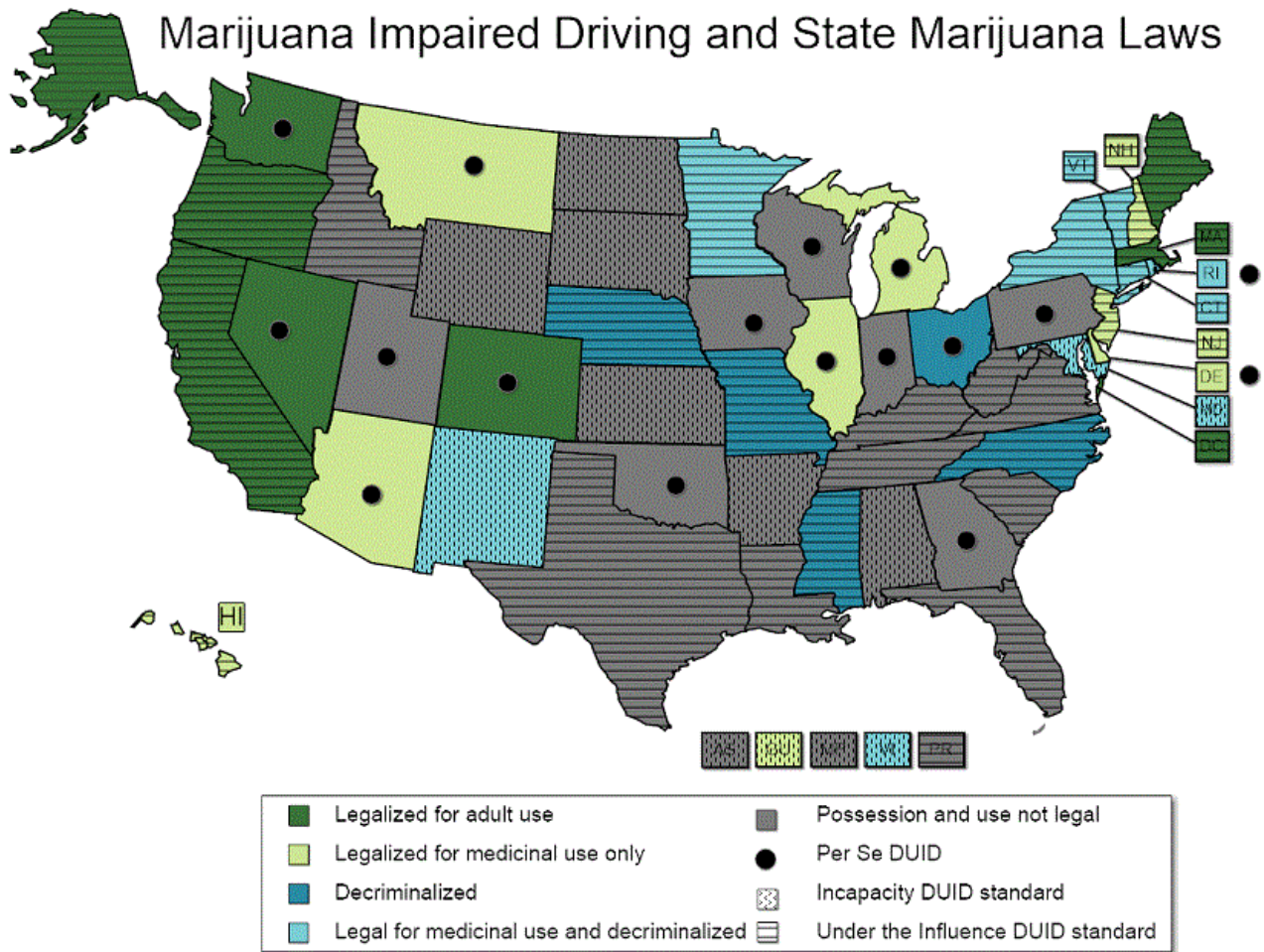
²² <https://www.nolo.com/legal-encyclopedia/dui-legal-drug-use-30320.html>

²³ *Id.*

²⁴ *Id.*

driver's ability to operate the vehicle.²⁵ Therefore, it can be illegal to drive under the influence of any substance, even if that substance has been lawfully prescribed.²⁶

In 2012, Colorado and Washington state became the first states to vote to legalize marijuana for recreational purposes.²⁷ Since then, seven more states and the District of Columbia have as well.²⁸ With this trend, there has been increased interest in marijuana-impaired driving. The follow map shows the interplay between drug-impaired driving laws and marijuana state law:



²⁵ *Id.*

²⁶ <https://www.heritage.org/public-health/report/the-need-treat-driving-under-the-influence-drugs-seriously-driving-under-the>

²⁷ <https://www.vox.com/cards/marijuana-legalization/where-is-marijuana-legal>

²⁸ *Id.*

IV. ISSUES

The following issues may be examined at the hearing:

- The current trends of drug-impaired driving, including the size and scope of the problem.
- What states are currently doing to address drug-impaired driving, including law enforcement action and training, roadside detection capabilities, and public education.
- Whether there is enough accurate available data on drug-impaired driving and what can be done to improve data collection.
- Ways in which the federal government can help address the growing problem, including NHTSA's Drug-Impaired Driving Initiative.
- How to respond to the public safety risks posed by drug-impaired driving and any policy recommendations for both state and federal action moving forward.

V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Melissa Froelich or Bijan Koohmaraie of the Committee staff at (202) 225-2927.