



# 2022 Recommendations and Policy Options

December 5, 2022



## Overview

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- **Driving Under the Influence (DUI)**
  - 10 Policy Options
  - 2 Recommendations
- **Expungement and Sealing of Criminal Records**
  - 1 Policy Option



## DUI

**Policy Option 1-A:** Repeal the prohibition on stops, searches, and seizures based solely on the odor of marijuana.

- May also require an amendment to the use of marijuana in a vehicle statute.

**Policy Option 1-B:** Amend the prohibition on stops, searches, and seizures based solely on the odor of marijuana to create an exception for certain DUI-related offenses.



## DUI

**Policy Option 2:** Add a 3ng/mL per se limit for marijuana (THC) across the DUI statutes.

- Meant to establish a bright line and promote public awareness of the dangers of THC impaired driving.
- This per se limit would be administrative as research does not support a relationship between THC levels in the blood and impaired driving.
- The Virginia Code includes administrative per se limits for four other drugs.



## DUI - Policy Option #2

State	THC Limit
Colorado*	5ng/mL
Illinois*	5ng/mL
Montana*	5ng/mL
Nevada*	2ng/mL
Ohio	2ng/mL
Pennsylvania	1ng/mL
Washington*	5ng/mL
West Virginia	3ng/mL

\* State legalized recreational marijuana.

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## DUI

**Policy Option 3:** Allow for the preliminary roadside screening of a person's saliva for the presence of drugs (similar to an alcohol PBT) in DUI cases.

- A person could refuse the saliva screening without any penalty and the results of the screening would not be admissible in court.
- DFS would need to hire 1 FTE research position (~\$85,000 per year).

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## DUI - Policy Option #3

Advantages	Disadvantages
<ul style="list-style-type: none"><li>• Rapid results (&lt;10 minutes)</li></ul>	<ul style="list-style-type: none"><li>• Screens for a limited number of drugs and/or drug categories</li></ul>
<ul style="list-style-type: none"><li>• Ease of oral fluid collection</li></ul>	<ul style="list-style-type: none"><li>• Qualitative assessment only (+/-)</li></ul>
<ul style="list-style-type: none"><li>• Minimally invasive</li></ul>	<ul style="list-style-type: none"><li>• Quality and accuracy of devices</li></ul>
<ul style="list-style-type: none"><li>• Helps to establish probable cause</li></ul>	<ul style="list-style-type: none"><li>• Price of devices and test kits</li></ul>
<ul style="list-style-type: none"><li>• Assists in identifying recent drug use or poly drug use</li></ul>	<ul style="list-style-type: none"><li>• Requires training and education</li></ul>

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## DUI

**Policy Option 4:** Require the Commonwealth to pay hospital employees who performed a DUI blood draw \$250 if they appear one time for any hearing or trial related to the blood draw.

- Would have a fiscal impact (~5,000 blood draws annually performed by variety of individuals).
- Other considerations: how the person receives payment, what if the person appears in both district and circuit court, and whether to assess the fee to the defendant as part of the court costs.

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## DUI

**Policy Option 5:** Require the Department of Forensic Science to conduct both alcohol and drug screening on all DUI blood draw submissions. DFS could screen for certain drugs or all drugs.

- May have a significant fiscal impact for additional staffing and resources and could result in a backlog of toxicology cases depending on number of drugs screened.
- DFS will begin testing all DUI blood draw submissions for THC (marijuana) in January 2023.



## DUI

**Policy Option 6:** Require the Department of Motor Vehicles' Highway Safety Office to collect existing data from various sources on DUI trends and enforcement across Virginia by both locality and individual law enforcement agencies and provide an annual comprehensive report on the status of impaired driving in the Commonwealth.



## DUI – Policy Option 6

The draft legislation includes:

- A requirement to annually collect and report on specific DUI data points and trends;
- Language directing government agencies to provide data upon request from the DMV; and,
- That the report be published by December 1st of each year, beginning in 2023, and provided to the General Assembly, Governor, and Crime Commission.



## DUI

**Policy Option 7:** Require the Office of the Chief Medical Examiner (OCME) to perform a blood test on all drivers killed in motor vehicle and boating crashes and report the results to DMV.

- OCME policy is to collect blood and other fluids for all motor vehicle crash (MVC) driver decedents.
- Approximately 90% of MVC driver decedents are tested each year. There are numerous reasons why someone's blood may not be collected.



## DUI

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**Policy Option 8:** Amend the driving, boating, and commercial DUI refusal statutes to ensure procedural consistency across these statutes.



## DUI

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**Policy Option 9:** Require any defendant challenging the lawfulness of a DUI arrest in a refusal prosecution to file a motion challenging the arrest prior to trial.

- This would reverse Green v. Commonwealth, 299 Va. 593, 856 S.E.2d 587 (2021) (VA Supreme Court).
- Under Green, the defendant is not required to file written notice to contest the lawfulness of the DUI arrest in advance of a refusal trial.



## DUI

**Policy Option 10:** Create a new statute to explicitly allow for the admission of accident reconstruction expert testimony in a criminal case after the expert has been properly qualified and a foundation for such testimony has been established.

- Accident reconstruction evidence is a complex matter that goes beyond DUI cases.



## DUI

**Recommendation 1:** Continue funding for the Virginia State Police (VSP) to provide Drug Recognition Expert (DRE), Advanced Roadside Impaired Driving Enforcement (ARIDE), and drug impaired driving training for both state and local law enforcement officers.

- VSP developed three options for consideration based on the scope of the training and associated costs.





## DUI – Recommendation 1

### **Option 1:** Sustain current DRE and ARIDE training.

- \$1 million per year for training expenses
  - 1 DRE school per year (~12 officers trained)
  - 10 ARIDE courses per year (~200 officers trained)
- Requires 1 FTE to coordinate training
  - FY24 cost: ~\$285,000
  - FY25 cost: ~\$185,000



## DUI – Recommendation 1

### **Option 2:** Sustain current DRE, expand ARIDE, and add SFST training.

- \$1 million per year for training expenses
  - 1 DRE school per year (~12 officers trained)
  - 16 ARIDE courses per year (~320 officers trained)
  - Provide SFST training at criminal justice academies
- Requires 5 FTEs to coordinate training statewide
  - FY24 cost: ~\$1.2 million
  - FY25 cost: ~\$735,000



## DUI – Recommendation 1

**Option 3:** Expand both current DRE and ARIDE and add SFST training.

- \$1 million per year for training expenses
  - 2 DRE schools per year (~24 officers trained)
  - 20 ARIDE courses per year (~400 officers trained)
  - Provide SFST training at criminal justice academies
- Requires 7 FTEs to coordinate training statewide
  - FY24 cost: ~\$1.7 million
  - FY25 cost: ~\$1 million



## DUI

**Recommendation 2:** Request that the Office of the Executive Secretary of the Supreme Court of Virginia (OES) include drug impaired driving at the upcoming mandatory 2023 District Court Judges' conference.

- Judges have not received DUI specific training at this conference within the past 5 years.
- This can be accomplished via a letter request.



# Expungement and Sealing of Criminal Records



## Expungement and Sealing

**Policy Option 1:** Amend the expungement and sealing statutes to reconcile and align these processes, and to streamline the expungement process:

- establish a clear line between expungement and sealing;
- repeal automatic marijuana expungement from the expungement chapter and add it into the sealing chapter;
- repeal petition-based marijuana drug paraphernalia expungement from the expungement chapter and add it into the sealing chapter;



## Expungement and Sealing

Amend the expungement and sealing statutes to:

- amend the expungement petition process so that it is similar to the sealing petition process;
- ensure that persons who have had their criminal records expunged are provided at least the same protections as afforded to persons who have had their criminal records sealed;
- amend the expungement petition process to authorize the use of new technology;
- allow a person to access their own expunged record;



## Expungement and Sealing

Amend the expungement and sealing statutes to:

- provide automated notice of expunged records to business screening services in the same manner as sealed records; and,
  - make other changes to improve the programming of the automatic sealing processes.
- Changes that mandate automated communications in the expungement process would require additional resources and delay the sealing implementation date.



## Discussion