



Driving Under the Influence (DUI) *Laws and Enforcement*

November 16, 2022



Research Findings

- Virginia's statutory scheme appears to be effective for charging and prosecuting DUI cases; however, policy changes could be made to these laws.
- Other states have implemented various measures in an effort to enhance DUI enforcement.
- Drug impaired driving is a growing concern amongst stakeholders across Virginia.
- Seven key barriers to DUI enforcement were identified, centering primarily on staffing and logistical challenges.



DUI Enforcement Barriers

- **Barrier 1: Law enforcement staffing shortages.**
 - Law enforcement staffing is affected by:
 - recruitment (lacking qualified applicants); and,
 - retention (officers changing agencies, retiring, or leaving the law enforcement field).
 - Staffing shortages have multiple impacts:
 - requiring officers to work overtime and/or assume additional duties; and,
 - limiting proactive DUI enforcement measures, such as checkpoints, saturation patrols, and general traffic enforcement.



DUI Enforcement Barriers

- **Barrier 2: Procedural requirements related to investigating and prosecuting DUI cases.**
 - DUI arrests are extremely time consuming and require extensive paperwork.
 - Numerous stakeholders expressed concerns with:
 - prohibitions on traffic stops for certain equipment and inspection violations; and,
 - restrictions on searches based on the odor of marijuana.
 - Reviewing body and dash camera footage for DUI trials requires a significant amount of time.



DUI Enforcement Barriers

- Barrier 3: Investigating and prosecuting drug impaired driving cases presents unique challenges.
 - Drug impaired driving is not directly comparable to alcohol impaired driving.
 - The effects of some drugs will be similar to alcohol, while other drugs will have different effects.



DUI Enforcement Barriers

- Barrier 4: Training and awareness.
 - General lack of awareness of the signs and effects of drug impaired driving.
 - Limited number of DRE instructors to provide DRE and ARIDE training.
 - Inability of law enforcement officers and prosecutors to attend specialized DUI training.
 - Availability of DUI training for judges.



DUI Enforcement Barriers

- **Barrier 5:** Roadside instrument for detecting the presence of drugs in a person's system (similar to a PBT).
 - Roadside oral fluid drug screening is an emerging practice to test a person's saliva for the presence of either specific drugs (e.g., cocaine) or certain drug categories (e.g., opiates).
 - While roadside oral fluid drug screening instruments can serve as a tool for law enforcement, these instruments vary in accuracy and do not test for all types of drugs.



Oral Fluid Drug Screening

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



Oral Fluid Drug Screening

- Virginia law does not permit the use of any roadside drug screening instruments.
- At least 26 other states either explicitly or implicitly authorize oral fluid drug screening in DUI cases:
 - 13 states explicitly allow for oral fluid testing.
 - 13 states generally allow for the testing of breath, blood, or “other bodily substances.”



Oral Fluid Drug Screening

- Various roadside oral fluid drug screening programs exist in other states:
 - Alabama: conducting statewide roadside screening and confirmatory testing.
 - Indiana: conducting roadside screening.
 - Kansas: currently authorizing a device to conduct roadside screenings.
 - Florida, Michigan, Montana, and North Dakota: currently conducting roadside screening pilot programs.



DUI Enforcement Barriers

- Barrier 6: Difficulties obtaining DUI blood draws.
 - Blood testing is the gold standard in drug impaired driving cases.
 - A blood sample is needed to test for the presence of drugs in a person's system.
 - A blood test is critical evidence at trial.



Blood Draws

- Individuals can refuse a blood draw based on medical informed consent regardless of implied consent or a search warrant.
 - Medical providers may be subject to civil liability for violating medical informed consent.



Blood Draws

- Some jurisdictions are experiencing challenges obtaining blood draws in DUI cases due to:
 - Time required for law enforcement to travel to the facility.
 - Wait time for blood to be drawn.
 - Medical staff being required to appear in court.



Blood Draws

- At least 9 states have implemented phlebotomy programs that allow law enforcement officers to perform blood draws.
- These phlebotomy programs include specialized training for officers to perform blood draws, and may also include:
 - Mobile blood draw units.
 - Electronic search warrants.



DUI Enforcement Barriers

- **Barrier 7:** Lack of a per se blood concentration level for marijuana (THC) that is comparable to the .08% BAC for alcohol.
 - As more states have legalized recreational possession of marijuana (21 states), there has been an increased interest in per se THC limits.
 - Research does not support a relationship between THC levels in the blood and impaired driving; therefore, per se THC limits cannot be reliably used to identify impaired drivers.



Per Se THC Limit

- Virginia's DUI statute does not include a per se THC limit, but does include per se limits for alcohol and four other drugs.
 - Cocaine, methamphetamine, phencyclidine, and MDMA.
- Other states have adopted various THC measures:
 - 8 states have a per se or permissible inference THC limit which ranges from 1 ng/mL to 5 ng/mL.
 - 9 states have a zero tolerance law for THC (including or excluding metabolites).



Other DUI Enforcement Measures

- Other measures to improve DUI enforcement or reduce impaired driving include:
 - “Green” lab training on the signs of marijuana impairment (similar to alcohol “wet” labs).
 - DUI monitoring courts.
 - Advancements in safety features and alcohol detection technology in vehicles.
 - Reducing the BAC limit from .08% to .05%.



Reduced BAC Limit

- Since 2013, the National Transportation Safety Board (NTSB) has recommended that states lower the BAC limit from .08% to .05%.
 - A 2022 NHTSA study showed that crash risk increases significantly after a person’s BAC reaches .05%.
- Utah is the only state that has lowered the BAC limit to .05% (*effective 12/30/2018*).
 - While no direct correlation can be made, Utah experienced a reduction in fatal crashes and crash rates generally, as well as alcohol-involved crashes.



Conclusion

- Virginia's statutory scheme appears to be effective for charging and prosecuting DUI cases; however, policy changes could be made to these laws.
- Virginia could explore various DUI measures that have been implemented in other states.
- Stakeholders could benefit from additional DUI training, with a specific focus on drug impaired driving.



Recommendations



Recommendations

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 would coordinate with training academies to ensure that training is offered across the Commonwealth.
- VSP will need one or more additional positions depending on the scope of the training to be provided.



Recommendation #1

- VSP received \$1 million in FY22 and FY23 to train law enforcement officers on drug recognition techniques, and as a result:
 - Certified DREs increased from 22 to 58; and,
 - Approximately 300 state and local law enforcement officers have received ARIDE training thus far.



Recommendations

Recommendation #2: Request that the Office of the Executive Secretary include drug impaired driving at the upcoming 2023 mandatory District Court Judges' conference.

- General district court judges have not received DUI specific training at the mandatory Judges' conference within the past 5 years.



Member Guidance

- Staff needs guidance from Crime Commission members on whether to:
 - draft any legislation for consideration at the December 5th meeting; or,
 - further examine any DUI data or barriers.



Discussion