



Standards for “Drugged Driving”— Current State Statutes and Recently Proposed Legislation

Research current through September 18, 2014.

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Current State Statutes Addressing “Drugged Driving”

<u>State</u>	<u>Citation(s)</u>	<u>Includes “Per Se” Provision?</u>	<u>Standard(s)</u>	<u>Substance(s) to Which Standard(s) Apply</u>	<u>Affirmative Defenses Listed in Statute</u>	<u>Recent Proposed Legisl.*</u>
AL	Ala.Code 1975 § 32-5A-191	No	“[U]nder the influence ...to a degree which renders him or her incapable of safely driving”	(1) Controlled substance (2) “[A]ny substance which impairs the mental or physical faculties of such person”	None	Yes*
AK	AS § 28.35.030	No	“[U]nder the influence”	“[I]nhalant, or any controlled substance, singly or in combination”	None	No
AZ	A.R.S. § 28-1381 (eff. 4/11/2012)	Yes, with respect to certain defined drugs.	Subsection (A)(1) - “under the influence ... if the person is impaired to the slightest degree” Subsection (A)(3) - “[w]hile there is any drug defined in § 13-3401 or its metabolite in the person’s body”	Subsection (A)(1) - any drug Subsection (A)(3) - “any drug defined in § 13-3401 or its metabolite in the person’s body” §13-3401 contains definitions for drug offenses in the criminal code	Subsection (D) - (A)(3) does not apply to a person using a drug “as prescribed by a [licensed] medical practitioner.”	No

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AR	A.C.A. § 5-65-102 (definition) A.C.A. § 5-65-103 (offense) (eff. 8/16/2013)	No	A person “who is intoxicated” “Intoxicated” means “influenced or affected ... to such a degree that the driver's reactions, motor skills, and judgment are substantially altered” and this the driver “constitutes a clear and substantial danger of physical injury or death to himself and other motorists or pedestrians.”	“[C]ontrolled substance, or an intoxicant” “Controlled substance” means “drug, substance, or immediate precursor in Schedules I through VI”	None. Statute expressly provides that fact that person is or has been entitled to use that drug or controlled substance under the laws of state does not constitute a defense.	No
CA	Cal. Vehicle Code §§ 23152-53 (eff. 1/1/2014)	Yes, with respect to persons addicted to any drug.	Subsection (c) – it is unlawful “for a person who is addicted to any drug to drive a vehicle” Subsection (e) - “under the influence”	Subsection (e) - any drug	Subsection (c) does not apply to a person participating in an approved “narcotic treatment program.”	Yes*

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CO	C.R.S.A. § 42-4-1301 (eff. 5/28/2013)	No	<p>Subsection (1)(a) – “under the influence”</p> <p>Means substance “affects the person to a degree that the person is substantially incapable, either mentally or physically, or both mentally and physically, to exercise clear judgment, sufficient physical control, or due care in the safe operation of a vehicle.”</p> <p>Subsection (1)(b) – “impaired”</p> <p>“Driving while ability impaired” means the substance “affects the person to the slightest degree so that the person is less able than the person ordinarily would have been, either mentally or physically, or both mentally and physically, to exercise clear judgment, sufficient physical control, or due care in the safe operation of a vehicle.”</p>	<p>“[O]ne or more drugs”</p> <p>“Drugs” means “any drug, as defined in section 27-80-203(13), C.R.S., any controlled substance, as defined in section 18-18-102(5), C.R.S., and any inhaled glue, aerosol, or other toxic vapor or vapors, as defined in section 18-18-412, C.R.S.”</p>	<p>None. The fact that person “is or has been entitled to use one or more drugs under the laws of this state, including, but not limited to, the medical use of marijuana pursuant to section 18-18-406.3, C.R.S., shall not constitute a defense.”</p>	No

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CO	§C.R.S.A. § 42-4-1305.5 (eff. 6/6/2014) (Open marijuana container law)	Yes	<p>“[A] person in the passenger area of a motor vehicle may not knowingly:</p> <p>(I) Use or consume marijuana; or (II) Have in his or her possession an open marijuana container.”</p> <p>“Passenger area” means “the area designed to seat the driver and passengers, including seating behind the driver, while a motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in his or her seating position, including but not limited to the glove compartment.”</p>	Marijuana	<p>Does not apply to possession by:</p> <p>(1) by passengers behind front row in for-hire transportation vehicle</p> <p>(2) in living quarters of house coach or motor home</p> <p>(3) behind last upright seat in vehicle w/o trunk</p> <p>(4) in area not normally occupied by driver/passengers in vehicle w/o trunk</p>	No
CT	C.G.S.A. § 14-227a	No	“[U]nder the influence”	Any drug	None	No

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DE	21 Del.C. § 4177 (eff. 4/15/2014)	Yes, with respect to “illicit” or recreational drugs.	<p>Subsection (a)(2) – “under the influence”</p> <p>“Under the influence” means that the person is “less able than the person would ordinarily have been, either mentally or physically, to exercise clear judgment, sufficient physical control, or due care in the driving of a vehicle.”</p> <p>Subsection (a)(6) – person’s blood contains “any amount of an illicit or recreational drug that is the result of the unlawful use or consumption”</p>	<p>Subsection (a)(2) – “any drug”</p> <p>Subsection (a)(6) – “an illicit or recreational drug”</p> <p>“illicit or recreational drug” is (a) material “enumerated as a Schedule I controlled substance under § 4714 of Title 16”</p> <p>(b) Cocaine</p> <p>(c) Amphetamine</p> <p>(d) Methamphetamine</p> <p>(e) Phencyclidine</p> <p>(f) a “designed drug” as defined in § 4701</p> <p>(g) any other substance that produces vapors used for intoxication.</p>	Subsection (b)(3)(b) – (a)(6) does not apply where “person has used or consumed the drug or drugs detected according to the directions and terms of a lawfully obtained prescription for such drug or drugs.”	No

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DC	DC ST § 50-2206.11 (eff. 4/27/2013)	No	“[W]hile ...intoxicated ...[or] under the influence”	Any drug	None	No
FL	F.S.A. § 316.193 (eff. 7/1/2014)	No	“[U]nder the influence ... when affected to the extent that the person's normal faculties are impaired”	“[A]ny chemical substance set forth in s. 877.111 [harmful chemical substances], or any substance controlled under chapter 893”	None	Yes*
GA	Ga. Code Ann. § 40-6-391 (eff. 7/1/2014)	Yes, with respect to marijuana and controlled substances.	Subsections (a)(2) and (a)(3) - “Under the influence ...to the extent that it is less safe for the person to drive” Subsection (a)(6) - “any amount of marijuana or a controlled substance ...present in the person's blood or urine, or both, including the metabolites and derivatives of each”	Subsection (a)(2) - any drug Subsection (a)(3) - “any glue, aerosol, or other toxic vapor” Subsection (a)(6) – “marijuana or a controlled substance, as defined in Code Section 16-13- 21”	Subsection (b) - person “legally entitled to use a drug” is not in violation unless “such person is rendered incapable of driving safely as a result of using a drug other than alcohol which such person is legally entitled to use.”	No

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HI	HRS § 291E-1 (definition) HRS § 291E-61 (offense)	No	“While under the influence of any drug that impairs the person's ability to operate the vehicle in a careful and prudent manner”	Any drug “Drug” means “any controlled substance, as defined and enumerated in schedules I through IV of chapter 329, or its metabolites.”	None	No
ID	I.C. § 18-8004	No	“[U]nder the influence”	“[D]rugs or any other intoxicating substances”	None. Statute expressly states that fact person is or has been entitled to use drug under the laws of this or other state does not constitute a defense.	No

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IL	625 ILCS 5/11-501 (eff. 7/16/2014)	Yes, for cannabis, controlled substances or meth.	Subsections (a)(3) and (a)(4) – “under the influence ... to a degree that renders the person incapable of driving safely” Subsection (a) (6) – “any amount” of certain substances in person’s blood, breath or urine	Subsection (a)(3) – “any intoxicating compound or combination of intoxicating compounds” Subsection (a)(4) – “any other drug or combination of drugs” Subsection (a)(6) – “a drug, substance, or compound ... resulting from the unlawful use or consumption of cannabis ...a controlled substance ... an intoxicating compound ..., or methamphetamine”	Subsection (a)(6) – the subsection does not apply to “the lawful consumption of cannabis by a qualifying patient licensed under the Compassionate Use of Medical Cannabis Pilot Program Act” ... unless that person is impaired by the use of cannabis.”	Yes*
IN	IC 9-30-5-1 IC 9-30-5-2 IC 9-30-5-4 IC 9-30-5-5 (various levels of offense)	Yes, for certain controlled substances.	Operating a vehicle with “a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's body”	“[C]ontrolled substance listed in schedule I or II of IC 35-48-2 or its metabolite”	The person consumed the substance “under a valid prescription or order of a practitioner (as defined in IC 35- 48-1) who acted in the course of the practitioner's professional practice.”	No

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IA	I.C.A. § 321J.1 (definition) I.C.A. § 321J.2 (offense)	Yes, for controlled substances.	Subsection (1)(a) – “under the influence” Subsection (1)(c) – while “any amount of a controlled substance is present in the person, as measured in the person’s blood or urine”	Subsection (1)(a) – “other drug” Subsection (1)(c) – “controlled substance” “Controlled substance” means “any drug, substance, or compound that is listed in section 124.204 or 124.206, or any metabolite or derivative of the drug, substance, or compound.”	Subsection (11) – the section does not apply: (a) “if the substance was prescribed for the person and was taken under the prescription and in accordance with the directions of a medical practitioner as defined in chapter 155A” (b) if “the controlled substance present in the person's blood or urine was prescribed or dispensed for the person and was taken in accordance with the directions of a practitioner and the labeling directions of the pharmacy””	Yes*

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KS	K.S.A. § 8-1567	No	“[U]nder the influence ...to a degree that renders the person incapable of safely driving a vehicle”	“[A]ny drug or combination of drugs” Term “drug” includes “toxic vapors as such term is defined in K.S.A. 21-5712, and amendments thereto”	None. Statute provides that fact that person “is or has been entitled to use the drug under the laws of this state shall not constitute a defense against the charge.”	No

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KY	KRS § 189A.010	Yes, as to certain controlled substances.	Subsection (1)(c) – “under the influence” Subsection (1)(d) – while “the presence of a controlled substance listed in subsection (12) of this section is detected in the blood, as measured by a scientifically reliable test, or tests, taken within two (2) hours of cessation of operation or physical control of a motor vehicle”	Subsection (1)(c) – “any ... substance or combination of substances which impairs one's driving ability” Subsection (1)(d) – (a) Any Schedule I controlled substance except marijuana; (b) Alprazolam; (c) Amphetamine; (d) Buprenorphine; (e) Butalbital; (f) Carisoprodol; (g) Cocaine; (h) Diazepam; (i) Hydrocodone; (j) Meprobamate; (k) Methadone; (l) Methamphetamine; (m) Oxycodone; (n) Promethazine; (o) Propoxyphene; and (p) Zolpidem	Subsection (4)(b) - a laboratory test for a controlled substance is “inadmissible as evidence in a prosecution under subsection (1)(d)” if the court finds that the person “consumed the substance under a valid prescription from a practitioner ... acting in the course of his or her professional practice.”	No

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LA	LSA-R.S. § 14:98 (eff. 6/18/2013)	No	“[U]nder the influence of”	<p>Subsection (1)(c) - “any controlled dangerous substance listed in Schedule I, II, III, IV, or V as set forth in R.S. 40:964”</p> <p>Subsection (1)(d) – “a combination of alcohol and one or more drugs which are not controlled dangerous substances and which are legally obtainable with or without a prescription”</p> <p>Subsection (1)(e) - “one or more drugs which are not controlled dangerous substances and which are legally obtainable with or without a prescription”</p>	<p>Subsection (1)(d) - that “the label on the container of the prescription drug or the manufacturer’s package of the drug does not contain a warning against combining the medication with alcohol.”</p> <p>Subsection (1)(e) - that “operator did not knowingly consume quantities of the drug or drugs which substantially exceed the dosage prescribed by the physician or the dosage recommended by the manufacturer of the drug.”</p>	Yes*

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ME	29-A M.R.S.A. § 2401 (definitions) 29-A M.R.S.A. § 2411 (offense)	No	“[U]nder the influence of intoxicants” Defined as “being under the influence of alcohol, a drug other than alcohol, a combination of drugs or a combination of alcohol and drugs”	“Drugs” means “scheduled drugs as defined under Title 17- A, section 1101” and includes “any natural or artificial chemical substance that, when taken into the human body, can impair the ability of the person to safely operate a motor vehicle.”	None	No
MD	MD Code, Transportation, § 21-902 (eff. 10/1/2011)	No	Subsection (c)(1) - “so far impaired ... that he cannot drive a vehicle safely” Subsection (d)(1) – “impaired by any controlled dangerous substance ... if the person is not entitled to use the controlled dangerous substance under the laws of this State”	Subsection (c)(1) – any drug Subsection (d)(1) – “any controlled dangerous substance, as that term is defined in § 5- 101 of the Criminal Law Article”	Subsection (c)(1) – entitlement under law to use drug is not a defense “unless the person was unaware that the drug or combination would make the person incapable of safely driving a vehicle.” Subsection (d)(1) – entitled to use substance under state law.	No

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MA	M.G.L.A. 90 § 24 (eff. 3/1/2014)	No	“[U]nder the influence of”	“[M]arijuana, narcotic drugs, depressants or stimulant substances, all as defined in section one of chapter ninety- four C [Controlled Substances Act], or the vapors of glue”	None	Yes*
MI	M.C.L.A. 257.625 (eff. 9/24/2014)	Yes, with respect to certain controlled substances.	Subsection (1)(a) – “operating while intoxicated” which means “under the influence” Subsection (3) – “person's ability to operate the vehicle is visibly impaired” Subsection (8) – “any amount” of certain controlled substances	Subsection (1)(a) – “a controlled substance, or other intoxicating substance” Subsection (3) - “a controlled substance, or other intoxicating substance” Subsection (8) – “a controlled substance listed in schedule 1 under section 7212 of the public health code, 1978 PA 368, MCL 333.7212 ... or of a controlled substance described in section 7214(a)(iv) of the public health code, 1978 PA 368, MCL 333.7214”	None	No

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MN	M.S.A. § 169A.20	Yes, as to certain scheduled controlled substances.	<p>Subsection (1)(2) – “under the influence”</p> <p>Subsection (1)(3) – “knowingly under the influence of a hazardous substance that affects the nervous system, brain, or muscles of the person so as to substantially impair the person's ability to drive or operate the motor vehicle”</p> <p>Subsection (1)(7) – “the person's body contains any amount of a controlled substance listed in Schedule I or II, or its metabolite, other than marijuana or tetrahydrocannabinols”</p>	<p>Subsection (1)(2) – controlled substance</p> <p>Subsection (1)(3) – “a hazardous substance”</p> <p>Subsection (1)(7) – “a controlled substance listed in Schedule I or II, or its metabolite, other than marijuana or tetrahydrocannabinols”</p>	None	No

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MS	Miss. Code Ann. § 63-11-30 (eff. 10/1/2014)	No	“[U]nder the influence”	Subsection (1)(b) - “any . . . substance that has impaired the person's ability to operate a motor vehicle” Subsection (1)(c) - “any drug or controlled substance, the possession of which is unlawful under the Mississippi Controlled Substances Law”	None	No
MO	V.A.M.S. § 577.001 (definition) § 577.010 (offense)	No	Operation of a motor vehicle “while in an intoxicated or drugged condition” “Intoxicated condition” means “under the influence of alcohol, a controlled substance, or drug, or any combination thereof”	“[A] controlled substance, or drug, or any combination thereof”	None	No

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MT	MCA § 61-8-401	No	“[U]nder the influence” Defined to mean “that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a vehicle has been diminished”	A “dangerous drug” or “any other drug”	None. Statute expressly states that fact that person is or has been entitled to use that drug or controlled substance under the laws of this state does not constitute a defense.	No
NE	Neb.Rev.St. § 60-6,196	No	“[U]nder the influence”	“[A]ny drug”	None	No

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NV	N.R.S. 484C.110 (eff. 1/1/2011)	Yes, with respect to certain listed substances.	Subsection (2)(a) – “under the influence” Subsection (2)(c) – ingests “to a degree which renders the person incapable of safely driving or exercising actual physical control of a vehicle” Subsection (3) – “with [specified] amount of a prohibited substance in his or her blood or urine”	Subsection (2)(a) – controlled substance Subsection (2)(b) – “any chemical, poison or organic solvent, or any compound or combination of any of these” Subsection (3) – specified amounts of amphetamine, cocaine, cocaine metabolite, heroin, heroin metabolite, morphine, 6-monoacetyl morphine, lysergic acid diethylamide, marijuana, marijuana metabolite, methamphetamine, phencyclidine	None. Statute expressly states that fact that person is or has been entitled to use that drug or controlled substance under the laws of this state does not constitute a defense.	No
NH	N.H. Rev. Stat. § 265-A:2 (eff. 1/1/2013)	No	“[U]nder the influence ...which impairs a person's ability to drive”	“[A]ny controlled drug, prescription drug, over-the-counter drug, or any other chemical substance, natural or synthetic”	None	No

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NJ	N.J.S.A. §39:4-50	No	“[U]nder the influence”	<p>“[N]arcotic, hallucinogenic or habit-producing drug”</p> <p>Includes “an inhalant or other substance containing a chemical capable of releasing any toxic vapors or fumes for the purpose of inducing a condition of intoxication or any other substance containing one or more” of many listed chemical compounds</p>	None	Yes*
NM	N. M. S. A. 1978, § 66-8-102	No	“[U]nder the influence ... to a degree that renders the person incapable of safely driving a vehicle”	“[A]ny drug”	None	Yes*

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NY	McKinney's Vehicle and Traffic Law §114-a (definition) § 1192 (offense)	No	Subsection (3) – “No person shall operate a motor vehicle while in an intoxicated condition.” Subsection (4) – “No person shall operate a motor while the person's ability to operate such a motor vehicle is impaired by the use of a drug as defined in this chapter.”	“Drug” “The term drug, when used in this chapter means and includes any substance listed in section thirty-three hundred six of the public health law.”	None	Yes*

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NC	N.C.G.S.A. § 20-138.1 N.C.G.S.A. § 20-138.3 (under age 21)	Yes, as to certain controlled substances and persons under age 21.	§138.1(a)(1) – “under the influence of an impairing substance” §138.1(a)(3) – with “any amount of a Schedule I controlled substance ... or its metabolites in his blood or urine” §138.3 – for persons under 21, driving while “remaining in his body any ...controlled substance previously consumed”	§ 138.1(a)(1) – impairing substance § 138.1(a)(3) – “Schedule I controlled substance, as listed in G.S. 90-89, or its metabolites” § 138.3 – any controlled substance	§ 138.1 - None. Statute provides that fact that a person “is or has been legally entitled to use alcohol or a drug is not a defense to a charge under this section” § 138.3 – if driving with “a controlled substance in his body which was lawfully obtained and taken in therapeutically appropriate amounts”	No

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ND	NDCC, 39-08-01	No	“[U]nder the influence ... to a degree which renders that person incapable of safely driving”	“[A]ny drug or substance or combination of drugs or substances”	Person’s legal entitlement to use alcohol or drugs does not provide a defense “unless a drug which predominately caused impairment was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person.”	No

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OH	R.C. § 4511.19 (eff. 9/29/2013)	Yes, with respect to specified substances.	Subsection (A)(1)(a) – “under the influence” Subsection (A)(1)(j) – above certain specified concentrations in a person’s blood, blood serum, plasma or urine	Subsection (A)(1)(a) – “drug of abuse” Subsection (A)(1)(j) – amphetamine, cocaine, cocaine metabolite, heroin, heroin metabolite, LSD, “marihuana,” marihuana metabolite, methamphetamine, phencyclidine, salvia divinorum	(A)(1)(j) o does not apply if both of the following apply: “(1) The person obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs. (2) The person injected, ingested, or inhaled the controlled substance in accordance with the health professional's directions.”	No

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OK	47 Okl.St. Ann. § 11-902	Yes, for Schedule I controlled substances.	Subsection (A)(3) – “any amount ... in the person's blood, saliva, urine or any other bodily fluid at the time of a test” Subsection (A)(4) – “under the influence ... which may render such person incapable of safely driving or operating a motor vehicle”	Subsection (A)(3) – “Schedule I chemical or controlled substance, as defined in Section 2-204 of Title 63 of the Oklahoma Statutes, or one of its metabolites or analogs” Subsection (A)(4) – “any intoxicating substance other than alcohol”	None. Statute expressly states that fact that person is or has been entitled to use “ a controlled dangerous substance or any other intoxicating substance” does not constitute a defense.	Yes*
OR	O.R.S. § 813.010	No	“[U]nder the influence”	A “controlled substance or an inhalant”	None	No

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PA	75 Pa.C.S.A. § 3802	Yes, with respect to Schedule I, II and III substances.	<p>Subsection (d)(1) – “any amount” of certain substances</p> <p>Subsection (d)(2) – “under the influence ... to a degree which impairs the individual's ability to safely drive, operate or be in actual physical control of the movement of the vehicle”</p>	<p>Subsection (d)(1) – “(i) Schedule I controlled substance, as defined in the ... The Controlled Substance, Drug, Device and Cosmetic Act; (ii) Schedule II or Schedule III controlled substance, as defined in The Controlled Substance, Drug, Device and Cosmetic Act, which has not been medically prescribed for the individual; or (iii) metabolite of a substance under subparagraph (i) or (ii).”</p> <p>Subsection (d)(2) - a drug or combination of drugs</p>	<p>75 Pa.C.S.A. § 3810 – legal entitlement to use is not a defense</p> <p>§ 3802 (d)(1)(ii) - if the Schedule II or III controlled substance was medically prescribed for individual</p>	No

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PR	9 L.P.R.A. § 5203	No	“[U]nder the influence of any narcotic drug, marihuana, stimulant or depressant substance, or of any chemical or controlled substance, to the degree whereby it makes said person unable to drive a vehicle safely”	“[A]ny narcotic drug, marihuana, stimulant or depressant substance, or of any chemical or controlled substance”	None. Statute expressly states that fact person is or has been entitled to use the substance does not constitute a defense.	No
RI	Gen.Laws 1956, § 31-27-2	Yes, for scheduled controlled substances.	Subsection (a) - “under the influence” Subsection (b)(2) – “a blood presence of any scheduled controlled substance”	Subsection (a) - “any intoxicating ... drugs, toluene, or any controlled substance” Subsection (b)(2) – “any scheduled controlled substance as defined within chapter 28 of title 21”	None. Statute provides that fact person is legally entitled to use alcohol or a drug does not constitute a defense.	Yes*
SC	Code 1976 § 56-5-2930	No	“[U]nder the influence ... which cause impairment to the extent that the person's faculties to drive a motor vehicle are materially and appreciably impaired”	“[A]ny other drug or a combination of other drugs or substances”	None	No

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SD	SDCL § 32-23-1 § 32-23-21 (persons under 21)	Yes, with respect to persons under 21.	Subsection (2) – “under the influence” Subsection (3) – “under the influence ... to a degree which renders the person incapable of safely driving” Subsection (5) – “under the influence” § 32-23-21 – “after having consumed marijuana or any controlled drug or substance for as long as physical evidence of the consumption remains present in the person's body”	Subsection (2) – “marijuana, or any controlled drug or substance not obtained pursuant to a valid prescription” Subsection (3) – “any controlled drug or substance obtained pursuant to a valid prescription” Subsection (5) – “any substance ingested, inhaled, or otherwise taken into the body as prohibited by § 22-42-15 [ingesting substances other than alcohol for intoxication]” § 32-23-21 – “marijuana or any controlled drug or substance”	None. § 32-23-6 provides that having been prescribed drug is not a defense.	No

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TN	T. C. A. § 55-10-401 (eff. 7/1/2013)	No	“[U]nder the influence ...that impairs the driver's ability to safely operate a motor vehicle by depriving the driver of the clearness of mind and control of himself which he would otherwise possess”	Any “intoxicant, marijuana, controlled substance, controlled substance analogue, drug, substance affecting the central nervous system or combination thereof”	None	No
TX	V.T.C.A., Penal Code § 49.01 (definitions) § 49.04 (offense) (eff. 9/1/2011)	No	“[I]ntoxicated” “Intoxicated” is defined as “not having the normal use of mental or physical faculties”	“[A] controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body”	None. §49.10 provides that “the fact that the defendant is or has been entitled to use the alcohol, controlled substance, drug, dangerous drug, or other substance is not a defense.”	No

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UT	U.C.A. 1953 § 41-6a-501 (definitions) U.C.A. 1953 § 41-6a-502 U.C.A. 1953 § 41-6a-517	Yes, as to controlled substances.	§ 41-6a-502 – under the influence” § 41-6a-517 – “any measurable controlled substance or metabolite of a controlled substance in the person's body”	§ 41-61-502 – “any drug” Drug means: “(i) a controlled substance as defined in Section 58-37-2; (ii) a drug as defined in Section 58-17b-102; or (iii) any substance that, when knowingly, intentionally, or recklessly taken into the human body, can impair the ability of a person to safely operate a motor vehicle.”	As to § 41-6a-517, there is a defense if controlled substance was: “(a) involuntarily ingested by the accused; (b) prescribed by a practitioner for use by the accused; or (c) otherwise legally ingested.”	Yes*

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VT	23 V.S.A. § 1200 (definition of drug) 23 V.S.A. § 1201 (eff. 6/3/2014)	No	“[U]nder the influence” “Under the influence of a drug” is defined as “a person’s ability to operate a motor vehicle safely is diminished or impaired in the slightest degree.” [does not apply to intoxicating liquor]	“any other drug” “Drug” means: “(A) a regulated drug as defined in 18 V.S.A. § 4201; or (B) any substance or combination of substances, other than alcohol, which affects the nervous system, brain, or muscles of a person so as to impair, noticeably and appreciably, a person’s ability to drive a vehicle safely.”	None. Statute provides that fact that person “is or has been entitled to use a drug under the laws of this state shall not constitute a defense against any charge of violating this section.”	No
VA	VA Code Ann. § 18.2-266	Yes, with respect to certain substances.	Subsection (iii) - “under the influence ...to a degree which impairs his ability to drive or operate any motor vehicle, engine or train safely” Subsection (v) - blood concentrations of certain specified substances above certain amounts	Subsection (iii) – “any narcotic drug or any other self- administered intoxicant or drug of whatsoever nature” Subsection (v) - cocaine, methamphetamine, phencyclidine, methylenedioxymethampheta mine	None	No

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State	Citation(s)	Includes “Per Se” Provision?	Standard(s)	Substance(s) to Which Standard(s) Apply	Affirmative Defenses Listed in Statute	Recent Proposed Legisl.*
WA	RCWA § 46.61.502 (driving under influence) § 46.61.503 (under age 21 and consuming alcohol or marijuana) §46.61.5249 (negligent driving – first degree) (eff. 9/28/2013)	Yes, with respect to THC.	Subsection (1)(b) – “THC concentration of 5.00 or higher” (level is 0.00 for persons under age 21, per § 46.61.503) Subsection (1)(c) – “under the influence” Section (5249) – driver operates a vehicle negligently and “exhibits the effects of having consumed ... marijuana or any drug or exhibits the effects of having inhaled or ingested any chemical, whether or not a legal substance, for its intoxicating or hallucinatory effects”	Subsection (1)(b) – “THC” Subsection (1)(c) – “marijuana, or any drug” Section (5249) – “marijuana or any drug”	Subsection (1)(b) or (503) - if “the defendant consumed a sufficient quantity of marijuana after the time of driving and before the administration of an analysis of the person's blood” to cause the positive test. Section (5249) – “driver has a valid prescription for the drug consumed, and has been consuming it according to the prescription directions and warnings.”	No

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WV	W. Va. Code, § 17C-5-2	Yes, with respect to “habitual user.”	Subsections (a)(1)(B) and (a)(1)(C) - “under the influence” Subsection (f) - a “habitual user of narcotic drugs or amphetamine or any derivative thereof” may not drive a vehicle.	“Any controlled substance” or “any other drug”	None. Statute provides that fact person “is or has been legally entitled to use alcohol, a controlled substance or a drug does not constitute a defense.”	Yes*

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WI	W.S.A. § 340.01(50m) (definition) W.S.A. § 346.63 (eff. 4/10/2014)	Yes, with respect to restricted controlled substances.	Subsection (a) - “[u]nder the influence of ... a controlled substance ... to a degree which renders him or her incapable of safely driving” Subsection (am) – “[t]he person has a detectable amount of a restricted controlled substance in his or her blood”	“Restricted controlled substance” means: “(a) A controlled substance included in schedule I under ch. 961 other than a tetrahydrocannabinol. (b) A controlled substance analog, as defined in s. 961.01(4m), of a controlled substance described in par. (a). (c) Cocaine or any of its metabolites. (d) Methamphetamine. (e) Delta-9-tetrahydrocannabinol.	Subsection (am) - if driver can prove they have a “valid prescription” for methamphetamine or one of its metabolic precursors, gamma-hydroxybutyric acid, or delta-9-tetrahydrocannabinol.	Yes*

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WY	W.S.1977 § 31-5-233	No	“[T]o a degree which renders him incapable of safely driving” is “under the influence”	A “controlled substance” Defined as: “(A) Any drug or substance defined by W.S. 35-7-1002(a)(iv); (B) Any glue, aerosol or other toxic vapor which when intentionally inhaled or sniffed results in impairment of an individual's ability to drive safely; (C) Any drug or psychoactive substance, or any combination of these substances, capable of impairing a person's physical or mental faculties.”	None. Statute provides that fact that person “is or has been entitled to use the controlled substance under the laws of this state shall not constitute a defense against any charge”	No

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Recently Pending Legislation

<u>State</u>	<u>Bill Number</u>	<u>Terms</u>	<u>Status</u>
AL	2014 HB 357	Amends statute to define “under the influence” as “not having the normal use of mental or physical faculties by reason of the introduction into the body of alcohol, a controlled substance, a drug, or any other substance, or a combination of two or more of those substances.”	Pending third reading, favorable from Judiciary – 3/19/2014
AL	2014 SB 117	Amends statute to define “under the influence” as per HB 357 plus a “per se” provision. Violation would occur if driver has a measurable amount of certain specified substances (or more than 5ng of THC), in his or her body unless the person “has a valid prescription for use of the substance or is otherwise authorized to use the substance.”	Indefinitely postponed – 4/1/2014
CA	2013 AB 2500	Amends §23152 to include a “per se” provision making it unlawful for a person to drive a motor vehicle if his or her blood contained specified amounts of “amphetamine, methamphetamine, cocaine or heroin or their metabolites, morphine, phencyclidine, or delta-9-tetrahydrocannabinol of marijuana.”	Failed passage – 4/29/2014
FL	2014 HB 299 2014 SB 1118	Changes legal standard from driving under influence to driving “while impaired.” Enacts a “per se” provision with respect to controlled substances except for those “prescribed by a licensed health professional authorized to prescribe the controlled substance” and “consumed ...in accordance with the health professional's directions.”	Died in subcommittee – 5/2/2014
IL	2013 HB 5924	Proposes to add “per se” provision making unlawful driving while there is any amount of a controlled substance “in excess of the prescribed amount in the person's prescription for the controlled substance.”	Referred to subcommittee – 3/28/2014

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State	Bill Number	Terms	Status
IA	2013 HF 562	Adds requirement that person asserting an affirmative defense pursuant to Subsection (11) “shall provide notice” to the state of that defense within 45 days of arraignment. In addition, at that time, “the person shall provide a list of witnesses and shall allow the state to inspect and copy any records or statements upon which the witnesses will rely in testifying.” Proposal also indicates that bringing such a defense waives operator’s confidentiality privilege as to “all records which are directly related to the person’s prescription or prescriptions.”	Referred to Judiciary Committee – 4/5/2013
LA	2014 HB 508	Establishes a “per se” provision if the “operator's blood has any detectable amount of any controlled dangerous substance listed in Schedule I, II, III, or IV as set forth in R.S. 40:964, or a metabolite of such controlled dangerous substance, that has not been medically ordered or prescribed for the individual.”	Involuntarily deferred in committee – 4/16/2014
MA	2013 SB 655	Defines “Under the Influence” as “[h]aving ingested enough marijuana, narcotic drugs, depressants or stimulant substances, all as defined in section 1 of chapter 94C, or intoxicating liquor or vapors of glue to diminish one’s capacity or ability to drive safely[.]”	Study by Senate Judiciary Committee ordered – 6/30/2014
MA	2013 HB 3020	Would replace reference to “vapors of glue” with “intentionally smelling or inhaling the fumes of any substance having the property of releasing toxic vapors, as defined in section 18 of chapter 270.”	Hearing scheduled – 5/28/2014

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<u>State</u>	<u>Bill Number</u>	<u>Terms</u>	<u>Status</u>
NJ	2014 AB 3009	<p>Establishes “per se” provision for driving under influence of inhalant by finding that a person is “under the influence of an inhalant if there is any amount of a prohibited inhalant ...in the person's blood.”</p> <p>There is an affirmative defense if person “obtained that inhalant pursuant to a prescription issued by a licensed health professional who was authorized to prescribe it and inhaled the substance in accordance with the health professional's directions[.]”</p>	Referred to Assembly Law and Public Safety Committee – 3/24/2014
NJ	2014 SB 358	<p>Establishes “per se” provision for driving under influence of inhalant by finding that a person is “under the influence of an inhalant if there is any amount of a prohibited inhalant ...in the person's blood.”</p> <p>There is an affirmative defense if person “either obtained that inhalant pursuant to a prescription issued by a licensed health professional who was authorized to prescribe it and inhaled the substance in accordance with the health professional's directions, or used the inhalant for its specific intended purpose in accordance with the directions for use of the product[.]”</p>	Referred to Senate Law and Public Safety Committee – 1/14/2014

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<u>State</u>	<u>Bill Number</u>	<u>Terms</u>	<u>Status</u>
NJ	2014 AB 701	<p>Establishes “per se” provision for driving under influence of narcotic, hallucinogenic, or habit-producing drug by finding that a person is “under the influence of an intoxicating narcotic, hallucinogenic, or habit-producing drug if there is any amount of a Schedule I, II, III, or IV chemical or controlled dangerous substance as defined in sections 5 through 8 of P.L.1970, c.226 (C.24:21-5 through 24:21-8) or one of its metabolites or analogs in the person's blood, saliva, urine, or any other bodily fluid.”</p> <p>There is an affirmative defense for person “charged with driving under the influence of a Schedule II, III, or IV controlled dangerous substance pursuant to a prescription issued by a licensed health professional authorized to prescribe it and injected, ingested, or inhaled the controlled dangerous substance in accordance with the health professional's directions[.]”</p>	Referred to Assembly Law and Public Safety Committee – 1/16/2014
NJ	2014 AB 758	Adds “any other substance or combination of substances which has impaired the person's ability to operate a motor vehicle” to violation.	Referred to Assembly Law and Public Safety Committee – 1/16/2014
NM	2014 HB 190/191	Establishes a “per se” provision if driver has certain amount or more of certain controlled substances or metabolites which resulted from consumption of the substance before or while driving vehicle. Substances included are: amphetamine, cocaine, cocaine metabolite, cocaethylene, heroin, morphine, 6-monoacetylmorphine, the active compound in marijuana, delta-9-tetrahydrocannabinol, methamphetamine, 3,4-methylenedioxymethamphetamine.	Postponed indefinitely – 3/17/2014

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<u>State</u>	<u>Bill Number</u>	<u>Terms</u>	<u>Status</u>
NY	2013 SB 7170	<p>Defines “intoxication” and “impaired” for Vehicle and Traffic laws. “Impaired” is defined as the voluntary ingesting of substances “to the extent that the driver has impaired, to any extent, the physical and mental abilities which a driver is expected to possess in order to operate a vehicle as a reasonable and prudent driver.”</p> <p>“Intoxication” is noted as “a greater degree of impairment which is reached when a driver has voluntarily consumed or ingested a substance or combination of substances to the extent that the driver is incapable of employing the physical and mental abilities which a driver is expected to possess in order to operate a vehicle as a reasonable and prudent driver.”</p> <p>Bill also creates an affirmative defense if driver “suffered an allergic reaction or medical emergency rather than being impaired by the substance or combination of substances” but this does not apply if “substance is contained in section thirty-three hundred six of the public health law.”</p>	Referred to Senate Committee on Transportation – 5/1/2014
NY	2013 AB 6491	Similar to 2013 SB 7170	Referred to Transportation Committee – 1/8/2014
NY	2013 SB 754	Similar to 2013 SB 7170	Passed Senate; referred to Assembly Transportation Committee – 4/24/2013

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<u>State</u>	<u>Bill Number</u>	<u>Terms</u>	<u>Status</u>
NY	2013 AB 7967	Amends driving while ability impaired by drugs to include impairment “by the voluntary ingestion of any chemical, pharmaceutical or other impairing substance or combination of substances”	Referred to Transportation Committee – 1/8/2014
NY	2013 AB 3812	Adds provision that driving will ability impaired includes when driver is “affected to any extent by the voluntary consumption or utilization of a drug as defined in this chapter.”	Referred to Codes Committee – 1/8/2014
NY	2013 SB 1512	Similar to 2013 AB 3812	Referred to Transportation Committee – 1/8/2014
OK	2013 SB 2111	Removes “per se” provision re Schedule 1 substances (subsection (A)(3)) from § 11-902.	Referred to Public Safety Committee – 2/4/2014
OK	2013 HB 2216	Adds a “per se” provision with respect to driver having “any amount of a Schedule II, III or IV chemical or controlled substance, as defined in Sections 2-206, 2-208 or 2-210 of Title 63 of the Oklahoma Statutes or one of its metabolites or analogs in the person's blood, saliva, urine” at the time of a test. Creates an affirmative defense if the driver “consumed the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe controlled substances[.]”	Referred to Transportation Committee – 2/28/2013

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OK	2013 HB 1420	Adds a “per se” provision with respect to driver having “any amount of a Schedule II, III or IV chemical or controlled substance as provided in Section 2-206, 2-208 or 2-210 of Title 63 of the Oklahoma Statutes or one of its metabolites or analogs in the person's blood, saliva, urine” at the time of a test. Creates an affirmative defense if the driver “consumed, injected or inhaled the chemical or controlled dangerous substance pursuant to a prescription issued by a practitioner authorized to prescribe it[.]”	Referred to Appropriations and Budget Committee – 2/5/2013
RI	2013 HB 7506	Marijuana legalization bill. Adds exception to “per se” provision relating to controlled substances. Persons 21 or older or persons “exempt from criminal penalties for the medical use of marijuana pursuant to chapter 28.6 of title 21” are not to be considered under the influence solely because of the presence of marijuana metabolites or components of marijuana “unless the concentration of components of marijuana is proven to be sufficient to cause impairment.”	Recommended by Judiciary Committee to be held for further study – 4/16/2014
RI	2013 SB 2379	Similar to 2013 HB 7506	Recommended by Judiciary Committee to be held for further study – 6/3/2014
UT	2014 HB 303	Proposes to change standard in § 41-6a-502 from “under the influence” to “being impaired to the slightest degree.”	Filed for bills not passed – 3/13/2014
WV	2014 SB 95	Eliminates the misdemeanor offense of driving under influence making all driving violations felonies. Several other pieces of proposed legislation in 2014 session to increase the penalties for driving under the influence.	Passed senate (2/24/2014) and referred to House Judiciary Committee (2/25/2014).

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WI	2013 AB 810	Removes Delta-9-tetrahydrocannabinol from the definition of “restricted controlled substance” and instead proposes to treat it like alcohol in which violation occurs only if driver’s blood contains above a specified concentration or it otherwise renders driver incapable of safely driving.	Failed passage – 4/8/2014

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