

# Research Protocol for Drugged Driving Laws

*Prepared by Legal Science*

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## DRUGGED DRIVING LAWS

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# Research Protocol

- I. **Date of Protocol:** November 30, 2016
  
- II. **Scope:** Compile state laws regulating drugged driving in all 50 states and the District of Columbia. This dataset, created for use in the Drug Abuse Policy System (DAPS), is intended to cover state laws prohibiting driving under the influence of drugs other than alcohol, including penalties and procedures. There are two standards utilized by states to target drugged driving: a per se standard and a driving under the influence standard. Every state currently has a driving under the influence standard law, which prohibits a person from driving while being under the influence of a drug to the degree that renders them incapable of safe driving. Some states go one step further by implementing per se laws making it a violation to have any or a certain amount of a drug in your system. A per se standard law means that any detectable amount of a drug constitutes per se evidence of a drugged driving violation.

This dataset is longitudinal, depicting the drugged driving laws on January 1, 2006 as well as in their current form in each state today. This dataset is valid through October 1, 2016.

- III. **Primary Data Collection**
  - a. **Original Project Dates:** June 1, 2016 – November 30, 2016
  - b. **Original Dates Covered in Dataset:** January 1, 2006 – October 1, 2016
  - c. **Data Collection Methods:** The team building this dataset consisted of two legal researchers (“Researchers”) and one supervisor (“Supervisor”). The Supervisor conducted preliminary scoping research to draft an initial scoping memo on drugged driving laws. The Researchers also conducted background research on the key areas of variance among drugged driving laws and focused on drugged driving laws in five states each.
  - d. **Databases Used:** Searches were conducted using WestlawNext and state-specific legislature websites. Full text versions of the laws collected were pulled from state legislature websites. Researchers noted case law holding on a Master Sheet for situations where a case outcome impacted the constitutionality of a drugged driving law.
  - e. **Search Terms:** drugged driving, driving under the influence, marijuana and driving, per se drugged driving, operating while intoxicated
    - i. The Researchers supplemented key word searches by examining the table of contents of each relevant section of the state law that they identified.
  - f. **Initial Returns and Additional Inclusion or Exclusion Criteria:** Included laws covering universally applicable laws that apply to all standard drivers. This means that the dataset does not include laws that specifically apply to persons under the age of 21 or specialized drivers such as commercial truck drivers. In a future version of this dataset, we may add a question and the

necessary laws to look at states with legislation targeted specifically for drivers under the age of 21. For the questions regarding penalties, we only included laws on first offense drugged driving and excluded laws on any form of “aggravated drugged driving” that amplify the penalties in the event of serious injury or death.

- i. Excluded driving under the influence (DUI) laws on alcohol use only or laws that required the use of alcohol in combination with a drug for violation. We wanted to focus solely on drugged driving only laws. For an example of a combination alcohol and drug crime, please see Del. Stat. tit. 21, § 4177.
- ii. Excluded laws on habitual users of drugs or controlled substances due to lack of specific definition of a habitual user and our scope of universally applicable laws that apply to all standard drivers. An example can be found in West Virginia’s drugged driving statute.
- iii. All additional inclusionary/exclusionary criteria decided by question is described below.

#### IV. Coding

- a. **Development of Coding Scheme:** The team met with an expert on drugged driving laws to help develop a coding scheme using the team’s existing background research. Once the coding questions were finalized, the Supervisor entered the questions into the MonQcle. During the question drafting process, the team defined the inclusionary and exclusionary criteria for specific questions and noted these important nuances in the question development table.
  - i. For the question, “**Does the per se drugged driving law exclude marijuana?**”, the researchers completed research to capture per se drugged driving laws which exclude marijuana. As of 2016, the following states exclude marijuana: Virginia, Kentucky, North Carolina, Minnesota, and Arizona. These states use different mechanisms to do so, and they are captured by the question “**Through what mechanism does the state exclude marijuana from the per se drugged driving law?**” Virginia does not include marijuana in the list of prohibited drugs; Kentucky and North Carolina exclude marijuana from its definition of prohibited drugs; Minnesota explicitly prohibits the presence of controlled substances in person’s body except for marijuana directly in the law; and Arizona, by case law, allows marijuana metabolites to be in a person’s body while operating a vehicle.
  - ii. For the questions, “**Does the law allow a person to claim an affirmative defense?**” the Researcher shall only code “Yes” where it clearly states that a defendant has a “defense” to a charge. The Researcher should not code “Yes” where a coding answer is an element of the initial offense. In terms of the specific answer choices, “Person entitled to possess” should be coded only when it is explicitly stated. Researchers should not infer that a person with a valid prescription is entitled to possess unless that fact is actually written into the drugged driving law.
  - iii. For the questions, “**What are the available penalties for a first time drugged driving offense?**”, the Researcher shall code for first time offenses only. The Researchers should not code for any aggravated drug driving penalties or penalties that solely apply to driving under the influence of alcohol crimes (i.e. interlock ignition device penalties).

- iv. For the question, **“What is the threshold amount of marijuana to be charged with an offense?”**, the Researcher will code the amount of marijuana in the person’s blood rather than the amount in a person’s urine.
  - v. For the question, **“What drugs are prohibited?”** the answer choice “intoxicating compound” includes “intoxicants” or “any intoxicants.”
- b. Coding Methods:** The Researchers were responsible for researching, building, and coding all state records. The Supervisor reviewed the research and coding for each of the records as they were completed. The Supervisor also added new answer choices as needed, based on the different responses found in state laws.
- i. After coding several states, the Researchers found additional answers to the question, **“Under what circumstances may a person claim an affirmative defense?”** The Supervisor added two answer choices “ingested drug after driving” and “no intention of placing vehicle in motion” to cover these state laws.
- c. Quality Control:** The Supervisor assigned the first 10 states for redundant coding by the Researchers. The divergence rate was 8.6%. All divergences were discussed and resolved accordingly. Another 10 states were assigned for redundant coding and the divergence rate fell to 1.29%. Subsequent rounds of redundant coding yielded divergence rates of 0.92%, 0.46%, and eventually 0% throughout the quality control process. All divergences were resolved accordingly. The Supervisor then did a final coding check for each state and finalized the data for publication.
- i. One repeated divergence occurred in states where there were specific exceptions for medical marijuana within the per se drugged driving law, like Illinois and Michigan. These states allow for marijuana to be in a person’s body if he or she is authorized to use medical marijuana despite the zero tolerance per se drugged driving law. After discussing with the team, we decided that where there is a per se drugged driving law which includes marijuana yet creates an exception for a person that complies with the medical marijuana law, the Researcher shall code “Yes” to the question asking whether marijuana is included in the per se drugged driving law and then provide a caution note regarding whether the medical marijuana is a defense or an exception to a per se drugged driving law. In a future version of this dataset, we hope to add specific questions that capture this nuance.
  - ii. For the questions, **“What are the available penalties for a first time drugged driving offense?”** the Researcher shall code the answer choice “probation” if the statute explicitly states that a penalty for a first time offense is probation or that a court may sentence a person to a type of community supervision.