

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)
(With Comments/Support in the Margin)

BILL NUMBER: To be determined.

SPONSOR: Magnarelli

TITLE OF BILL: An Act to amend the Vehicle and Traffic Law, in relation to procedures relating to driving while ability impaired by drugs.

PURPOSE OF THE BILL: To update and modernize New York's laws regarding driving while intoxicated by drugs.

SUMMARY OF SPECIFIC PROVISIONS:

Section 1: Amends Section 114-a of the Vehicle and Traffic Law by adding to the definition of "drug" to include "any substance or combination of substances that impair, to any extent, physical or mental abilities".

Section 2: Adds a new definition of "impairment".

Section 3: Adds a new definition of "intoxication".

Section 4: Amends Section 1194 of the Vehicle and Traffic Law to update the procedures for field testing of drivers suspected of being under the influence of drugs to include the use of oral/bodily fluid tests. Refusal to submit to such field tests is specified to be a traffic infraction. Evaluations by a drug recognition expert are added to the deemed consent and evidentiary testing provisions. Provides that drivers who refuse examination by a drug recognition expert would face a loss of driving privileges similar to refusing a chemical test for alcohol. This section also allows a court to order a chemical test in crashes involving personal injury and/or a driver with a previous arrest for drunk/drugged driving. Additionally, it allows the "the odor of cannabis or burnt cannabis" to be used to support "reasonable cause" in an application for a court order to compel submission to a chemical test.

Section 5: Subparagraph (7) of paragraph (e) or subdivision (2) of section 1193 of the Vehicle and Traffic Law are amended to update the law regarding suspension of licenses pending prosecution to reflect updates to the definitions of driving while under the influence of drugs and provide for such suspensions for alleged drugged drivers under designated circumstances.

Section 6: Establishes the effective date.

JUSTIFICATION:

The rising number of roadway fatalities was described by U.S. Transportation Secretary Pete Buttigieg as a national crisis on March 2, 2022. The National Highway Traffic Safety Administration (NHTSA) reported in June of 2021 that nationally 56% of drivers involved in serious injury and fatal crashes tested positive for at least one drug. In New York 40% of fatal and injury crashes in 2020 were drug-related. With the legalization of adult use cannabis and

Commented [MMc1]: 1. <https://www.nhtsa.gov/press-releases/2020-traffic-crash-data-fatalities>

Commented [MMc2]: 2. <https://www.nhtsa.gov/risky-driving/drug-impaired-driving>

Commented [MMc3]: 5. Institute for Traffic Safety Management and Research (ITSMR) Fact Sheet; <https://www.itsmr.org/wp-content/uploads/2022/01/Impaired-Driving-Arrests-Crashes-2016-2020-Oct-2021.pdf>

the continued problems associated with “synthetic drugs”, New York’s laws regarding driving under the influence of drugs need to be updated to ensure public safety on the roads. New York is only one of a handful of states that requires a drug to be listed in statute to trigger a drugged driving violation. The list does not keep pace with the proliferation of rapidly changing synthetic drugs. The result is impaired drivers are allowed to endanger themselves and others with impunity. This bill would correct this by amending the definition of drug in the Vehicle and Traffic Law to include “any substance or combination of substances that impair, to any extent, physical or mental abilities”. This language would combat the growing number of synthetic drugs that have the chemical composition constantly changed to avoid enforcement.

The terms “impaired” and “intoxicated” have distinct meanings but have not been statutorily defined leading to uncertainty. This bill codifies the definitions enunciated more than 40 years ago by the Court of Appeals in People v. Cruz, 48 N.Y.2d 419 (1979) and People v. Ardila, 85 N.Y.2d 846 (1995) and extends them to all impairing substances. Courts and practitioners had been familiar with the application of these terms until a recent Appellate Division decision conflated them in People v. Caden N., 189 A.D.3d 84 (3rd Dept.2020). This legislation will re-establish “impaired” and “intoxicated” as separate standards. The two standards are necessary to recognize the distinct and scientifically supported danger of drug impaired driving.

This legislation also updates New York law regarding field testing for drugged driving to include the use of oral/bodily fluids. This testing screens for the recent use of multiple types of drugs. Scientifically establishing recency will assist law enforcement to properly identify actually impaired drivers. Oral fluid testing has been the subject of dozens of studies and pilot programs over more than a decade. NHTSA published an evaluation of On-Site Oral Fluid Drug Screening Technology in April 2021 and identified methods that meet established accuracy and sensitivity standards. Non-invasive oral fluid testing will reduce the number of dangerously impaired drivers on New York’s roadways. Vehicle and Traffic Law section 1194(1)(b) requires drivers to submit to a field test at the request of a police officer. Section 1800(a) makes it a traffic infraction to violate any of the provisions of the Vehicle and Traffic Law. Recent court decisions have invalidated charging a traffic infraction for refusing to submit to a field test. There is no longer a consequence for violating this mandatory public safety provision. This bill provides that refusing to submit to a field test is a traffic infraction.

Drug recognition evaluations were developed fifty years ago and validated in the 1980s. Certified Drug Recognition Experts (DREs) determine whether a driver’s impairment is due to drug use rather than neurological conditions, illness, or disease. A DRE evaluation helps to insure that drivers who are actually impaired by cannabis and drugs are charged as New York State law requires. The mere presence of a drug in a driver’s system is not sufficient. A driver who refuses to submit to a drug recognition evaluation, a chemical test (or a field test) hampers the investigation that will either support an arrest or exonerate the driver. This bill provides the same license revocation for refusing a DRE exam that already exists for refusing a chemical test.

It is well-settled that states have a paramount interest in preserving public highway safety. Administrative license sanctions encouraging testing are

Commented [MMc4]: 3. Driving Under the Influence of Drugs: When the Law Misses the Mark *Journal of Analytical Toxicology*, 2018;1–6
If you wish.

Commented [MMc5]: 4. Citation for impaired driving definition of drug:
DRUG IMPAIRED DRIVING @ A GUIDE FOR STATES, GHSA_DruggedDriving2017_FINAL.pdf
This toxicology definition of drug in the context of impaired driving is part of the model laws for Prohibiting Driving Under the Influence (DUI) of Alcohol or Drugs [§1(a)] developed by the [Institute for Behavior and Health \(IBH\)](#) and the [National Partnership on Alcohol Misuse and Crime \(NPAMC\)](#).

Commented [MMc6]: 5. People v. Bemby, NY Slip Op 06235 Decided on November 12, 2021 Appellate Division, Fourth Department; People v. Tshombe A. Harris, 944 KA 17-00505 (4th Dept. 1/28/22)

Commented [MMc7]: 9. International Association of Chiefs of Police (IACP)
<https://www.theiacp.org/drug-recognition-experts-dres>
DOT HS 812 440 July 2017, NHTSA Marijuana-Impaired Driving A Report to Congress

commonplace and appropriate tools in New York's efforts to prevent impaired driving and save lives. This legislation corrects disparate court decisions that provide different standards for consenting to a chemical test and refusing. The public safety policy of encouraging testing is not served by a time limit for refusals. A refusal at any time after arrest will result in a license revocation and shall be admissible in any trial, proceeding or hearing.

Additionally, the bill expands the circumstances where a court can order a compulsory chemical test in a suspected drunk or drugged driving crash. Currently, it can only be done in crashes where there is death or serious physical injury. The new statute includes language from the Leaving the Scene of an Incident statute and expands compulsory tests supported by probable cause to any crash with personal injury and/or where the driver has a history of convictions for impaired driving offenses.

Finally, it updates the law regarding suspension of licenses pending prosecution by adding drugged drivers with charges supported by testing or admissions. The provision reflects the bill's updates to the definitions of driving while under the influence of drugs. This is done to keep dangerous drivers off the road pending prosecution.

PRIOR LEGISLATIVE HISTORY: New bill.

FISCAL IMPLICATIONS: To be determined.

EFFECTIVE DATE: This act shall take effect on the first of November next succeeding the date on which it shall have become a law.

Commented [MMc8]: 6. Birchfield v. North Dakota, 136 S. Ct. 2160 (2016)
Mackey v. Montrym, 443 U. S. 1 (1979), et. al.

Commented [MMc9]: 7. People v. Atkins, 85 NY 2d 1007 (1995)
People v. Odum, 31 NY 3d 344 (2018)

Commented [MMc10]: 8. VTL 1194(2)(f)