

108TH CONGRESS  
2D SESSION

# H. R. 3922

To amend title 23, United States Code, relating to improving safety and enforcement with respect to individuals operating motor vehicles while under the influence of, or having used, drugs.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 2004

Mr. PORTMAN (for himself, Mr. LEVIN, Mr. LATOURETTE, Mr. SOUDER, and Mr. RAMSTAD) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend title 23, United States Code, relating to improving safety and enforcement with respect to individuals operating motor vehicles while under the influence of, or having used, drugs.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Drug Impaired Driving  
5 Enforcement Act of 2004”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) driving under the influence of, or after hav-  
4 ing used, illegal drugs has become a significant  
5 problem worldwide;

6 (2) in 2002, over 35,000,000 persons in the  
7 United States aged 12 or older had used illegal  
8 drugs in the past year and almost 11,000,000 of  
9 these persons (5 percent of the total population of  
10 the United States aged 12 or older and 31 percent  
11 of past year illicit drug users) had driven under the  
12 influence of, or after having used, illegal drugs in  
13 the past year;

14 (3) research has established that abuse of a  
15 number of drugs can impair driving performance;

16 (4) according to the National Highway Traffic  
17 Safety Administration, illegal drugs (often in com-  
18 bination with alcohol) are used by approximately 10  
19 to 22 percent of drivers involved in all motor vehicles  
20 crashes;

21 (5) drug impaired drivers are less frequently  
22 detected, prosecuted, or referred to treatment than  
23 drunk drivers;

24 (6) there is a lack of uniformity or consistency  
25 in the way the 50 States approach drug impaired  
26 drivers;

1           (7) too few police officers have been trained to  
2 detect drug impaired drivers, and too few prosecu-  
3 tors have been trained to prove drug impaired driv-  
4 ing cases beyond a reasonable doubt;

5           (8) per se drug impaired driving laws, like those  
6 used for driving under the influence of alcohol, are  
7 feasible and represent a sound strategy for dealing  
8 with drug impaired drivers and can assist in the  
9 prosecution of drug impaired driving offenders; and

10          (9) while it is illegal in all States to drive a  
11 motor vehicle while under the influence of alcohol,  
12 drugs other than alcohol, or a combination of alcohol  
13 and other drugs, there is no consistent method  
14 across States for identifying drug impairment and  
15 the presence of drugs in the body.

16 **SEC. 3. PURPOSES.**

17       The purposes of this Act are—

18           (1) to provide a model for States to implement  
19 and enforce a drug impaired driving statute;

20           (2) to ensure drivers in need of drug education  
21 or treatment are identified and provided with the ap-  
22 propriate assistance;

23           (3) to advance research and development of  
24 testing mechanisms and knowledge about drugged  
25 driving and its impact on traffic safety; and

1           (4) to enhance the training of traffic safety offi-  
2           cers and prosecutors to detect, enforce, and pros-  
3           ecute drug impaired driving laws.

4 **SEC. 4. DEFINITIONS.**

5           In this Act, the following definitions apply:

6           (1) **CONTROLLED SUBSTANCE.**—The term  
7           “controlled substance” includes substances listed in  
8           schedules I through V of section 112(e) of the Con-  
9           trolled Substances Act (21 U.S.C. 812(e)).

10          (2) **LICENSE.**—The term “license” means any  
11          driver’s license or any other license or permit to op-  
12          erate a motor vehicle issued under the laws of, or  
13          granted by, a State, including—

14                (A) any temporary license or instruction  
15                permit;

16                (B) the privilege of any person to drive a  
17                motor vehicle whether or not the person holds  
18                a valid license; and

19                (C) any nonresident’s operating privilege.

20          (3) **REVOCAION.**—The term “revocation”  
21          means the termination by formal action of the State  
22          of a person’s license or privilege to operate a motor  
23          vehicle on the highways.

24          (4) **STATE.**—The term “State” means a State,  
25          the District of Columbia, the Commonwealth of

1 Puerto Rico, and the territories and possessions of  
2 the United States.

3 (5) SUSPENSION.—The term “suspension”  
4 means the temporary withdrawal by formal action of  
5 the State of a person’s license or privilege to operate  
6 a motor vehicle on the highways.

7 (6) SECRETARY.—The term “Secretary” means  
8 the Secretary of Transportation.

9 (7) INHALANT.—The term “inhalant” means a  
10 household or commercial product that can be used  
11 by inhaling for intoxicating effect.

12 (8) DRUG RECOGNITION EXPERT.—The term  
13 “drug recognition expert” means an individual  
14 trained in a specific evaluation procedure that en-  
15 ables the person to determine whether an individual  
16 is under the influence of drugs and then to deter-  
17 mine the type of drug causing the observable impair-  
18 ment.

19 **SEC. 5. MODEL STATUTE.**

20 (a) IN GENERAL.—Not later than one year after the  
21 date of enactment of this Act, the Secretary shall develop  
22 and provide to the States a model statute relating to drug  
23 impaired driving which incorporates the provisions de-  
24 scribed in this section.

1 (b) MANDATORY PROVISIONS.—Provisions of the  
2 model statute under this section shall include, at a min-  
3 imum, a provision that the crime of drug impaired driving  
4 is committed when a person operates a motor vehicle—

5 (1) while any detectable amount of a controlled  
6 substance is present in the person’s body, as meas-  
7 ured in the person’s blood, urine, saliva, or other  
8 bodily substance; or

9 (2) due to the presence of a controlled sub-  
10 stance or a controlled substance in combination with  
11 alcohol or an inhalant, or both, in the person’s body,  
12 the person’s mental or physical faculties are affected  
13 to a noticeable or perceptible degree.

14 (c) DISCRETIONARY PROVISIONS.—Provisions of the  
15 model statute under this section may include the following:

16 (1) Sanctions for refusing to submit to a test  
17 for the presence of a controlled substance in a per-  
18 son’s body which are equivalent to sanctions for a  
19 positive test result.

20 (2) Lawful use of any controlled substance list-  
21 ed in schedule II, III, IV, or V of section 112(c) of  
22 the Controlled Substances Act (21 U.S.C. 812(c))  
23 that was lawfully prescribed by a physician licensed  
24 under State law is an affirmative defense to a  
25 charge of drug impaired driving; except that the af-

1 firmative defense shall not be available if it is shown  
2 that the person's mental or physical faculties were  
3 impaired by such use to a noticeable or perceptible  
4 degree.

5 (3) An appropriate system of evaluation, coun-  
6 seling, treatment (if required), and supervision for  
7 persons convicted of drug impaired driving.

8 (4) A graduated system of penalties for repeat  
9 offenses of drug impaired driving, including, at a  
10 minimum, that a third or subsequent offense within  
11 a 10-year period shall be a felony punishable by im-  
12 prisonment for more than a year.

13 (5) Authorization for States to suspend or re-  
14 voke the license of any driver upon receiving a  
15 record of the driver's conviction of driving a motor  
16 vehicle while under the influence of a controlled sub-  
17 stance.

18 (6) Provisions that require a sentence of impris-  
19 onment imposed for any drug impaired driving of-  
20 fense be served consecutively, not concurrently, from  
21 a sentence imposed for any other criminal act; ex-  
22 cept that a sentence imposed for the same act of im-  
23 paired driving may be imposed concurrently if the  
24 additional conviction was based on an alternate the-  
25 ory of culpability for the same act.

1 **SEC. 6. USE OF GRANTS TO ENFORCE DRUG IMPAIRED**  
2 **DRIVING LAWS.**

3 (a) **GENERAL AUTHORITY.**—Section 410(a)(1) of  
4 title 23, United States Code, is amended by inserting “and  
5 individuals driving while under the influence of a con-  
6 trolled substance (as defined in section 4 of the Drug Im-  
7 paired Driving Enforcement Act of 2004)” before the pe-  
8 riod at the end of the first sentence.

9 (b) **MAINTENANCE OF EFFORT.**—Section 410(a)(2)  
10 of such title is amended by inserting “and drug impaired  
11 driving traffic safety programs” before “at or above”.

12 (c) **BASIC GRANT.**—Section 410(b)(1) of such title  
13 is amended by inserting after subparagraph (G) the fol-  
14 lowing:

15 “(H) **CONTROLLED SUBSTANCE PRO-**  
16 **GRAMS.**—The State provides for at least one of  
17 the following programs:

18 “(i) **DETECTION OF CONTROLLED**  
19 **SUBSTANCES.**—A program to detect the  
20 unlawful presence of a controlled substance  
21 (as defined in section 4 of the Drug Im-  
22 paired Driving Enforcement Act of 2004)  
23 in the body of the operator of a motor ve-  
24 hicle or on the person of any occupant of  
25 the vehicle, including the operator.

1           “(ii) MODEL STATUTE.—A program  
2           that adopts and enforces on a statewide  
3           basis, at a minimum, the mandatory provi-  
4           sions of the model drug impaired driving  
5           statute developed by the Secretary under  
6           section 5 of the Drug Impaired Driving  
7           Enforcement Act of 2004.

8           “(iii) COUNSELING AND TREAT-  
9           MENT.—A program to ensure that individ-  
10          uals who are convicted of drug impaired  
11          driving are provided counseling and treat-  
12          ment as necessary.

13          “(iv) TRAINING.—A program to train  
14          law enforcement officers and prosecutors  
15          in the detection, investigation, and pros-  
16          ecution of drug impaired driving, including  
17          training provided by the National Highway  
18          Traffic Safety Administration, the Inter-  
19          national Association of the Chiefs of Po-  
20          lice, or the American Prosecutors Research  
21          Institute in drug recognition expert tech-  
22          niques.

23          “(v) EDUCATION AND RESEARCH.—A  
24          program to advance research in the area of  
25          drug impaired driving and enhance com-

1                   munication of advancements in research,  
2                   technology, and policy to key policymakers,  
3                   prosecutors, law enforcement and judges.”.

4 **SEC. 7. RESEARCH AND DEVELOPMENT.**

5           Section 403(b) of title 23, United States Code, is  
6 amended by adding at the end the following:

7                   “(5) New technology to detect drug use.

8                   “(6) Research and development to improve test-  
9           ing technology, including toxicology lab resources  
10           and field test mechanisms to enable States to proc-  
11           ess toxicology evidence in a more timely manner.

12                   “(7) Determining per se impairment levels for  
13           controlled substances (as defined in section 4 of the  
14           Drug Impaired Driving Enforcement Act of 2004)  
15           and the compound effects of alcohol and controlled  
16           substances on impairment to facilitate enforcement  
17           of per se drug impaired driving laws. Research  
18           under this paragraph shall be carried out in collabo-  
19           ration with the National Institute on Drug Abuse of  
20           the National Institutes of Health.”.

21 **SEC. 8. GOALS FOR TRAINING.**

22           Section 403 of title 23, United States Code, is  
23 amended by adding at the end the following:

1       “(g) TRAINING GOALS.—For the purpose of enhance-  
2 ing the States’ ability to detect, enforce, and prosecute  
3 drug impaired driving laws, the Secretary shall—

4               “(8) establish and carry out programs to en-  
5 hance police and prosecutor training efforts for en-  
6 forcement of laws relating to drug impaired driving  
7 and for development of programs to improve en-  
8 forcement of such laws;

9               “(9) ensure that drug impaired driving enforce-  
10 ment training or drug recognition expert programs,  
11 or both, exist in all 50 States and the District of Co-  
12 lumbia by December 31, 2006;

13               “(10) ensure that at least 10 percent of State  
14 and local police officers whose duties, entirely or  
15 partly, include traffic monitoring or enforcement are  
16 trained to enforce drug impaired driving laws and  
17 utilize new technologies or any recognition training  
18 by December 31, 2010; and

19               “(11) ensure that at least 10 percent of State  
20 prosecutors are trained to prosecute drug impaired  
21 driving laws by December 31, 2010.”.

22 **SEC. 9. REPORTING.**

23       (a) IN GENERAL.—Not later than 18 months after  
24 the date of enactment of this Act and annually thereafter,  
25 the Secretary shall transmit to Congress a report on the

1 progress being made in carrying out this Act, including  
2 the amendments made by this Act.

3 (b) CONTENTS.—The Secretary shall include in the  
4 report an assessment of the status of uniform drugged  
5 driving laws in the United States, new research and tech-  
6 nologies in the area of drug impaired driving enforcement.

7 **SEC. 10. FUNDING.**

8 Out of amounts appropriated to carry out section 403  
9 of title 23, United States Code, for fiscal years 2004  
10 through 2009, the Secretary shall use, at a minimum,  
11 \$2,000,000 per fiscal year to carry out drug impaired driv-  
12 ing traffic safety programs, including the provisions of this  
13 Act and the amendments made by this Act.

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