Drugs and Alcohol Behind the Wheel: What's a State to Do?

NCSL'S Legislative Summit

Monday, August 14, 2023

10:30-11:45 a.m.

Data Drives the Narrative

2021 Fatal Crash Data

- 42,939 people were killed in motor vehicle traffic crashes - 2021, a 10-percent increase from 39,007 fatalities in 2020, and the largest number of fatalities since 2005.
- Speeding-related fatalities increased by 7.9 percent, seat belt non-use fatalities increased by 8.1 percent and **alcohol-impaired-driving fatalities increased by 14 percent**
- 24% of fatal crashes involved drugs, where at least one driver involved tested positive for drugs.
- 41% of cannabinoid*-positive driver fatalities involved an alcohol-impaired driver.
- 60% of drug-positive driver fatalities, involved a driver who tested positive for drugs but not alcohol, and 40% were positive for both alcohol (BAC=.01+) and at least one other impairing drug.
- 18% of driver fatalities involved a driver who tested positive for **two or more impairing** drugs.

Complexity of Impaired Driving and Public Perception

	DRUGGED DRIVING	DRUNK DRIVING
Number:	Hundreds of drugs	Alcohol is alcohol
Use by Driver, Presence in Crashes:	Limited Data	Abundant Data
Use by Drivers:	Increasing	Decreasing (at time of survey)
Impairment:	Varies by type	Well-documented
Beliefs & Attitudes:	No strong attitudes/public indifference	Socially unacceptable

NHTSA National roadside survey: ~1-4 drivers tested positive for drugs 22.4% daytime weekday drivers and 22.5% weekend nighttime drivers (20% increase from 2007).

Percentage of drivers with cannabis in their system increased 50% (8.6% in 2007 to 12.6% in 2013-14).

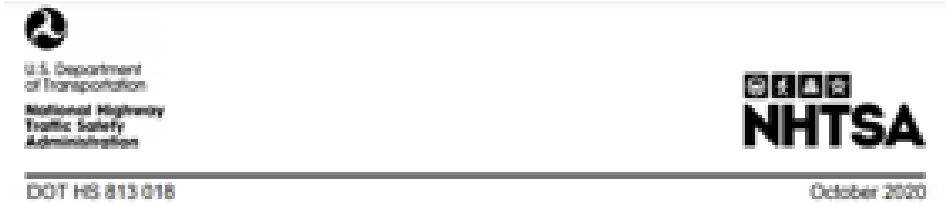
Revised Roadside Survey needs to be conducted by NHTSA.

GHSA Governors Highway Safety Association The States' Voice on Highway Safety

Presence of Substances Among Drivers During COVID-19

	Before (N= 1,880)		During (N= 1,123)	
Drug Category	**n**	**%**	**n**	**%**
Alcohol	400	21.3	302	26.9*
Cannabinoids^	402	21.4	350	31.2*
Stimulants	190	10.1	115	10.2
Sedatives	158	8.4	95	8.5
Opioids	142	7.6	145	12.9*
Antidepressants	37	2.0	5	0.4*
Over-the-Counter	43	2.3	18	1.6
Other Drugs	27	1.4	20	1.8
At Least 1 Category	959	51.0	714	63.6*
Multiple Categories	341	18.1	267	23.8*

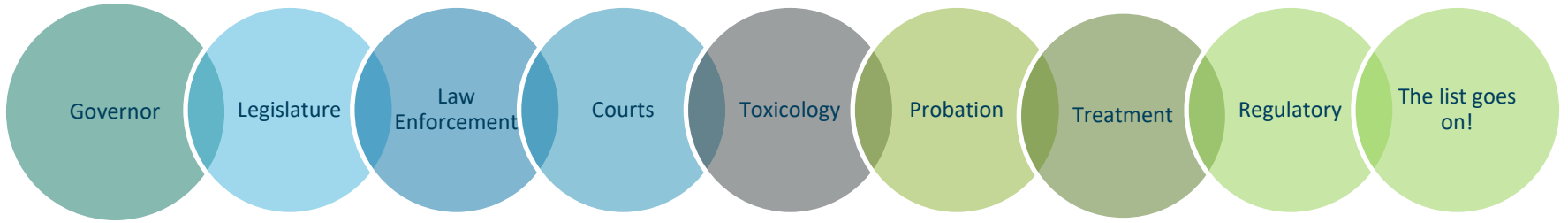
^ Active THC (Δ-9-THC or 11-OH-THC)
* Significantly different ($p < .05$) compared to Before period



Drug and Alcohol Prevalence in Seriously and Fatally Injured Road Users Before and During the COVID-19 Public Health Emergency

Thomas, F. D., Berning, A., Darrah, J., Graham, L., Blomberg, R., Griggs, C., Crandall, M., Schulman, C., Kozar, R., Neavyn, M., Cunningham, K., Ehsani, J., Fell, J., Whitehill, J., Babu, K., Lai, J., and Rayner, M. (2020, October). Drug and alcohol prevalence in seriously and fatally injured road users before and during the COVID-19 public health emergency (Report No. DOT HS 813 018). National Highway Traffic Safety Administration.

Systems Thinking



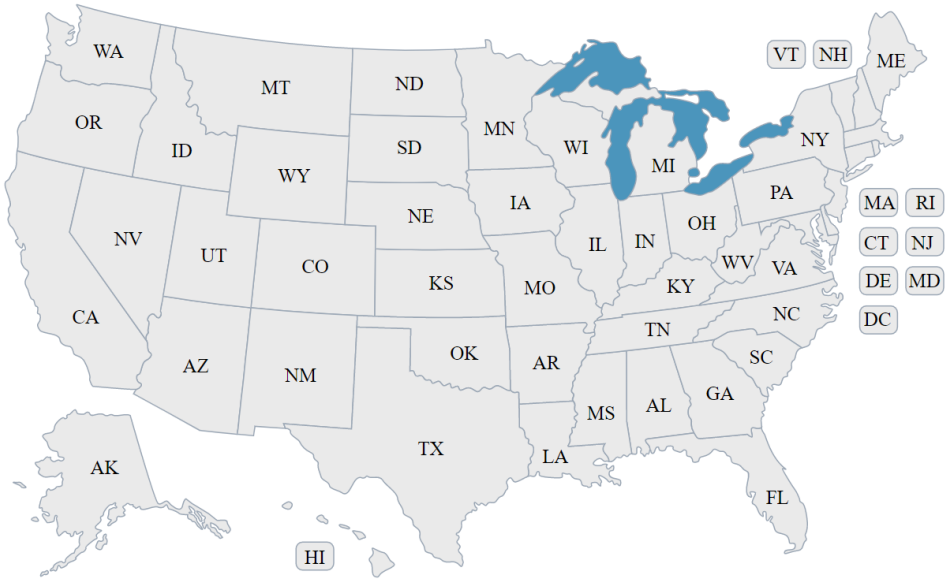
NASID Resource: State Cannabis DUI Laws

NASID
National Alliance to Stop Impaired Driving
Established By
RESPONSIBILITY.ORG

About | Impaired Driving | State-By-State Info | Framework | Members | Get Involved

State Laws

SELECT A STATE on the map below to view statistics about and laws relating to impaired driving.



Colorado

Share this data

STATE LAWS | CANNABIS LAWS

Implied Consent Laws

DRUGS

CRS 42-4-1301.1 - Learn More
TThe law states that every driver shall be deemed to have expressed a consent to take a blood, breath, saliva, or urine test when requested to do so by a law enforcement officer who has probable cause to believe that that person is DUI or DWAI (CRS 42-4-1301(1)(g))- Learn More

BLOOD

CRS 42-4-1301.1 - Learn More
The law states that every driver shall be deemed to have expressed a consent to take a blood, breath, saliva, or urine test when requested to do so by a law enforcement officer who has probable cause to believe that that person is DUI or DWAI (CRS 42-4-1301(1)(g)) - Learn More

URINE

CRS 42-4-1301.1 - Learn More
The law states that every driver shall be deemed to have expressed a consent to take a blood, breath, saliva, or urine test when requested to do so by a law enforcement officer who has probable cause to believe that that person is DUI or DWAI (CRS 42-4-1301(1)(g)) - Learn More

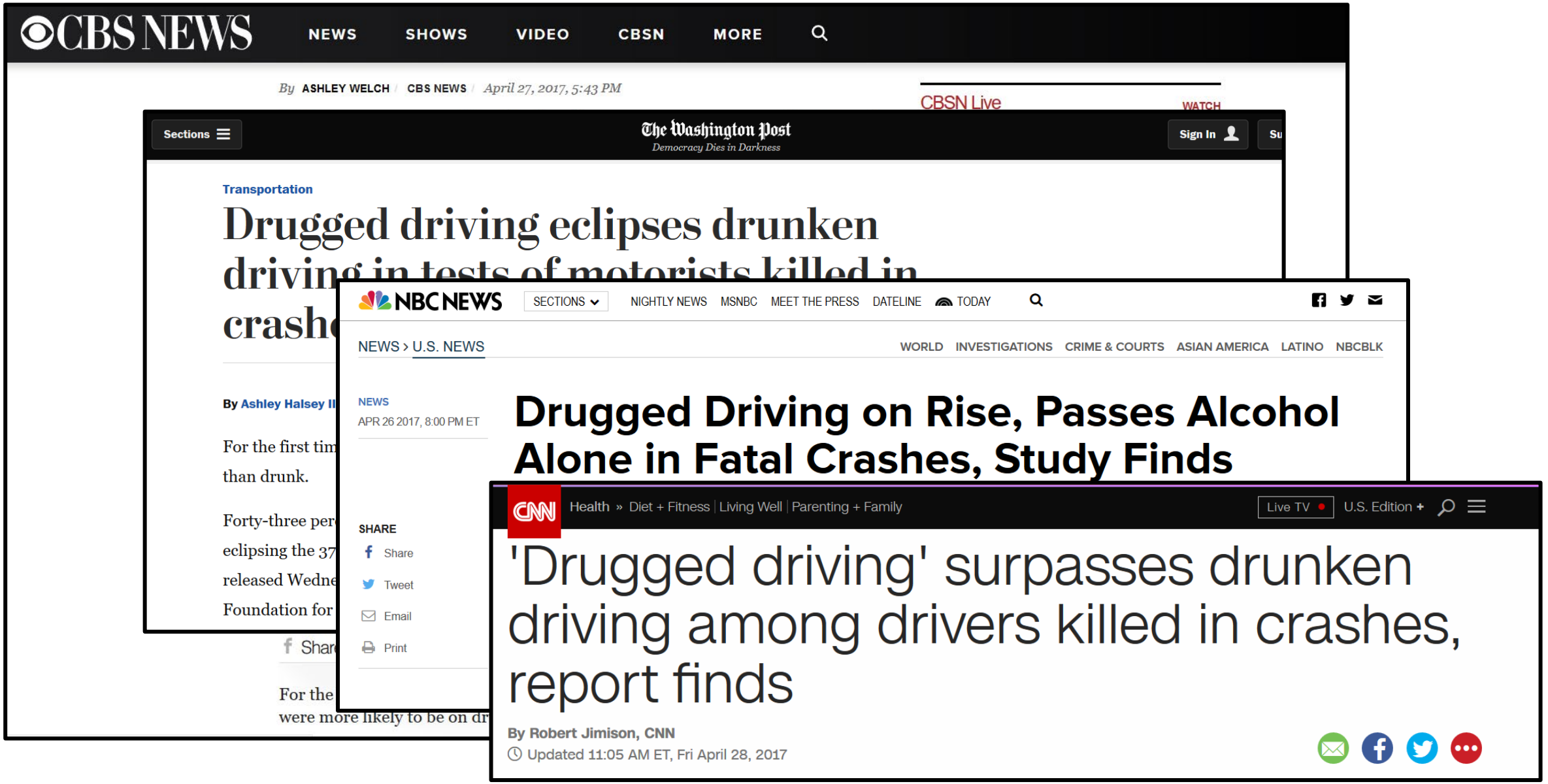
ORAL FLUIDS

CRS 42-4-1301.1 - Learn More
The law states that every driver shall be deemed to have expressed a

NTSB | National Transportation Safety Board

Polysubstance-Impaired Driving Overview

Leah Walton
Safety Advocate


CBS NEWS
NEWS SHOWS VIDEO CBSN MORE
By ASHLEY WELCH / CBS NEWS / April 27, 2017, 5:43 PM
CBSN Live
WATCH
Sections
The Washington Post
Democracy Dies in Darkness
Sign In
Transportation
Drugged driving eclipses drunken driving in tests of motorists killed in crashe
By Ashley Halsey II
For the first tim
than drunk.
Forty-three per
eclipsing the 37
released Wedne
Foundation for
Shar
For the
were more likely to be on dr
NBC NEWS
SECTIONS
NIGHTLY NEWS MSNBC MEET THE PRESS DATELINE TODAY
NEWS > U.S. NEWS
WORLD INVESTIGATIONS CRIME & COURTS ASIAN AMERICA LATINO NBCBLK
NEWS
APR 26 2017, 8:00 PM ET
Drugged Driving on Rise, Passes Alcohol Alone in Fatal Crashes, Study Finds
SHARE
Share
Tweet
Email
Print
CNN
Health » Diet + Fitness | Living Well | Parenting + Family
Live TV
U.S. Edition +
'Drugged driving' surpasses drunken driving among drivers killed in crashes, report finds
By Robert Jimison, CNN
Updated 11:05 AM ET, Fri April 28, 2017

What is Polysubstance Impaired Driving?
"Polydrug" Driving Examples

Driver #1

- Acetaminophen
- Loratadine

Unlikely to be Impairing

Driver #2

- Propofol
- Ethanol

Medical Administration

Driver #3

- Clonazepam
- 7-Aminoclonazepam
- Delta-9-THC
- Carboxy-THC
- Hydroxy-THC

Metabolites of a Parent Drug

Challenges to Understanding Drug Prevalence

Data Loss

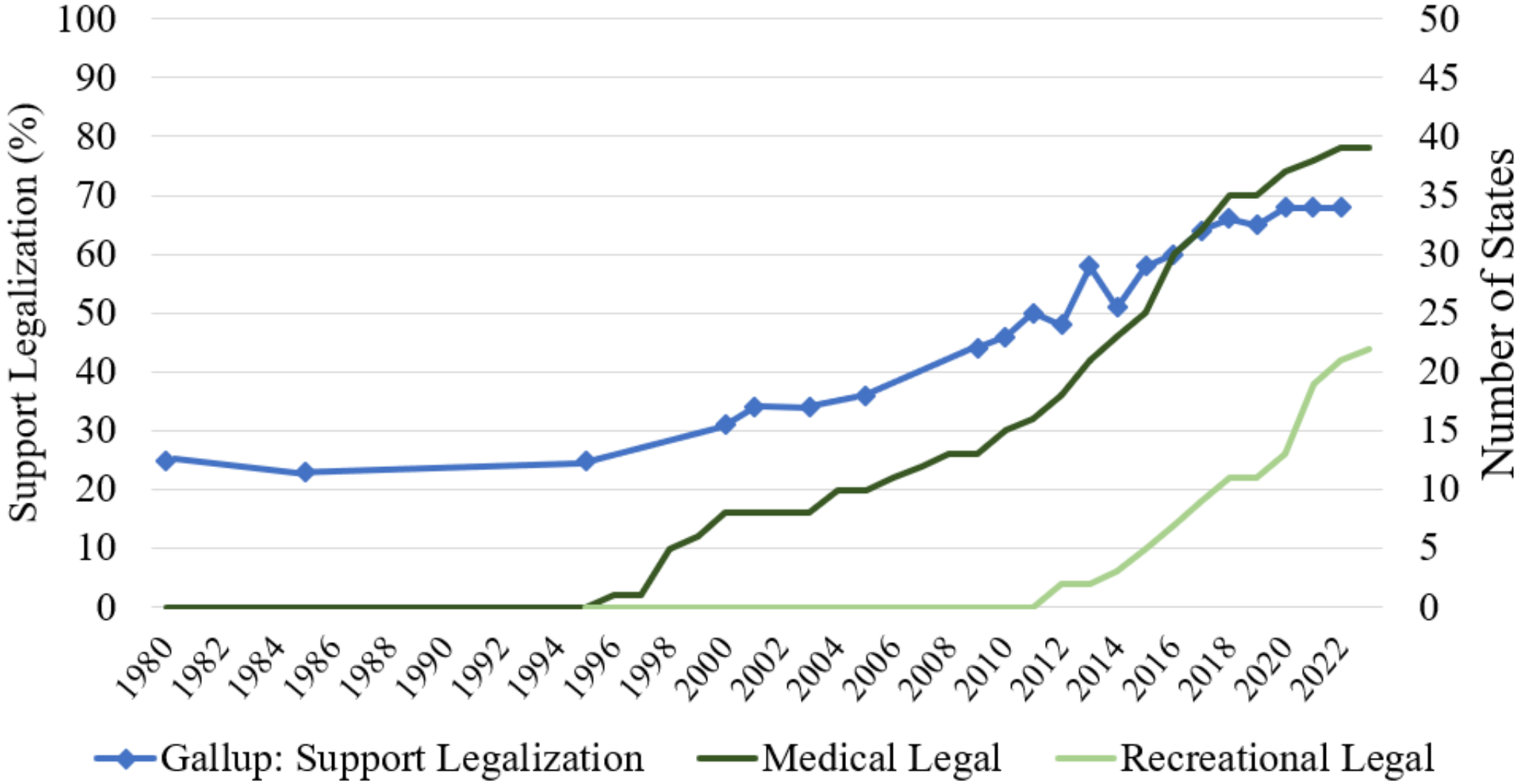
Inconsistencies

Traffic Event	Sample Collection	Toxicology Testing	Reporting & Databases	Analysis
Who is tested? Under what circumstances?	Delay in sample collection? Which matrix is collected?	What is the drug panel? What are the cutoffs? What equipment and procedures? Screening and confirmation? (National Standards?) Quantification?	All drug results? Quantification? Equipment and procedure?	Drug inclusion? Drug categorization?

Why Should We Care About Drug Prevalence?

- Rapidly shifting legal and drug landscape
  - Cannabis (and other drug) legalization/decriminalization
  - Opioid epidemic
  - Prescription and OTC drug usage

Cannabis Legalization 1980 - 2023



Why Should We Care About Drug Prevalence?

- Rapidly shifting legal and drug landscape
  - Cannabis (and other drug) legalization/decriminalization
  - Opioid epidemic
  - Prescription and OTC drug usage
- Countermeasure effectiveness
- Evidence-based deployment of resources
- Effective treatment for offenders

NHTSA Cautions Against Drug Data in FARS

U.S. Department of Transportation
National Highway Traffic Safety Administration

TRAFFIC SAFETY FACTS
Research Note

NHTSA
www.nhtsa.gov

DOT HS 812 072 Behavioral Safety Research

Understanding the Limitations of Drug Test Information, Reporting, and Testing Practi Fatal Crashes

Amy Berning & Dereece D. Smither

Since 1975, the National Highway Traffic Safety Administration (NHTSA) has collected data from all 50 States, the District of Columbia, and Puerto Rico on all police-reported fatal crashes on public roadways. NHTSA's National Center for Statistics and Analysis (NCSA) includes data from these fatal crashes in the Fatality Analysis Reporting System (FARS). This dataset provides a wealth of information on fatal crashes, the roadways, vehicles, and drivers involved.

"Impaired driving" includes use of alcohol, or drugs, or both. Blood alcohol concentration (BAC) results are not known for all drivers in fatal crashes. For crashes with missing alcohol data, NHTSA uses a statistical model called "multiple imputation" to estimate the BAC of a driver at the time of the crash. In contrast, the variables regarding drug test information in crashes is evolving. It does not include estimates for missing data or impairment levels and therefore needs further interpretation. This paper summarizes some of the complexities related to drug-involved driving, notes limitations of drug data collected in FARS, and presents challenges in interpreting, reporting, and analyzing the data.

Drug Presence Versus Drug Impairment

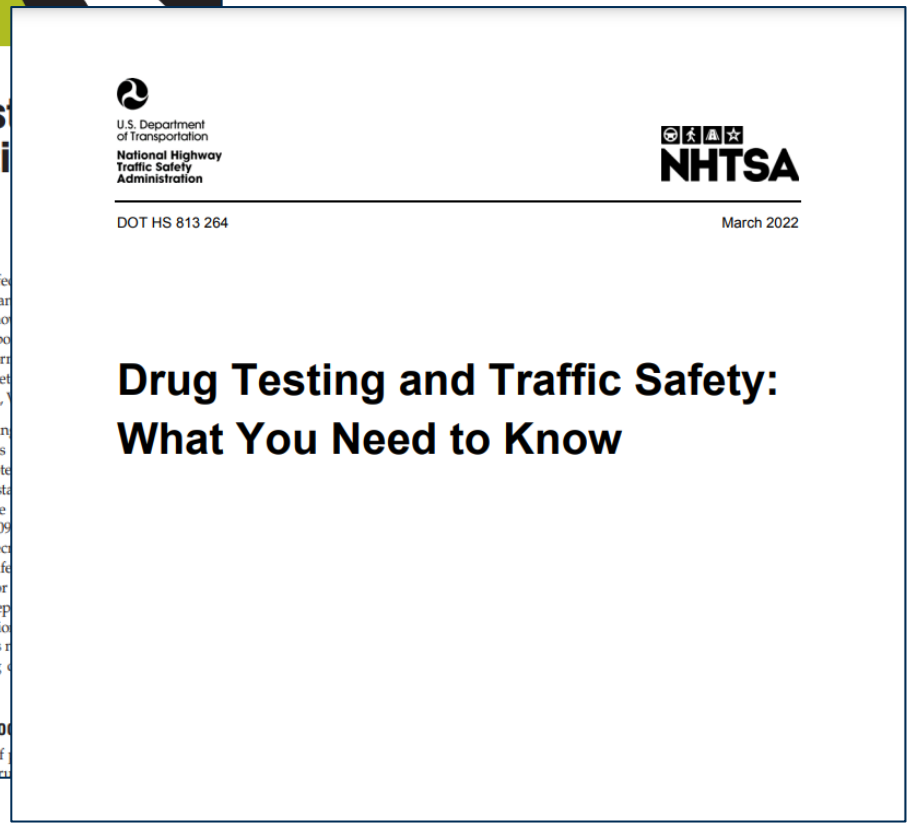
An important distinction to make when evaluating impaired driving data is the mere presence of a drug in a person's system, as compared to the person being impaired by a drug in

In addition, while the impairing effe understood, there is limited research ar of specific drugs, impairment, and ho related skills. Current knowledge abo other than alcohol on driving perfor make judgments about connections bet performance, and crash risk (Compton,

Every State has enacted a law definin above .08 grams per deciliter BAC as there are no similar, commonly accepte other drugs. Some State laws have esta drugs at which it is illegal to operate Brainard, & Snitow, 2010; Walsh, 2009 based on evidence concerning the dec across the population to function safe evidence is not currently available for drugs. Additionally, not all drugs rep gal. Over-the-counter and prescriptio reported. The legal status of a drug is ing a drug's potential for decreasing increasing crash risk.

Differences in Drug Testing Pro

There is no consistent policy or set of sometimes even within States for dru



U.S. Department of Transportation
National Highway Traffic Safety Administration

NHTSA

DOT HS 813 264 March 2022

Drug Testing and Traffic Safety: What You Need to Know

Challenges in Drug-Impaired Driving Research

Hundreds of potentially impairing drugs and drug combinations

Drug effects can vary based on several factors

- User characteristics
- How drugs are used

Drugs may affect driving performance in different ways

Biological measurements may not correlate with impairment

Highway Drug Screening vs. Aviation Drug Screening

NHTSA Drug Testing and Traffic Safety:

There is a patchwork of laboratory procedures, capabilities, and toxicological reporting that result in substantial inconsistencies in toxicology data both across and within States.

There is no "standard" drug test panel.

Testing performed at one laboratory can vastly differ from testing performed at another laboratory with regard to the drugs tested for and the detections levels used.

FAA Toxicology Testing:

While there is no official comprehensive list, the **FAA Forensic Sciences laboratory has the capability to test for around a thousand substances** including toxins, prescription and over-the-counter medications, and illicit drugs.

NTSB | National Transportation Safety Board

Alcohol, Other Drug, and Multiple Drug Use Among Drivers

NTSB Safety Research Report

Office of Research and Engineering

December 2022

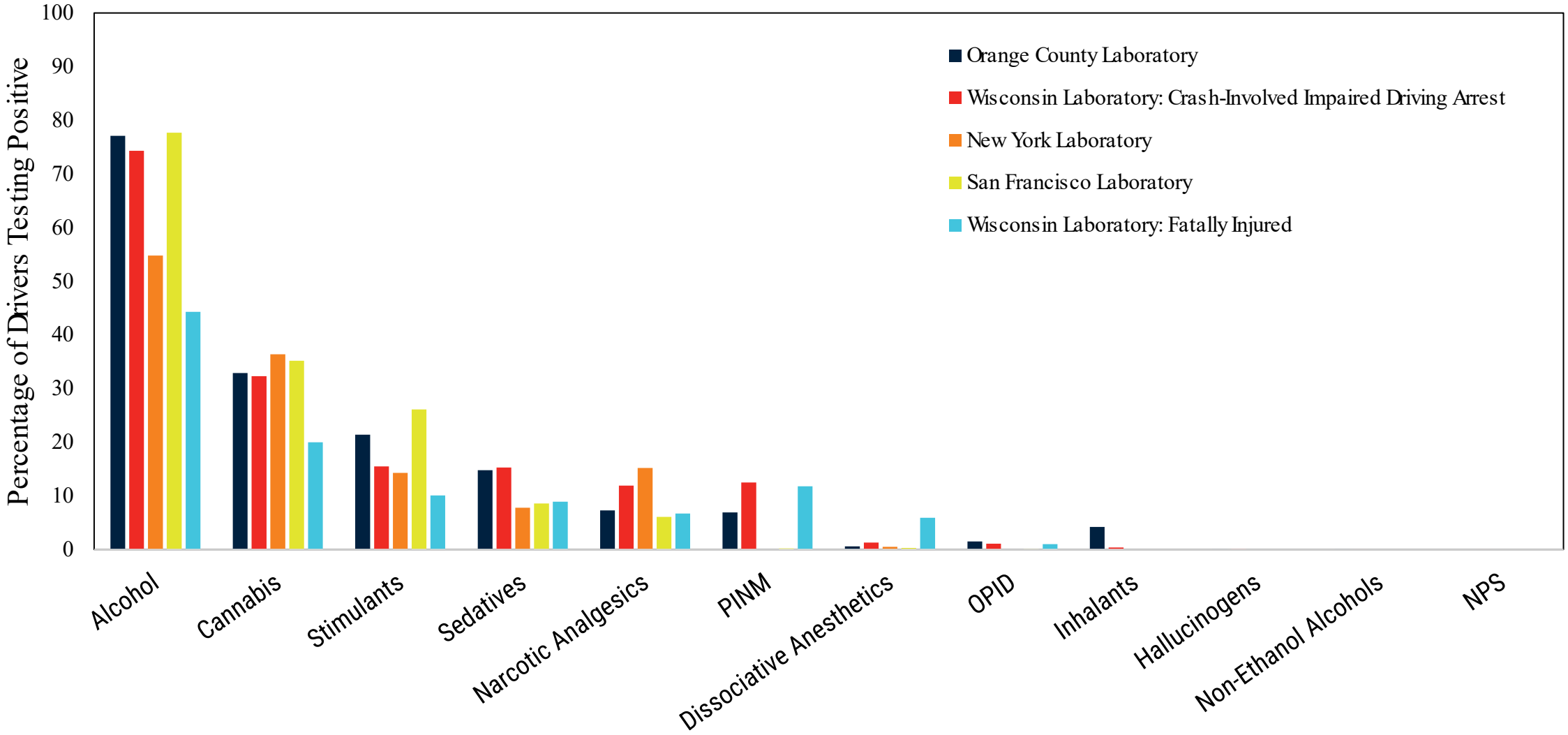
Data Analysis Approach

- Drug toxicology data are expansive and complex
- A novel approach was developed to code and analyze drug data
- Only potentially impairing drugs were included in the analysis
- Metabolites were "coded up" to the highest parent drug
- Development of a drug categorization scheme

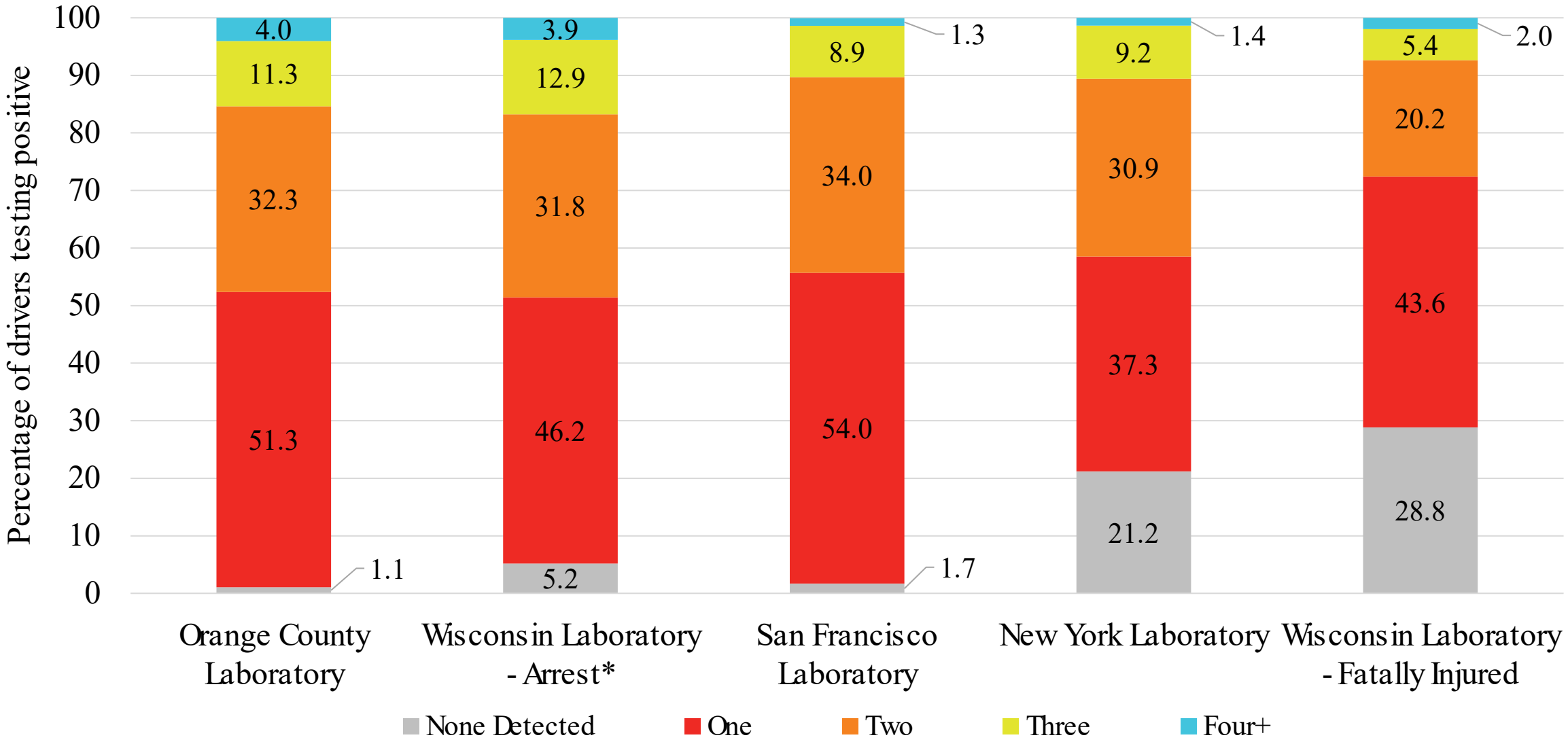
Four Study Toxicology Laboratories

Data Provided	Orange County Laboratory	Wisconsin Laboratory	Wisconsin Laboratory	San Francisco Laboratory	New York Laboratory
Driver Population	Impaired driving arrests	Crash-involved impaired driving arrests	Crash-involved fatally injured	Impaired driving arrests	Crash-involved suspected impaired-driving cases involving fatality or serious injury
Potentially Impairing Compounds Tested	183	136	136	54	39
Data Start Date	8/1/2018	1/1/2019	1/1/2019	3/20/2015	5/7/2020
Data End Date	7/30/2020	3/31/2021	3/31/2021	12/31/2018	6/8/2021
Sample Size	14,051	9,569	406	2,075	217

Percentage of Drivers Positive by Each Drug Category



Percentage of drivers testing positive for multiple drug categories



NTSB

Frequency of Drug Categories Combinations in Orange County

Drug Categories and Combinations of Drug Categories	Frequency	Overall Percent
Alcohol Only	5,926	42.17
Alcohol and Cannabis	2,022	14.39
Alcohol and Stimulants	739	5.26
Cannabis Only	685	4.88
Stimulants Only	455	3.24
Alcohol, Cannabis, and Stimulants	376	2.68
Alcohol and Sedatives	356	2.53
Cannabis and Stimulants	264	1.88
Cannabis and Sedatives	175	1.25
Alcohol, Cannabis, and Sedatives	166	1.18
Narcotic Analgesics and Stimulants	157	1.12
No Alcohol or Other Drugs Detected	148	1.05
Alcohol and Inhalants	143	1.02
Alcohol and Potentially Impairing Neuropsychiatric Medications	143	1.02
All Other Single Drug Categories or Combinations of Drug Categories	2,296	16.34
Total	14,051	100.00

Alcohol Prevalence Across Laboratory Samples

Alcohol	Orange County Laboratory	Wisconsin Laboratory (Crash-Involved Impaired Driving Arrests)	Wisconsin Laboratory (Crash-Involved Fatally Injured Drivers)	San Francisco Laboratory	New York Laboratory
Alcohol Only	42.2%	39.7%	26.9%	43.6%	22.6%
Alcohol and Other Drugs	34.9%	34.6%	17.4%	34.1%	32.3%
Alcohol Total	77.1%	74.3%	44.3%	77.7%	54.9%

Cannabis Prevalence Across Laboratory Samples

Drug Category	Orange County Laboratory	Wisconsin Laboratory (Crash-Involved Impaired Driving Arrests)	Wisconsin Laboratory (Crash-Involved Fatally Injured Drivers)	San Francisco Laboratory	New York Laboratory
Cannabis Only	4.9%	2.9%	5.2%	5.5%	8.8%
Cannabis and Alcohol Only	14.4%	15.6%	6.7%	16.1%	17.1%
Cannabis, Alcohol, and Other Drug	5.0%	6.8%	3.2%	6.6%	5.5%
Cannabis and Other Non-Alcohol Drugs	8.6%	7.0%	4.9%	7.0%	5.1%
Cannabis Total	32.9%	32.3%	20.0%	35.2%	36.4%

Summary of Results

- Alcohol was the most prevalent drug detected among impaired drivers followed by cannabis
- About half of drivers tested positive for more than one category of drug (including alcohol)
- Alcohol was most often detected alone, without any other drugs
- Cannabis was usually detected with at least one other drug category
- While alcohol countermeasures must remain the highest priority, countermeasures that address cannabis and other drugs are also needed

New NTSB Recommendations

- **States, DC, PR:**
  - Toxicology standards: ANSI/ASB Standard 120
  - Cannabis labeling
  - E-Warrants
  - Legislative enhancements: oral fluid and drugged driving
- **NHTSA:**
  - Disseminate ANSI/ASB Standard 120
  - Toxicology Support
  - Trauma center sentinel surveillance
- **FDA:**
  - Drug labeling
  - Audit drugmaker compliance with FDA guidance on evaluation of drug effects on driving
  - Drug data surveillance

Recommendations to States

To the 50 states, the District of Columbia, and the Commonwealth of Puerto Rico:

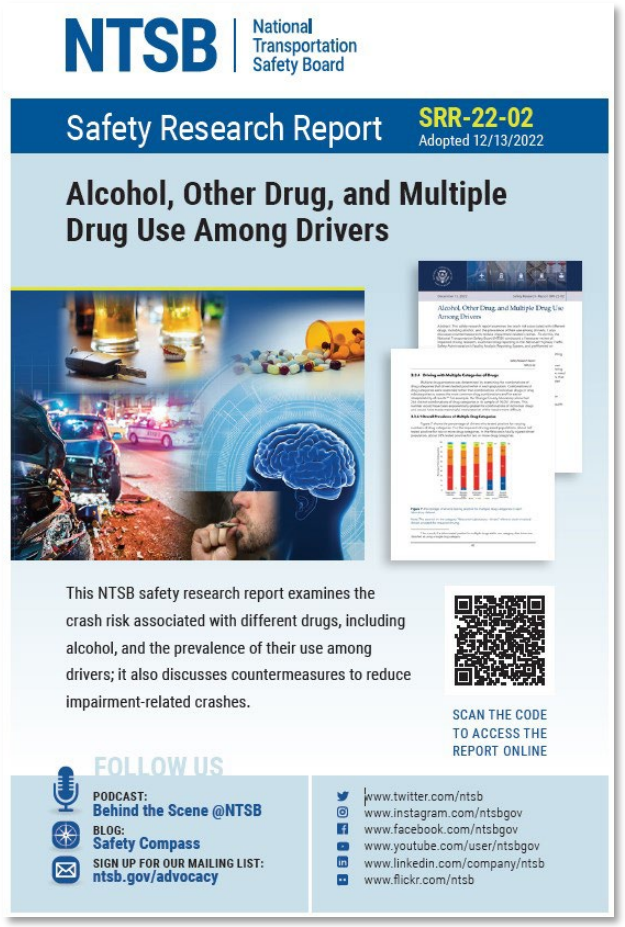
Complete an assessment using the National Highway Traffic Safety Administration's (NHTSA) Drug-Impaired Driving Criminal Justice Evaluation Tool, and, if gaps are identified, apply to NHTSA for support in establishing programs to reduce drug-impaired driving. (H-22-39)

Require government-funded laboratories that conduct forensic toxicology testing to adopt and routinely apply (regardless of driver blood alcohol concentration) the American National Standards Institute/American Academy of Forensic Sciences Standards Board Standard for the Analytical Scope and Sensitivity of Forensic Toxicological Testing of Blood in Impaired Driving Investigations, **ANSI/ASB Standard 120**, and provide funding for equipment, personnel, and training, to facilitate testing meeting that standard. (H-22-40)

Recommendations to States

To the District of Columbia and the states of Alaska, California, Connecticut, Delaware, Florida, Hawaii, Idaho, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington, West Virginia, and Wisconsin:

Modify your impaired driving laws to **allow for oral fluid collection, screening, and testing** for the detection of drug use by drivers. (H-22-41)



Thank you!

Leah Walton

Safety Advocacy Division

National Transportation Safety Board

leah.walton@ntsb.gov


NATIONAL TRANSPORTATION
E PLURIBUS UNUM
SAFETY BOARD

slido

In 1-2 words, what are the biggest challenges your state encounters in addressing polysubstance-impaired driving?

ⓘ Start presenting to display the poll results on this slide.

What Does an Impaired Driving Investigation Look Like?

Matthew Kling, Patrolman First Class,
Angola Police Department, IN

Vehicle in Motion

- Most often this starts with a traffic violation.
  - Crashes
  - Called in

Personal Contact

- Observations of the driver while at the vehicle
- Speech
- Eyes
- Statements
- Odors
- Plain sight
- Ability to divide attention
- Questioning (interrupting questions, unusual questions, etc)

Pre-Arrest Screening

- Field Sobriety tests
  - Horizontal Gaze Nystagmus
  - Walk and Turn
  - One Leg Stand

- Advanced Roadside Impaired Driving Enforcement/Drug Recognition Expert tests
  - Modified Romberg Balance
  - Lack of Convergence
  - Finger to Nose

Field Screening, not admissible in court

- Preliminary Breath Test

Chemical Test

A person who operates 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 commits a Class C misdemeanor.

Sec. 1. (a) A person who operates a vehicle with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol but less than fifteen-hundredths (0.15) gram of alcohol per:
(1) one hundred (100) milliliters of the person's blood; or
(2) two hundred ten (210) liters of the person's breath;
commits a Class C misdemeanor.

(b) A person who operates a vehicle with an alcohol concentration equivalent to at least fifteen-hundredths (0.15) gram of alcohol per:
(1) one hundred (100) milliliters of the person's blood; or
(2) two hundred ten (210) liters of the person's breath;

Behaviors of Impairment that may be Observed

- Alcohol/Depressants
- Stimulant
- Hallucinogenic
- Narcotic
- Dissociative Anesthetic
- Inhalants
- Cannabis

Indiana's History of Combatting Impaired Driving

- SFST (Standard Field Sobriety Test) at the academy
- Impaired Driving Grants
    - High Visibility Enforcement, public announcements
- Advanced Roadside Impairment Detection Enforcement (ARIDE)
- Drug Recognition Expert (DRE Training)
- Assisting the Department of Toxicology with increased funding and equipment to lower the time needed to get results.

Indiana's Oral Fluid Testing Program

- DUI fatalities involving drugs or a combination of drugs and alcohol, have overtaken alcohol.

- 2020: 150 fatalities from alcohol-involved crashes. 231 fatalities from drug-involved or drug and alcohol-involved crashes.

- Officers detecting impairment but that impairment was not due to alcohol. Reluctant to arrest for drug impairment without some type of confirmation of the cause.

Indiana's Oral Fluid Testing Program

- Did not use a pilot program
  - Michigan and Wisconsin both did pilot programs using the Sotoxa Oral Fluid Instrument, with very successful results.

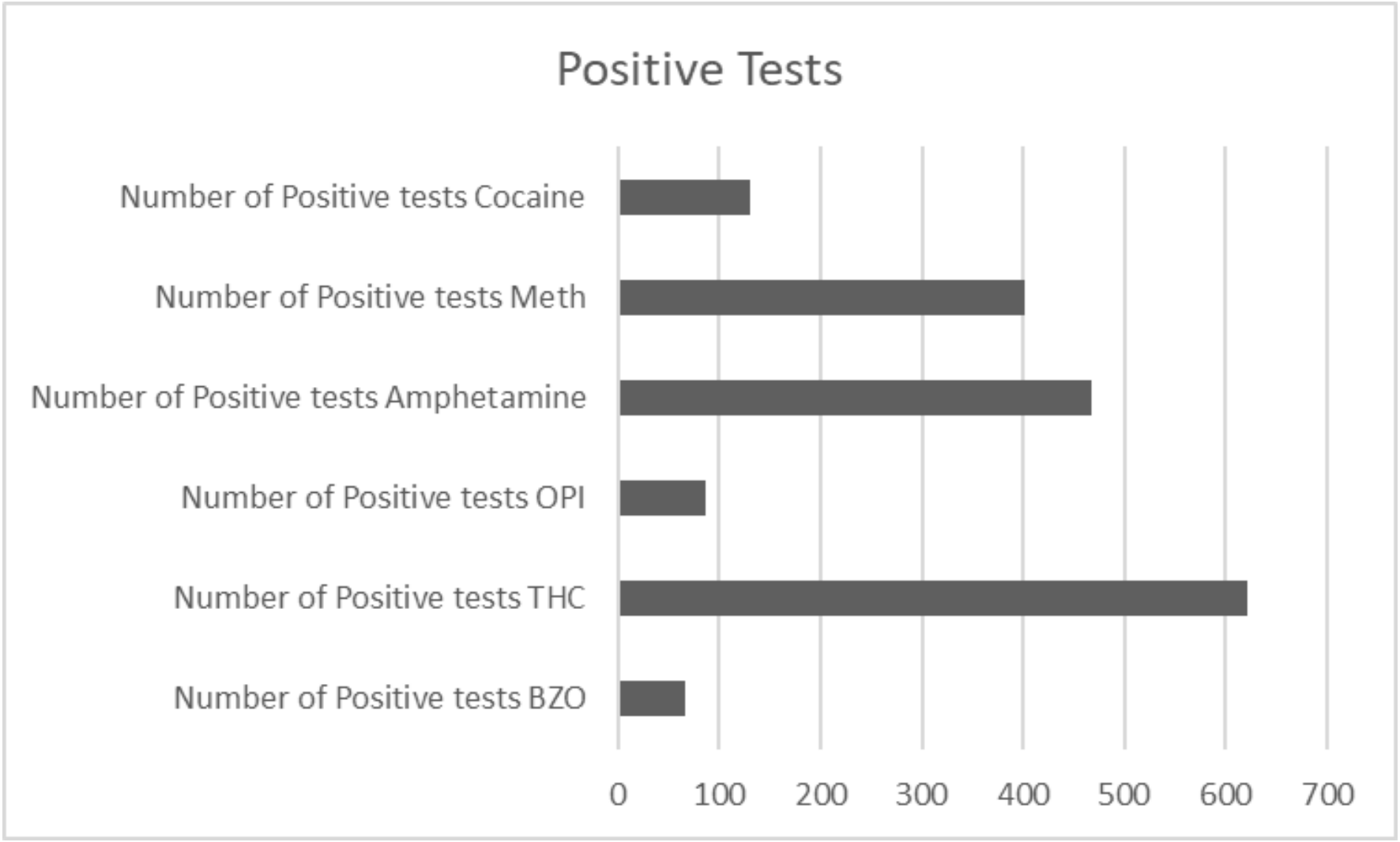
- Used similarly to a Preliminary Breath Test (PBT).
  - Used to confirm that the observed impairment was from a drug

- No statutory changes were needed, as a PBT/Sotoxa is not evidentiary.

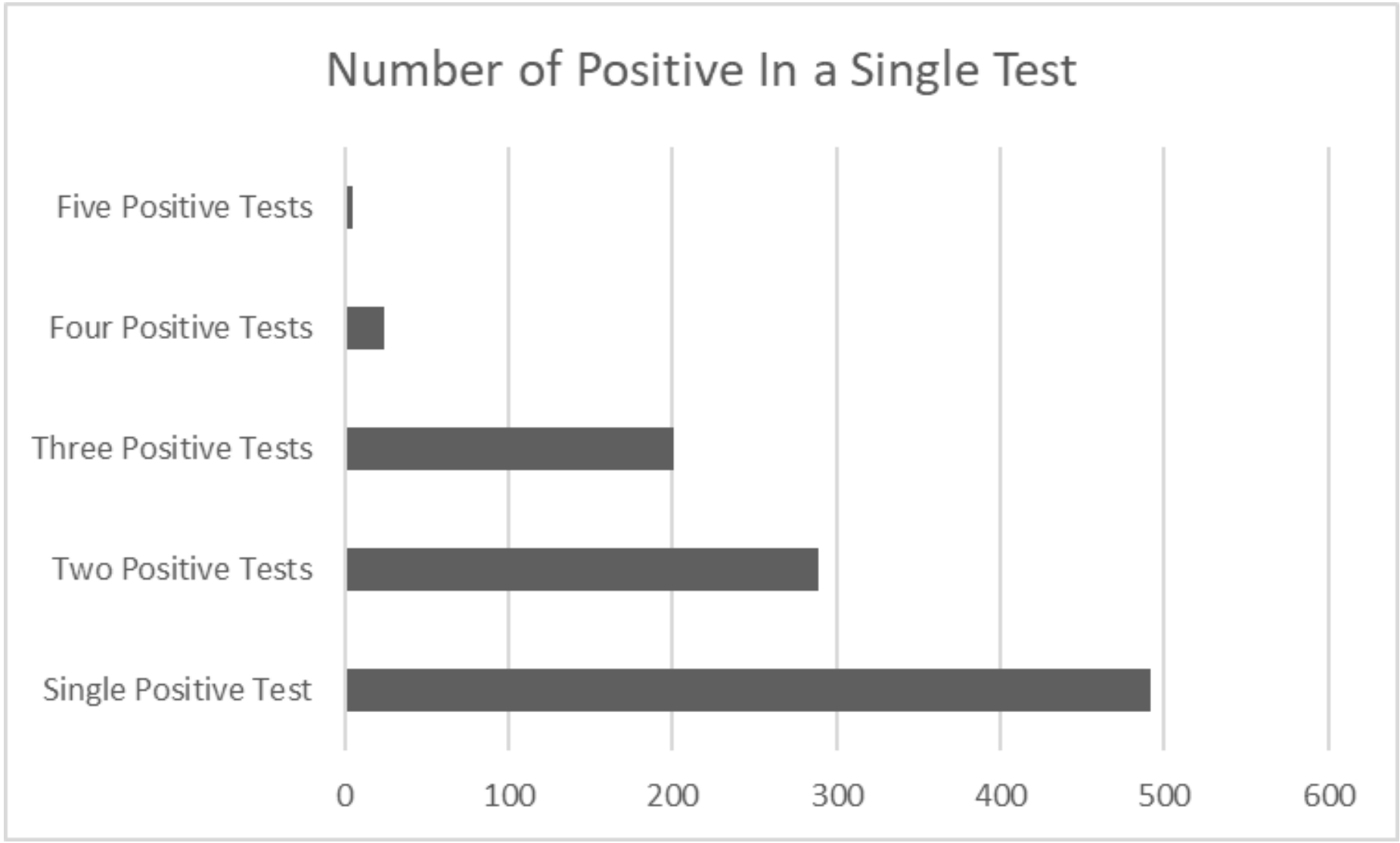
Sotoxa Roadside Oral Fluid Testing Device

Indiana's Oral Fluid Testing Program

- Deployment
  - 80 units placed in the counties with the highest number of drug-involved fatalities.
    - Agencies had to have a Standard Field Sobriety Testing Instructor that was either Advanced Roadside Impaired Driving Enforcement or Drug Recognition Expert (DRE).
  - Units are only to be used once impairment was determined.
  - Officers encouraged to contact DRE if available, regardless of oral fluid result.



Data provided by the Indiana Criminal Justice Institute



Data provided by the Indiana Criminal Justice Institute

Year	Laboratory Case Submissions	Requests for Alcohol Analysis	Requests for Drug Analysis	Total # of Testing Requests
2018	11,584	8,368	8,201	16,569
2019	12,493	8,989	8,236	17,225
2020	12,838	9,209	8,798	18,007
2021	14,522	10,548	9,466	20,014
2022	13,995	10,748	8,565	19,313

Data provided by the Indiana Department of Toxicology

Indiana Department of Toxicology

Effective 7-1-23, blood samples will not be tested for drugs if alcohol screen is greater than .10 BAC. This does not apply to Fatal and Serious Bodily Injury crashes

Legislative Actions that can be Taken

- Ensure that Roadside Oral Fluid Testing is an available option for law enforcement.
  - As probable Cause
  - Evidentiary

- Ensure that your state lab has the funding and personnel needed to test for both Alcohol and Drugs.

- Ensure that Advanced Roadside Impaired Driving Enforcement (ARIDE) is being taught to law enforcement.

Stakeholders that can Assist

- State Traffic Safety Resource Prosecutor
- Governor's Council on Traffic Safety
- State Impaired Driving Coordinator
- Law Enforcement

Turn to Your Neighbor

Small Group Session, Round 1

- Do you know of any actions, legislatively or administratively, your state has taken to address polysubstance-impaired driving?

- What are some barriers or opportunities your state may encounter when considering the enforcement options discussed?

IMPAIRED DRIVING IN WASHINGTON STATE

Sen. John Lovick
Vice President Pro Tem
Washington State Senate

NCSL

Drunk/drugged driving is a choice

- **In 2021 alone, there were 675 total traffic fatalities in Washington State**
- **50% of those involved an impaired driver under the influence of alcohol, marijuana, a combination of both, or other drugs**

Culture eats strategy for breakfast

- SB 5032: Extending felony DUI lookback to 15 years while providing additional treatment options through drug offender sentencing alternative for DUI *(2023, did not pass)*
- SB 5002: Lowering BAC from .08 to .05 *(2023, did not pass)*
- SB 5573: Creating a new drug offender sentencing alternative for offenders convicted of felony impaired driving offenses; expanded the impaired driving look-back period from 10 to 15 years *(2022, did not pass)*
- HB 1614: Made a 4th DUI a felony *(2018, passed into law)*

NCSL

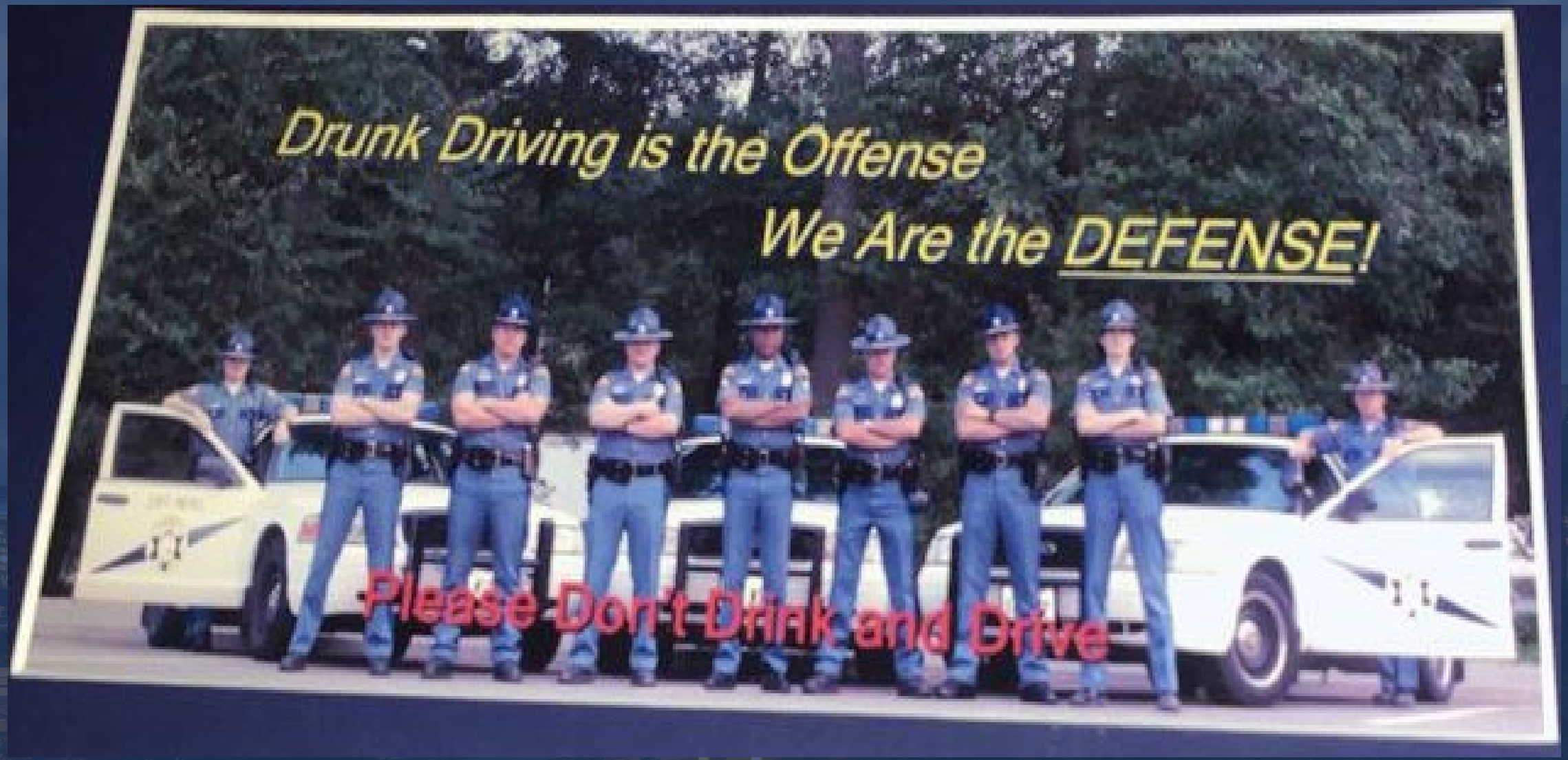
Drunk driving collisions are preventable

- **.05 BAC reduced 20% of fatalities in Utah**
- **Roadside checks can potentially reduce even more fatalities**
- **Interlocking devices could improve safety**

NCSL

Change the culture of drinking

- **Impairment starts with the first drink**
- **Traffic safety bills are all about community safety**
- **In WA we say, legal intoxication while driving up to .08%, this is wrong. The message should be if you're going to drink, don't drive**


Drunk Driving is the Offense
We Are the DEFENSE!
Please Don't Drink and Drive

Sen. John Lovick
Vice President Pro Tem
Washington State Senate

JOHN.LOVICK@LEG.WA.GOV

Turn to Your Neighbor

Small Group Session, Round 2

- What policy options discussed today are you going to explore further to address polysubstance-impaired driving challenges in your state?

- What stakeholder or agency in your state are you going to collaborate with to learn more about polysubstance-impaired driving?

Questions?

slido

In 1-2 words, what are the biggest challenges your state encounters in addressing polysubstance-impaired driving?

ⓘ Start presenting to display the poll results on this slide.

Reach out anytime!

Darrin Grondel

Darrin.Grondel@responsibility.org

Leah Walton

Leah.Walton@ntsb.gov

Officer Matthew Kling

Mkling@angolain.org

Sen John Lovick

John.Lovick@Leg.Wa.Gov

Annie Kitch

Annie.Kitch@ncsl.org