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# DRUNK AND HIGH BEHIND THE WHEEL: TACKLING THE GROWING THREAT OF POLYSUBSTANCE-IMPAIRED DRIVING

WEDNESDAY, DEC. 2, 2020

3 P.M. ET / 2 P.M. CT / 1 P.M. MT / NOON PT



# WHAT IS NCSL?

- National Conference of State Legislatures
- Members= 50 state legislatures and territories
  - 7,383 legislators; 30,000+ staff

## NCSL...

- Provides **bipartisan** research and analysis
- Links legislators and staff with each other and experts
- Speaks on behalf of states in D.C.



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## SPEAKERS:



**Darrin Grondel**

Vice President

Government Relations and Traffic Safety  
Responsibility.org



**Jake Nelson**

Director

Traffic Safety Advocacy & Research  
AAA National



NATIONAL CONFERENCE OF STATE LEGISLATURES

# Trends in Poly-Substance Impaired Driving and Roadside Drug and Alcohol Testing Technologies

NCSL Webinar

December 2, 2020



**RESPONSIBILITY.ORG**

# COMMITMENT TO RESPONSIBILITY

Responsibility.org members have invested nearly \$300 million in policy development, educational programs and public awareness campaigns to fight drunk driving and underage drinking.



Leading efforts to eliminate drunk driving and working with others to end all impaired driving.



Leading efforts to eliminate underage drinking.



Empowering adults to make a lifetime of responsible alcohol choices as part of a balanced lifestyle.

# RESPONSIBILITY.ORG MEMBER COMPANIES

Enhancing a legacy of responsibility and recognizing the power of collective action.



# Partners & Collaboration





# The Challenge of Polysubstance Use

What is  
Polysubstance  
Use?

Is Polysubstance  
just about drugs?



**Yes,** all impairing  
substances!

Does it include  
Alcohol?

**It is time to repeat the National Roadside Survey**

	Weekday Days	Weekend
Tested positive for		22.5%
Illegal drugs, including marijuana	12.1%	15.2%
Medication	10.3%	7.3%
Marijuana	11.7%	12.6%
Alcohol	1.1%	8.3%

Source: Berning et al. (2015). Results of the 2013-2014 National Roadside Survey of Alcohol and Drug Use by Drivers. DOT HS 812 118.

## AAA Newsroom



### Fatal Road Crashes Involving Marijuana Double After State Legalizes Drug

#### FOR MORE INFORMATION:



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AAA Public Relations  
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WASHINGTON, D.C. (May 10, 2016) – Fatal crashes involving drivers who recently used marijuana doubled in Washington after the state legalized the drug, according to the latest research by the AAA Foundation for Traffic Safety. New research also shows that legal limits for marijuana and driving are arbitrary and unsupported by

New AAA Foundation Research Also Shows that Legal Limits for Marijuana and Driving are Meaningless

#### Additional Resources

- [State List of Marijuana Laws](#)
- [Infographic](#)
- [5-min video](#)
- [Washington State Fatalities Chart](#)
- [Prevalence of Marijuana Involvement in Fatal Crashes, Washington, 2012-2014](#)
- [An Evaluation of Data from Drivers Arrested for Driving on Marijuana](#)

- ***There is no science showing that drivers reliably become impaired at a specific level of marijuana in the blood.*** Depending on the individual, drivers with relatively high levels of marijuana in their system might not be impaired, while others with low levels may be unsafe behind the wheel. This finding is very different from alcohol, where it is clear that crash risk increases significantly at higher BAC levels.
- ***High THC levels may drop below legal thresholds before a test is administered to a suspected impaired driver.*** The average time to collect blood from a suspected driver is often more than two hours because taking a blood sample typically requires a warrant and transport to a facility. Active THC blood levels may decline significantly and could drop below legal limits during that time.
- ***Marijuana can affect people differently, making it challenging to develop consistent and fair guidelines.*** For example, frequent users of marijuana can exhibit persistent levels of the drug long after use, while drug levels can decline more rapidly among occasional users.

## EMERGING ISSUE:

# DRIVERS IMPAIRED BY MULTIPLE SUBSTANCES

Combining drugs or drugs and alcohol and then driving can have a multiplicative effect on impairment and a much higher crash risk.

Recent data from Washington state shows multi-substance impairment was more common than any other type of impairment in fatal crashes from 2008-2016. In fact, among drivers involved in fatal crashes, 44 percent tested positive for two or more substances with alcohol and THC being the most common combination (Grondel, et al., 2018).

Alcohol and Poly-Drug Use in Fatal Crash Involved Drivers, 2008-2016



**36%** ALCOHOL ONLY

**44%** POLY-DRUG (ANY COMBINATION OF THE CATEGORIES)

**12%** ONE DRUG ONLY (NOT ALCOHOL OR THC)

**6%** THC ONLY

(Grondel, et al., 2018)



RESPONSIBILITY.ORG



For more information, go to

[responsibility.org/HRID](https://responsibility.org/HRID)



# Complexity of Impaired Driving and Public Perceptions

	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 <small>(at time of survey)</small>
Impairment:	Varies by type	Well-documented
Beliefs & Attitudes:	No strong attitudes/public indifferent	Socially unacceptable



**RESPONSIBILITY.ORG**

# Man caught driving 130 mph was allegedly high on LSD and intended to kill Sen. Claire McCaskill

by Spencer Neale, Breaking News Reporter | ✉ | November 11, 2020 07:50 PM

A Utah man who was allegedly driving at speeds of over 130 mph told police he was high on LSD and planned to kill former Sen. Claire McCaskill, according to court documents.

Missouri police arrested 36-year-old George William Stahl, who was allegedly recklessly driving during a snowstorm and later told officers he wanted to kill McCaskill "if she wasn't dead already."

"He smelled of an alcoholic beverage and his eyes were glassy and bloodshot," [stated the affidavit](#). "Stahl stated that he was on Adderall and LSD and beer."

# Data Drives the Narrative for Action!

- 50.5% of fatally injured drug-positive drivers (with known drug test results) were positive for two or more drugs and 40.7% were found to have alcohol in their system (NHTSA FARS as cited in Hedlund, 2018)
- Among drug-positive drivers killed in crashes, 4% tested positive for both marijuana and opioids, 16% for opioids only, 38% for marijuana only, and 42% for other drugs (Governors Highway Safety Association, 2017)
- The percentage of traffic deaths in which at least one driver tested positive for drugs has nearly doubled over a decade. (USA Today, 2016) (Source: <https://driving-tests.org/driving-statistics/>)
- The number of alcohol-positive drivers killed in crashes who also tested positive for drugs increased by 16% from 2006 to 2016 (Governors Highway Safety Association, 2017)

# Data Drives the Narrative for Action!

- In 2017, there were 8,585 fatal crashes where at least one driver tested positive for drugs, accounting for 25% of all fatal crashes. There were 9,561 fatalities in crashes involving drugs where at least one driver involved in the crash tested positive for drugs, accounting for 26% of fatal crashes.
- In 2017, drugs were present in nearly **48% of fatally** injured drivers with a known test result, up from 38% in 2010.
- In 2018, 8,867 people were killed in motor vehicle crashes where at least one driver tested positive for drugs, accounting for 24% of fatal crashes. Twenty-three percent (or 7,890) of fatal crashes involved drugs (i.e., at least one driver tested positive).

Source: *National Highway Traffic Safety Administration – Fatality Analysis Reporting System Data*

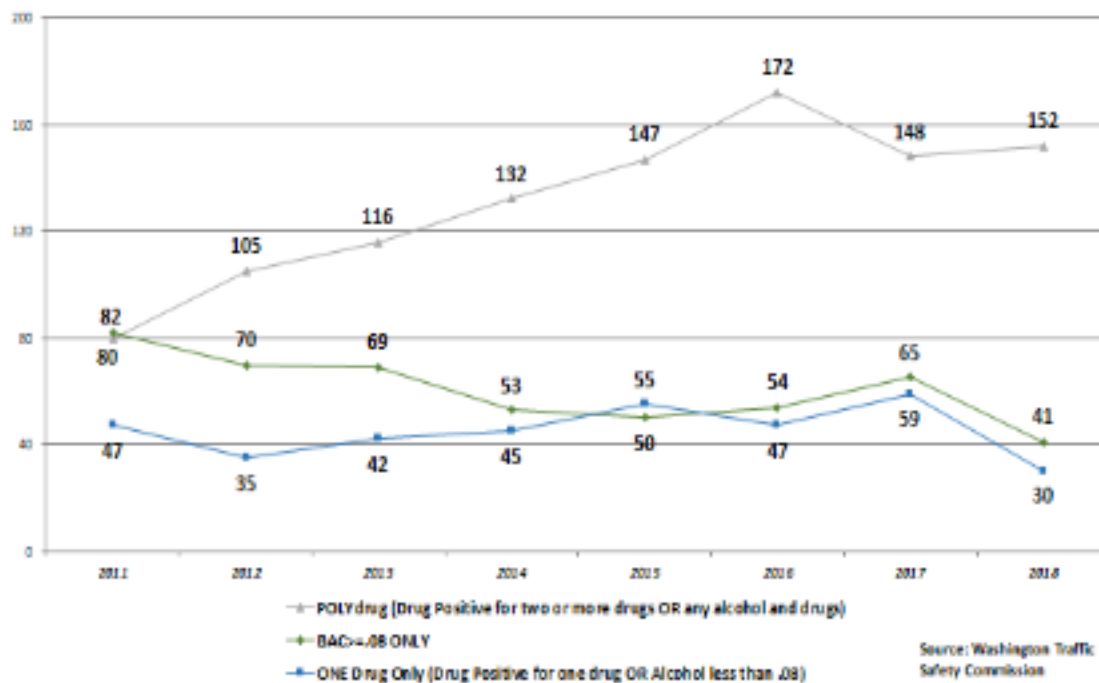


# Multi-substance impaired driving enforcement

DUI is the *ONLY* crime where the investigation stops after obtaining a minimum amount of evidence.

- Current protocols prevent drug testing once a suspect registers an illegal BAC.
- Implications:
  - » Hinders the ability to measure the true magnitude of the drug-impaired driving problem.
  - » Many DUI arrests are inaccurately attributed to alcohol alone.

Number of Drivers in Fatal Crashes in Washington State Under the Influence of Alcohol and/or Drugs



# Drug Categories and Their Common Effects

	CNS DEPRESSANTS	CNS STIMULANTS	HALLUCINOGENS	DISASSOCIATIVE ANESTHETICS	NARCOTIC ANALGESICS	INHALANTS	CANNABIS
<b>COMMON EXAMPLES</b>	Alcohol Valium Prozac Xanax Soma Rohypnol (roofies) GHB	Cocaine Crack Methamphetamine Adderall Ritalin Dexedrine MDPV (bath salts)	LSD (acid) MDMA (ecstasy) Peyote Psilocybin mushrooms	PCP Ketamine DXM (cough medicine)	Heroin Hydrocodone Vicodin Morphine Oxycontin Percodan Methadone	Solvents (gasoline, paint thinner, cleaning fluid, model glue) Aerosols (spray cans) Anesthetic gases (chloroform, whipped cream spray cans, nitrous oxide)	Marijuana Hash Hash oil Marinol Dronabinol K2 Spice
<b>PUPIL SIZE</b>	Normal	Dilated	Dilated	Normal	Constricted	Normal	Dilated
<b>REACTION TO LIGHT</b>	Slow	Slow	Normal	Normal	Little or none	Slow	Normal
<b>BODY TEMPERATURE</b>	Normal	Up	Up	Up	Down	Up/Down/Normal	Normal
<b>MUSCLE TONE</b>	Flaccid	Rigid	Rigid	Rigid	Flaccid	Normal or Flaccid	Normal
<b>OTHER INDICATORS</b> <small>(users will not typically show all indicators)</small>	<ul style="list-style-type: none"> <li>+Euphoria</li> <li>+Depression</li> <li>+Laughing/crying for no reason</li> <li>+Reduced ability to divide attention</li> <li>+Disoriented</li> <li>+Sluggish</li> <li>+Thick, slurred speech</li> <li>+Drunk-like behavior</li> <li>+Droopy eyes</li> <li>+Fumbling</li> <li>+Relaxed inhibitions</li> <li>+Slowed reflexes</li> <li>+Uncoordinated</li> <li>+Drowsy</li> </ul>	<ul style="list-style-type: none"> <li>+Restlessness</li> <li>+Body Tremors</li> <li>+Excitement</li> <li>+Euphoria</li> <li>+Talkative</li> <li>+Exaggerated reflexes</li> <li>+Anxiety</li> <li>+Redness to nasal area</li> <li>+Runny nose</li> <li>+Loss of appetite</li> <li>+Increased alertness</li> <li>+Dry mouth</li> <li>+Irritability</li> <li>+Grinding teeth</li> </ul>	<ul style="list-style-type: none"> <li>+Hallucinations</li> <li>+Paranoia</li> <li>+Nausea</li> <li>+Perspiring</li> <li>+Dazed appearance</li> <li>+Flashbacks</li> <li>+Body tremors</li> <li>+Disoriented</li> <li>+Memory loss</li> <li>+Uncoordinated</li> <li>+Synesthesia (transposition of senses)</li> <li>+Difficulty in speech</li> <li>+Huge pupils (MDMA)</li> </ul>	<ul style="list-style-type: none"> <li>+Blank stare</li> <li>+Confused</li> <li>+Cyclic behavior</li> <li>+Perspiring</li> <li>+Chemical odor</li> <li>+Hallucinations</li> <li>+Possibly violent and combative</li> <li>+Warm to the touch</li> <li>+Increased pain threshold</li> <li>+Incomplete verbal responses</li> <li>+Repetitive speech</li> </ul>	<ul style="list-style-type: none"> <li>+Droopy eyelids</li> <li>+On the nod</li> <li>+Drowsiness</li> <li>+Depressed reflexes</li> <li>+Dry mouth</li> <li>+Low, raspy slow speech</li> <li>+Euphoria</li> <li>+Fresh puncture marks</li> <li>+itching</li> <li>+Nausea</li> <li>+Track marks</li> </ul>	<ul style="list-style-type: none"> <li>+Confusion</li> <li>+Flushed face</li> <li>+Intense headaches</li> <li>+Bloodshot, watery eyes</li> <li>+Lack of muscle control</li> <li>+Odor of substance</li> <li>+Non-communicative</li> <li>+Disoriented</li> <li>+Slurred speech</li> <li>+Possible Nausea</li> <li>+Residue of substance around mouth and nose</li> </ul>	<ul style="list-style-type: none"> <li>+Odor of marijuana</li> <li>+Marijuana debris in the mouth</li> <li>+Body tremors</li> <li>+Increased appetite</li> <li>+Relaxed inhibitions</li> <li>+Disoriented</li> <li>+Possible paranoia</li> <li>+Eyelid tremors</li> <li>+Reddened eyes</li> </ul>

### POLY DRUG USE

The use of two or more drugs of different categories will cause the body to display a combination of effects. This is because each drug works independently. The results of poly drug use may be unpredictable but will generally show some indicators of each drug used. Alcohol and cannabis are the most common mixers with other drugs.

A project of the Northwest Washington Target Zero Coalition - [www.tzco.org](http://www.tzco.org)

# Presence of Substances Among Drivers During COVID-19

Drug Category	Before (N= 1,880)		During (N= 1,123)	
	n	%	n	%
Alcohol	400	21.3	302	26.9*
Cannabinoids <sup>^</sup>	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*

<sup>^</sup> Active THC ( $\Delta$ -9-THC or 11-OH-THC)

\* Significantly different ( $p < .05$ ) compared to Before period

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.



DOT HS 813 018



October 2020

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

# Substances Identified in Positive Drug Tests



## VIOLATIONS REPORTED TO CLEARINGHOUSE CONTINUED

Positive drug tests account for **80%** of the total violations reported.

See chart to the right and the graph below for a breakdown of the number of times a driver tested positive for each substance.

### SUBSTANCES IDENTIFIED IN POSITIVE DRUG TESTS as of 6/1/2020

Substance	# Tests Identified
Not Identified	39
6-Acetylmorphine	113
Amphetamine	2,108
Cocaine Metabolite (BZE)	3,192
Codeine	149
DILUTE	945
HYC	418
HYM	363
Marijuana Metabolite ( $\Delta^9$ -THCA)	10,388
MDA	11
MDMA	20
Methamphetamine	2,184
Morphine	171
OXYC	452
OXYM	556
PCP	47
All substances	21,156

Note: More than one substance can appear in a positive drug test



# Responsibility.org Position Statements



## Oral Fluid Screening for Impaired Drivers

Increases in drug and multi-substance impaired driving call for expanded drug testing on the roadside. For officers who are not specially trained in drug impairment detection, oral fluid screening can aid in identifying drivers that may have recently consumed drugs who would otherwise escape detection.

**How oral fluid field screening works.** Oral fluid screening detects recent drug use but does not detect impairment. It is collected and analyzed in under 10 minutes which is important as drug levels dissipate quickly while impairment remains. Oral fluid screening devices typically include an oral fluid collection system (consisting of a collection device and test cartridge) and an analyzer. Law enforcement officers obtain samples using the collection device and insert them into the analyzer which determines drug presence by an objective reading of the test strip.



Oral fluid test devices screen for specific drugs or drug classes that commonly appear among impaired drivers (cannabis [Tetrahydrocannabinol (THC)], cocaine, methamphetamine, amphetamine, opioids, and benzodiazepines). A positive result indicates recent drug use which alongside the officer's evaluation of impairment, can aid in detecting recent consumption of drugs (i.e., not several days or weeks prior to arrest).

Oral fluid screening devices are preliminary screening tests that can be used to establish probable cause in combination with other evidence. At the time of testing, the officer has concluded that a driver is impaired using the 9-1-1 and it is reasonably visible to safely operate a motor vehicle. The on-site oral fluid screen is used to identify what drug class(es) is/are likely causing the observed impairment. The devices indicate drug presence above established cut-off levels. They do not detect quantitative drug levels and are not admissible in court as evidence. Only a confirmation sample analyzed in a forensic laboratory, such as a blood test or a secondary oral fluid sample, can be used for evidentiary purposes.

Oral fluid screening device performance is variable and depends on the quality of the instrumentation.

Therefore, agencies must be careful when determining which instruments to deploy in the field. Pilot testing is one option available to assess the overall accuracy of devices and obtain officer feedback about performance and usability. The Society of Forensic Toxicologists (SOFT) offers [guidelines](#) for establishing oral fluid pilots.

Oral fluid screening offers the following advantages:

- Identifies recent drug use (within 24 hours)
- Easy, fast, gender-neutral collection that are minimally invasive
- No warrant required to collect samples
- Demonstrated accuracy, sensitivity, and specificity
- Results may support search warrant requests for additional chemical samples
- Quick identification of both drug and multi-substance impaired drivers (including those with a BAC above .08)
- Admissible in certain hearings (e.g., probable cause)



## Increase Drug Testing in Impaired Driving Cases

As more drivers are tested for drugs, it has become apparent that many alcohol-impaired drivers are actually multi-substance impaired drivers who avoid detection (see WA and CO data in Grondel, 2018 and Bai & Reed, 2020). **Driving under the influence (DUI) is the only crime where the investigation stops after minimal evidence is obtained due to standard operating procedure.** If a law enforcement officer observes impairment and detects a blood alcohol concentration (BAC) above the legal limit, the investigation typically ends, saving time and money. Many laboratory policies prohibit drug testing if a BAC is above .08 or .10 unless a request for additional testing is made, allowing drivers impaired by multiple substances to avoid accountability. If drug use is not identified, it cannot be quantified or treated and multi-substance impaired driving, which poses a much higher crash risk, remains significantly underreported. **Every impaired driving investigation – whether it involves alcohol, drugs, or both – is a race against the clock.**

When DUI cases involve drugs, time delays are significant, and the most compelling evidence (i.e., drug levels in the blood) dissipates quickly. In most states, blood levels confirm drug presence in a DUI suspect's system. However, due to delays in obtaining blood draws, test results often do not reflect drug concentration levels at the time of driving or account of rapid metabolism. When a suspect refuses to voluntarily submit to a breath test or a blood draw, a warrant must be obtained. Additionally, in most jurisdictions, a certified healthcare professional must perform the blood draw in a medical facility. This process can add up to two additional hours, possibly more in rural areas. To guard against the loss of evidence, officers must efficiently collect blood or other chemical samples that are then analyzed to confirm drug presence in DUI cases. **Four strategies are being implemented in a growing number of jurisdictions to increase the efficiency of this process:**

- **Electronic warrant systems (e-warrants)** that facilitate timely blood sample collection in DUI cases when people refuse to voluntarily submit to testing
- **Law enforcement pilot programs** that reduce time required to obtain a blood sample and safeguard against other issues
- **Oral fluid drug testing** for DUI suspects, regardless of BAC level, to identify drug presence at roadside and determine the need for a blood draw
- **Building laboratory capacity** to ensure toxicology labs can handle testing demands, are adequately staffed, and using advanced technology

**Electronic warrant systems (e-warrants)** help officers quickly obtain a search warrant for blood to accurately determine BAC or toxicology results and streamline the arrest process. Other benefits of e-warrants include reduced workloads, lower errors, stronger DUI cases, speedier case resolutions, lower barriers on the system, reduced refusal rates, and public clearance. Minnesota's e-Charging platform reduced error rates from 30% to nearly zero and practitioners report increased ease in obtaining warrants. With an e-warrant system, submissions can be prepared in under 10 minutes and the review, approval, and return process can be completed in 15-20 minutes. Implementation recommendations and examples of robust systems can be found in our [Guide to Implementing Electronic Warrants](#). Both the International Association of Chiefs of Police (IACP)



## Multi-substance Impaired Driving

Multi-substance impaired driving is the operation of a motor vehicle while impaired by drugs and alcohol or a combination of drugs. Research has continually shown that drugs used in combination or with alcohol produce greater impairment than substances used on their own (Compton, et al., 2009; Romano et al., 2014; Schutte et al., 2012). In describing this increased level of impairment, the analogy of 1+1=3 is often used to convey the higher risk associated with using multiple substances at the same time. This multiplicative impairment effect poses a higher crash risk on our roadways.

**Research & Data Highlights:**

- In 2016, 50.5% of fatally injured drug-positive drivers (with known drug test results) were positive for two or more drugs and 43.7% were found to have alcohol in their system (NHTSA FARS as cited in Hedlund, 2018).
- The Driving under the Influence of Drugs, Alcohol and Medicines (DUID) project of the European Commission found that individuals who drive under the influence of alcohol and drugs are up to 200 times more likely to be involved in a crash (Shulze et al., 2012; Griffiths, 2014).
- Washington State data revealed that multi-substance impairment was the most common type of impairment found among drivers involved in fatal crashes between 2008 and 2016. Among drivers involved in fatal crashes during this timeframe, 44% tested positive for two or more substances with alcohol and Tetrahydrocannabinol (THC) being the most common combination (Grondel et al., 2018).
- The National Survey on Drug Use and Health (NSDUH) revealed that of the 19.3 million individuals age 18 and over who had a substance use disorder in 2018, 12.9% (2.5 million) struggled with the use of both illicit drugs and alcohol (SAMHSA, 2019).

**Current Detection Challenges:**

Multi-substance impaired driving is underreported. Most law enforcement officers are trained to identify alcohol-impaired drivers, but unfortunately, many do not receive specialized training to identify the signs and symptoms of drug impairment (e.g., Advanced Roadside Impaired Driving Enforcement (ARIDE) training or Drug Recognition Expert certification).

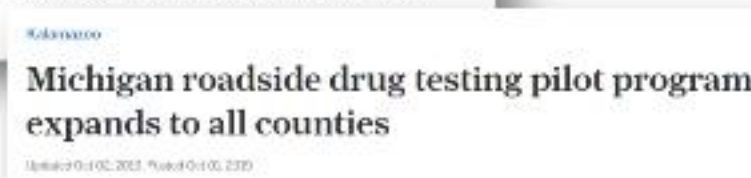


The background of the slide features a series of concentric, semi-circular arcs in various shades of blue, creating a ripple effect that originates from the center and expands towards the edges. The arcs are layered, with some being more prominent than others, giving a sense of depth and movement.

# The National Alliance to Stop Impaired Driving

# Why is NASID Needed?

- Why NASID?
  - Drug and multiple substance impaired driving problem increasing
  - COVID-19 increases in risky driving will demand attention
  - Opportunities at state and Federal levels, new elected officials
  - The issue and technology to address it needs a national voice and leader
- How did the idea for NASID begin?
  - Brian Swift turned tragedy into action
  - Cannabis-impaired driving truck crash killed his parents
  - He advocated for passage of MI oral fluid pilot program law and united stakeholders to expand the effort
  - Brian Swift will serve as NASID's spokesperson



# Mission

The National Alliance to Stop Impaired Driving (NASID) works to eliminate all forms of impaired driving, especially multiple substance impaired driving, through DUI system reform, DUI detection, data improvements and technology to effectively fight impaired driving. NASID is a broad coalition of stakeholders working in a public/private partnership to achieve these goals. We encourage collaboration between law enforcement, prosecutors, judges, toxicologists, academics, safety advocates, and industry to work together toward the goal of eliminating impaired driving.

# Purpose

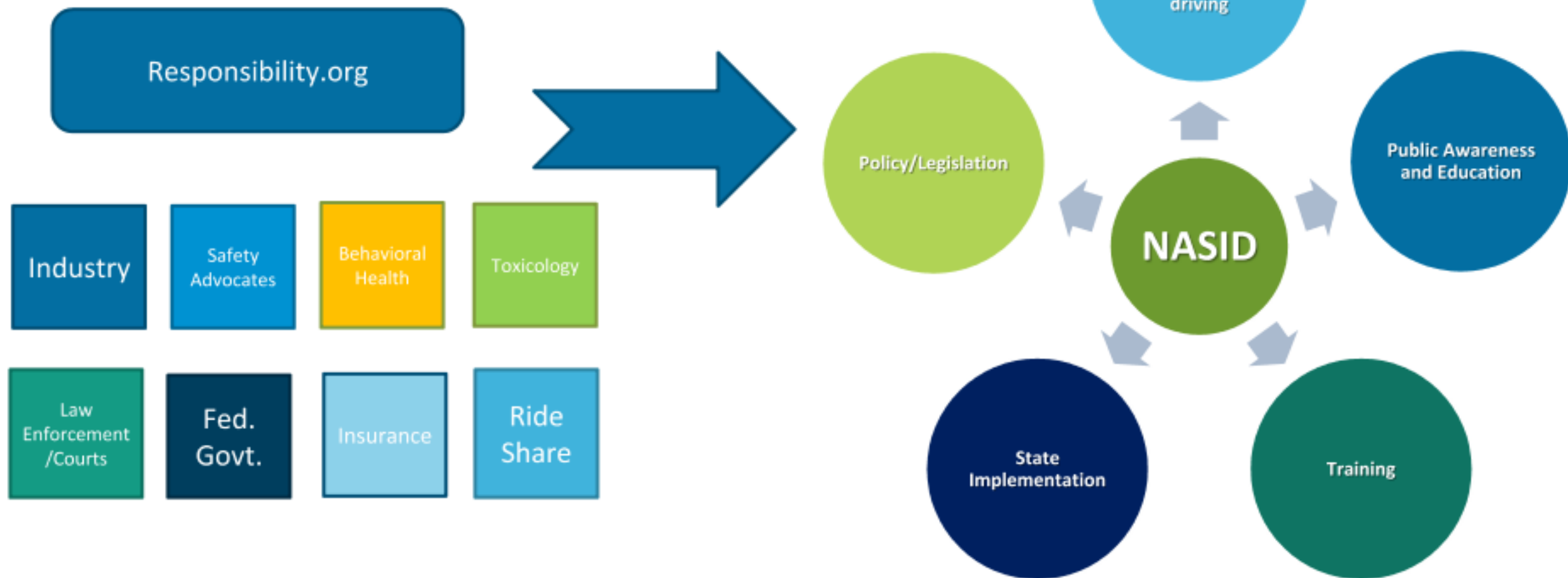
NASID provides national leadership to identifying and promoting solutions to impaired driving, including expanded chemical testing among impaired drivers, training for criminal justice practitioners, toxicology lab capacity improvements and programs to increase likelihood of recovery and reductions in recidivism. Our work includes state and federal advocacy efforts, public awareness and education, and state implementation of effective programs.



# NASID Goals and Promoting Emerging Technology

- Establish drug/multi-substance impaired driving as top priority safety issue
- Persuade the public and decision-makers to expand drug testing
- Promote oral fluid tests and other technology as a “must have”
  - Ensure a greater public understanding of how it works, reliability, effectiveness
  - Dispel myths regarding technology
  - Promote pilot programs and replicate them in target states
- Build champions for issue among elected officials and stakeholders
- Convene influencers for State and Federal legislative action
- Assist practitioners with training and education

# Visual Concept National Alliance to Stop Impaired Driving



## Contact Information to Sign up with NASID

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# Using Oral Fluid to Detect Drugs

**Jake Nelson, MPH, MPP**

**AAA National Office // Washington, DC**

**Tackling the Growing Threat of Polysubstance-Impaired Driving**

**December 2, 2020**

## Strengths/Limitations of using oral fluid to detect drugs in impaired driving suspects.

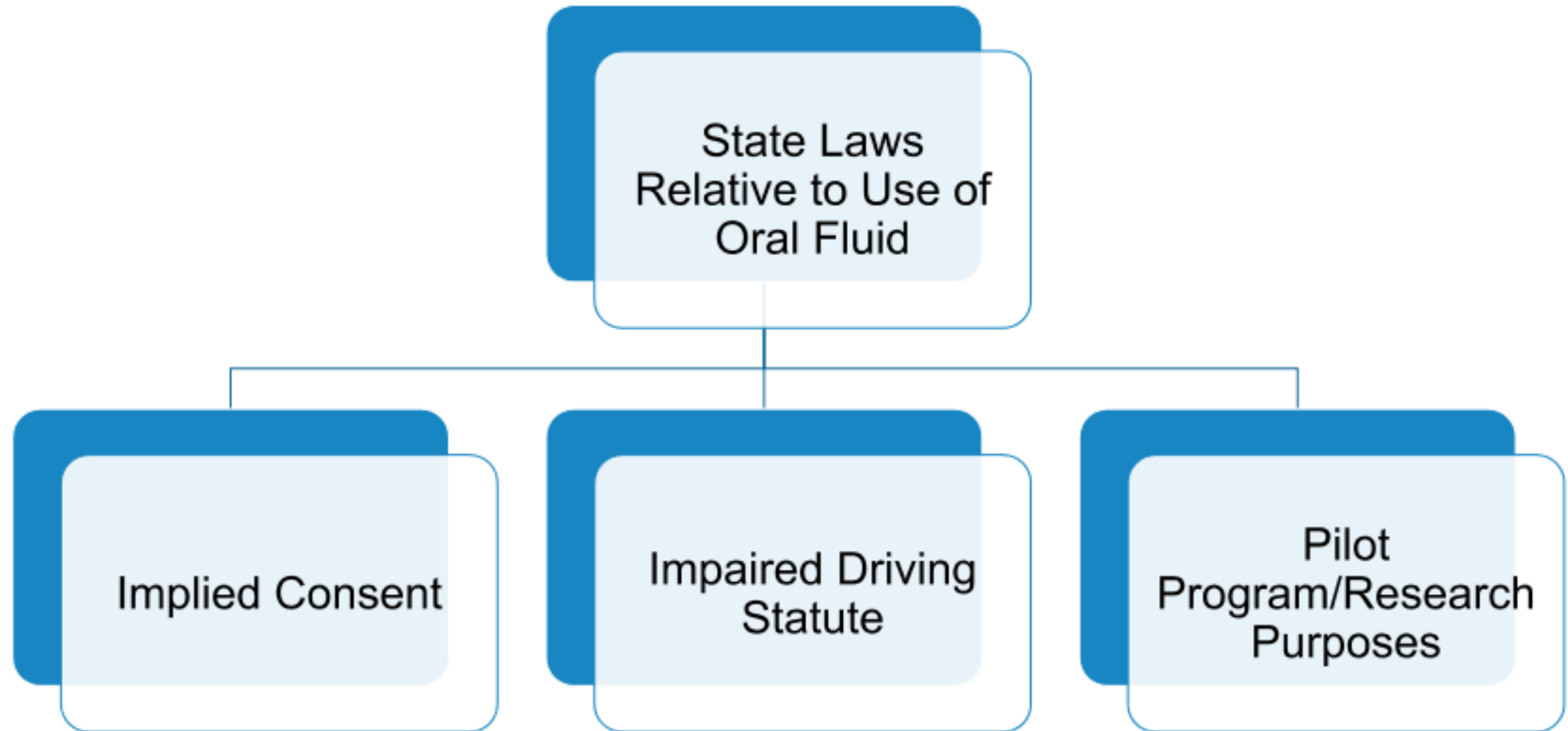
**Roadside Screening  
(Probable Cause)**



**Lab Testing  
(Evidentiary)**

## Establishing a supportive policy environment for use of oral fluid drug screening and testing in impaired driving cases is complex.

- Changes in state law
- Changes in law enforcement agency policy/practice
- Knowledge, attitudes and beliefs among judiciary
- Resources (people, time and money)



## State Law

- Implied consent laws or other statute must authorize the collection of blood and/or oral fluid specimens.

\* and \*

- Implied consent law or other statute must extend to drugs other than alcohol.

## Notes:

**Blood:** 40 states

- Exemptions in  $\geq$  eight states limit application of the law.

**Oral Fluid:** 23 states

- In practice, most of these states don't collect oral fluid specimens for use in impaired driving cases.







States that  
collect oral fluid:

**INDIANA**



Roadside screening devices used to:

- Build Probable Cause, and/or
- Determine whether or not to call for a Drug Recognition Expert.



States that  
collect oral fluid:

**MICHIGAN**



- Implied consent law does not extend to oral fluid, but exemption made for statewide pilot program.
- Only drug recognition experts collect oral fluid specimens



**States that  
collect oral fluid:**

**ALABAMA**



- Collection of oral fluid not specified by implied consent law, but impaired driving law allows for its collection.
- Statewide oral fluid drug screening at the roadside and evidentiary confirmation testing in the lab.
- Law enforcement officers collect specimens.



This just in!

## VERMONT

- Not currently collecting oral fluid.
- New legislation established a lab-based program (evidentiary), not a roadside program (screening).
- There's one big problem...



## State Law: Complicating Factors

- Loopholes/Exemptions.
- Expect loopholes/exemptions (just like those we see for blood) as authorization of oral fluid collection expands.
- Law makers do not typically understand complexity of establishing oral fluid drug screening/testing programs for impaired driving.
- Funding for program implementation.



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## Law Enforcement Agency Policy

- Researchers identified common reasons oral fluid is not collected by law enforcement officers even in states where they are authorized to do it.

## Notes:

- Existing backlog at labs
- Scientific uncertainty and reliability of roadside oral fluid devices and admissibility of results in court.
- Law enforcement agency policy that BAC  $\geq$  .08 is sufficient for arrest/conviction such that drug screening/testing is unnecessary.





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- Changes in law enforcement agency policy/practice
- Knowledge, attitudes and beliefs among judiciary
- Resources (people, time and money)

## Law Enforcement Agency Perspective on Use of Oral Fluid to Detect Drugs:

**OHIO**



- Priority is to double down on police training (back to the basics).
- Lack of confidence in oral fluid roadside screening devices.
- High degree of interest in collection of oral fluid for evidentiary testing in labs.



## Strategies to Boost Use of Oral Fluid

- Significant education effort within states on strengths and limitations of use of oral fluid for:
  - Roadside screening
  - Lab testing
- Facilitate **diverse coalition** of key players to help advance use of oral fluid to meet the needs w/in that state, and to close loopholes.
- Coalition to advocate for amendments to state law (if needed) and shift in law enforcement agency policy.
- Align incentives for law enforcement agencies to pursue drug testing even when BAC  $\geq$  .08
- Articulate the ROI in terms of public health/safety of better/faster identification of drugs other than alcohol in impaired driving cases.



# Enhancing Drugged Driving Data: State-Level Recommendations

This report presents the results of state-by-state analysis identifying the specific legislative, regulatory and/or resource changes required for states to align with recommended policies and practices.

December 2019

FULL REPORT PDF

FACT SHEET PDF

APPENDICES

ALABAMA: Laws and Policies to Improve Data on Drugged Driving	
RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
<p><b>1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;</b></p>	<p>The implied consent law applies primarily to alcohol only. In cases of crash death, implied consent can be used to test for alcohol, amphetamines, opiates, and other drugs. If drugs are suspected, tests for them require a search warrant or consent. A search warrant is required for a blood test, but not for an oral fluid test.</p> <p><b>Identify barriers to including drug impairment in implied consent law:</b></p> <ul style="list-style-type: none"> <li>• Changes must be made legislatively</li> <li>• Mistrust of law enforcement and prosecutors</li> <li>• Misunderstanding of how other drugs impair differently than alcohol</li> </ul> <p><b>Action Steps:</b></p> <ul style="list-style-type: none"> <li>• Submit a bill proposal</li> <li>• Education programs &amp; PSAs needed for general public and decision makers</li> </ul> <p><b>Comments:</b> Currently, the majority of our implied consent laws only apply to alcohol. In those DUI cases unless there is a crash and a serious injury/death crash cases, we can only utilize implied consent to look for alcohol. Any other drug that is suspected to be on board, the LEO has to get consent.</p>
<p><b>1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;</b></p>	<p>LEOs are authorized to collect a specimen or specimens to conduct multiple blood and/or oral fluid.</p> <p><b>Comments:</b> Although allowed by law, the option to collect a urine sample has been discontinued in Alabama's well-developed Oral Fluid Pilot Program recently developed specimen collection kits for blood collection and an oral fluid collection device.</p>
<p><b>1c. Implied consent laws should not permit suspects to choose the type of test(s).</b></p>	<p>LEOs choose the type of test used. Suspects can request a blood test, but by LEO.</p> <p><b>Identify barriers to changing the law to prohibit suspects from choosing the type of test:</b></p> <ul style="list-style-type: none"> <li>• Case law as it relates to invasiveness affects how we can change these laws</li> </ul> <p><b>Action Steps:</b></p> <ul style="list-style-type: none"> <li>• Develop new technologies that are not invasive.</li> </ul>
<p><b>2. Authorize LEOs to collect and test specimens for drugs on all DUI/DUID arrestees with probable cause (and with a warrant for a blood test).</b></p>	<p>LEOs are authorized to test for drugs via blood, urine and other bodily substances if impairment is suspected. <i>Ala. Code § 32-5A-194</i> Via policy, the option to collect a urine sample has been discontinued in the specimen collection kits and replaced with a blood collection device.</p>



Enhancing Drugged Driving Data: State-Level Recommendations

December 2019

Looking Ahead to  
2021...



### New Study

National survey of motorists.

Risky behaviors among drivers who report recent use of alcohol, other drugs, both or neither while behind the wheel.



# Using Oral Fluid to Detect Drugs

State-of-the-States

Thank you!

Jake Nelson

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## Q&A

- If you have a question, please type it in the chatbox now
- Please mention if the question is for a specific speaker





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Questions?

Contact

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