



Enhancing Drugged Driving Data: State-Level Recommendations – *Appendices*

December 2019

Appendix A: National At-a-Glance Chart: Alignment with Expert Panel Recommendations

National Overview Chart: Alignment with Recommended Laws & Policies											
State*	1a	1b	1c	2	3a	3b	4a	4b	5	6	7
	Implied Consent for Drugs: Oral Fluid and/or Blood	Implied Consent: Multiple Tests	Implied Consent: Prohibit Suspect Choice of Test(s)	Authorize & Encourage Testing of all DUID Arrestees	Test/Report on Surviving Drivers: Fatal/Serious Crashes		Mandate Test/Report on Fatality Injured Drivers		Distinguish Alcohol & Drug Offenses Separately in Data	Refusal Sanctions as Severe as First Offense	Usage of Electronic Warrants to Collect Specimens
					Test	Report	Test	Report			
AL	●	●	●	●	●				●		
AZ	●	●	●	●	●				●	●	●
AR		●	●	●	●	●	●	●	●	●	●
CA	●	●	●	●	●		●	●	●	●	●
CO	●	●	●	●	●		●	●		●	●
CT	●	●	●	●	●		●			●	
DC	●	●	●	●	●		●	●	●	●	●
DE	●	●	●	●	●		●			●	●
FL	●	●	●	●	●					●	●
GA	●	●	●	●	●					●	
HI	●	●		●	●					●	
ID	●	●	●	●	●		●	●		●	
IL	●	●	●	●	●	●	●		●	●	●
IN	●	●	●	●	●		●		●	●	●
IA	●	●		●	●				●	●	
KS	●	●	●	●	●			●	●	●	●
LA	●	●	●	●	●		●	●		●	●
ME	●	●	●	●	●		●		●	●	
MD	●	●	●	●	●	●	●		●	●	●
MA				●				●	●		
MI	●	●	●	●	●		●	●	●	●	●
MN	●	●	●	●	●	●	●	●	●	●	●
MS	●			●	●				●		
MO	●	●	●	●	●		●	●	●	●	●
MT	●	●	●	●	●	●	●	●	●	●	●
NE	●	●	●	●	●	●		●		●	●
NV	●	●	●	●	●	●	●	●	●	●	●
NJ			●	●	●		●	●		●	●
NM	●	●	●	●	●			●		●	
NC	●	●	●	●	●		●			●	
ND	●		●	●	●					●	●
OH	●	●	●	●	●		●	●	●	●	●
OK	●	●	●	●	●				●	●	●
OR		●	●	●	●		●	●		●	●
PA	●	●	●	●	●		●	●	●	●	●
RI	●	●	●	●	●		●		●	●	
TN	●	●	●	●	●		●	●	●	●	●
TX	●	●	●	●	●					●	●
UT	●	●	●	●	●					●	●
VT	●	●	●	●	●	●	●		●	●	●
VA	●	●	●	●	●				●	●	
WA		●	●	●	●	●	●				●
WV	●	●	●	●	●			●	●		
WI	●	●	●	●	●		●	●		●	●
WY	●	●	●	●	●				●		●

LEGEND: ● Law or Policy Aligned with Recommendation ● Law or Policy Partially Aligned with Recommendation

*AK, KY, NH, NY, SC, SD did not participate

Appendix B: State-by-State Charts with Barriers and Action Plans

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ALABAMA: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law authorizes the collection of a specimen or specimens for multiple tests. **(1b)**
- + LEOs determines the type of testing. **(1c)**
- + LEOs are authorized to collect and test specimens for drugs with probable cause and a warrant for a blood test. **(2)**

Partially aligned with recommendations:

- o The implied consent law applies to drugs only in cases of crashes involving injury or death. **(1a)**
- o State law allows drug testing of surviving drivers involved in fatal and serious injury crashes but only for the presence of alcohol, amphetamines, cannabis, or opiates. **(3a)**
- o The ability to discriminate between DUI-alcohol and DUI-drugs is limited to the state citation database, which is not universally used and the data is not always accurate. **(5)**

Not aligned with recommendations:

- There is no policy related to reporting the drug test results from surviving drivers involved in a serious injury or fatal crash. The available drug test results are maintained in the Department of Forensic Sciences database. **(3b)**
- State law allows but does not mandate drug testing of fatally injured drivers for the presence of alcohol, amphetamines, cannabis, or opiates. **(4a)**
- There is no law or policy mandating the reporting of drug test results for fatally injured drivers to a central database. Available drug test results are maintained by the Alabama Department of Forensic Science and reported to FARS. **(4b)**
- There is no administrative sanction for drug test refusal. **(6)**
- There is currently no law or policy in effect regarding electronic warrants. **(7)**

Notable Findings:

The state's implied consent laws apply primarily to alcohol. Blood tests can only be compelled in DUI cases involving a crash and a serious physical injury or death. In those cases, implied consent laws only authorize testing for alcohol, amphetamines, opiates, THC. LEOs must obtain a search warrant or get consent to test for additional drug types. **(1)**

Alabama is the first state to offer a statewide oral fluid drug testing program at the state crime lab level. The program offers drug screening at the roadside and evidentiary confirmation testing in the lab. They have validated three commercial roadside oral fluid collection devices. With the move to oral fluid testing, they have discontinued the use of urine testing. In the current phase of the program, law enforcement collects both oral fluid and blood (with warrant) for confirmation tests. The goal is to collect several years of data before shifting to oral fluid confirmation only. **(1)**



ALABAMA: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>The implied consent law applies primarily to alcohol only. In cases of crashes involving injury or death, implied consent can be used to test for alcohol, amphetamines, opiates, or THC. If other drugs are suspected, tests for them require a search warrant or consent. Ala. Code § 32-5-192</p> <p>Identify barriers to including drug impairment in implied consent law:</p> <ul style="list-style-type: none">• Changes must be made legislatively• Mistrust of law enforcement and prosecutors• Misunderstanding of how other drugs impair differently than alcohol <p>Action Steps:</p> <ul style="list-style-type: none">• Submit a bill proposal• Education programs & PSAs needed for general public and decision makers <p>Comments: Currently, the majority of our implied consent laws only apply to alcohol. We cannot compel the giving of blood in those DUI cases unless there is a crash and a serious physical injury or death. In those injury/death crash cases, we can only utilize implied consent to look for alcohol, amphetamines, opiates, THC. Any other drug that is suspected to be on board, the LEO has to obtain a search warrant or get consent.</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>LEOs are authorized to collect a specimen or specimens to conduct multiple tests to include blood and/or oral fluid.</p> <p>Comments: Although allowed by law, the option to collect a urine sample has been discontinued. Alabama's well-developed Oral Fluid Pilot Program recently developed specimen collection kits to include two vials for blood collection and an oral fluid collection device.</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>LEOs choose the type of test used. Suspects can request a blood test, but only after test selected by LEO.</p> <p>Identify barriers to changing the law to prohibit suspects from choosing the type of test(s):</p> <ul style="list-style-type: none">• Case law as it relates to invasiveness affects how we can change these laws. <p>Action Steps:</p> <ul style="list-style-type: none">• Develop new technologies that are not invasive.
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).	<p>LEOs are authorized to test for drugs via blood, urine and other bodily substances when drug impairment is suspected. Ala. Code § 32-5A-194 Via policy, the option to collect a urine sample has been discontinued in the specimen collection kits and replaced with an oral fluid sample collection device.</p>

	<p>Identify barriers to increasing the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none"> • Long timeframes to write and obtain search warrants • Lack of available hospital/doctors/RNs to draw blood in rural areas • Current implied consent laws only apply to alcohol. • Toxicology instrumentation (Automated Extraction equipment LC/MS/MS instruments) • Limited size of Toxicology staff <p>Action Steps:</p> <ul style="list-style-type: none"> • Develop electronic search warrant system • Update and broaden implied consent laws <p>Oral Fluid Pilot Test Program: Alabama is the first state to offer a statewide oral fluid drug testing program at the state crime lab level. The program offers drug screening at the roadside and evidentiary confirmation testing in the lab. They have validated three commercial roadside oral fluid collection devices: Drager Drug Test 500, Alere DDS-2, Randox Multi-Stat. Further, the lab has validated the confirmation methods for oral fluid using the Quantisal collection device. The oral fluid devices test for a variety of drug categories (device dependent).</p> <p>After an officer conducts the SFSTs for a suspected DUI/DUID case and has probable cause to suspect drug impairment, he/she has the option to use a roadside device to establish further PC and possibly confirm the drug responsible for impairment. A DRE is called in, if available. After arrest, the oral fluid confirmation sample is taken asap, followed by a blood test.</p> <p>In the current phase of the program, law enforcement collects oral fluid and blood (with warrant) for confirmation tests. The goal is to collect several years of data before shifting to OF confirmation only. The lab currently has 30 DUI cases for which they have both oral fluid and blood confirmation tests and a DRE evaluation; a journal publication is expected in early 2020. Since they have recently rolled out specimen collection kits with an oral fluid confirmation collection device and two vials for blood collection for statewide use, they will have significantly more data in the coming months.</p> <p>The pilot program is led by Alabama's Chief Toxicologist, Curt Harper, who also serves on the Society of Forensic Toxicologists (SOFT) Oral Fluid Committee. The SOFT OF committee, using the AL pilot program example, hopes to lay out the criteria for other states who want to do a pilot. The committee has developed an FAQ document related to using oral fluid testing for suspected drug impairment. http://soft-tox.org/files/2018%20OF_FAQ_FINAL.pdf</p>
<p>3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there</p>	<p>State law allows drug testing of <i>surviving drivers</i> involved in fatal and serious injury crashes for the presence of alcohol, amphetamines, cannabis, or opiates. Ala. Code § 32-5-200 There is no law or policy regarding the reporting of test results, but in practice the available drug test results are maintained in the Department of Forensic Sciences database.</p>

<p>is probable cause that impairment was a factor.</p>	<p>Identify barriers to a law or policy to increase drug tests for surviving drivers involved in a crash resulting in death or serious injury (with probable cause and warrant as needed)</p> <ul style="list-style-type: none"> • The investigating law enforcement agency and the District Attorney will determine if a crime has been committed, then take the appropriate steps. • Expand testing; do not limit to amphetamines, cannabis, and opiates. • The Alabama Department of Forensic Sciences does keep records on drug tests. • The Toxicology Discipline chief reports the drug test results to FARS annually.
<p>4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.</p>	<p>State law allows drug testing of fatally injured drivers for the presence of alcohol, amphetamines, cannabis, or opiates. <i>Ala. Code § 32-5-200</i></p> <p>Identify barriers to drug testing all fatally injured drivers?</p> <ul style="list-style-type: none"> • Limited medical resources in rural areas • Drivers flee the scene • Law change <p>Action Steps:</p> <ul style="list-style-type: none"> • Expand scope of testing. Do not limit to amphetamines, cannabis, opiates.
<p>4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.</p>	<p>Although there is no law mandating the reporting of drug test results for fatally injured drivers, the available drug test results are maintained by the Alabama Department of Forensic Science and reported to FARS.</p>
<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data.</p> <p><i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>The state electronic citation system distinguishes between DUI and DUID citations, however it is not used by all law enforcement agencies and some data entry is incorrect. The AL Department of Forensic Science database can sort DUI-alcohol vs. DUID cases.</p> <p>Identify barriers to updating data collection and reporting systems to distinguish among impaired driving offenses for DUI, DUID, and alcohol and drugs combined:</p> <ul style="list-style-type: none"> • Not every agency utilizes the state electronic citation system. • Even those agencies that do use the state system do not enter the information in correctly. <p>Action Steps:</p> <ul style="list-style-type: none"> • Better training for clerks • Mandate the use of the state system.
<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p>	<p>Because the implied consent law applies to alcohol only, there is no license sanction for a drug test refusal. DUID first offenders receive a 3-month license suspension. <i>Ala. Code § 32-5A-191</i></p> <p>Identify barriers to adding a license sanction to the law for a drug test refusal that is comparable to that for alcohol:</p> <ul style="list-style-type: none"> • Outdated implied consent laws

	<p>Action Steps:</p> <ul style="list-style-type: none"> • Update implied consent laws
<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>There is no state law or policy regarding the authorization of electronic warrants.</p> <p>Identify barriers to the use of electronic warrants to avoid delays when warrants are necessary:</p> <ul style="list-style-type: none"> • Lack of money to develop and implement a secure system • Lack of interest by decision makers <p>Action Steps:</p> <ul style="list-style-type: none"> • Legislatively mandate the creation of a secure e-warrant system.



ARIZONA: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law extends to drugs and supports the collection of blood, urine, and other bodily substances. The law allows for oral fluid testing, but this is not done in practice. LEO's test blood in at least 99% of DUID cases. **(1a)**
- + The implied consent law authorizes the collection of a specimen or specimens for multiple tests. **(1b)**
- + LEOs choose the type of test. **(1c)**
- + LEOs are authorized to collect and test specimens for DUI/DUID arrestees with probable cause and warrant for a blood test. **(2)**
- + State law allows for the testing of surviving drivers involved in a crash resulting in death or serious injury when there is probable cause to suspect impairment. **(3a)**
- + Impaired driving cases for alcohol and drugs are recorded separately in the Governor's Highway Safety Office proprietary system. **(5)**
- + The administrative license suspension penalty is the same for first time drug test refusals and for first DUID offenders. **(6)**
- + Electronic warrants are used to reduce delay with a statewide electronic warrant system. **(7)**

Not aligned with recommendations:

- There is no policy related to reporting the test results from surviving drivers involved in serious injury and fatal crashes. **(3b)**
- There are no laws or policies related to mandating drug testing fatally injured drivers. **(4a)**
- There are no laws or policies requiring the reporting of drug test results for fatally injured drivers. **(4b)**

Notable Findings:

Arizona has a strong law enforcement phlebotomy program. Blood is tested in at least 99% of DUID cases. They do not feel any need to collect oral fluid. Arizona labs reportedly test for more drugs than most other states. **(2)**

Refusal rates in Arizona are reportedly lower than the national average due to the fact that the word has spread that a warrant for a blood draw will be executed by law enforcement in refusal cases. **(6)**

The electronic warrant system has expanded statewide. E-warrants are available 24 hours a day and take an average of 15 minutes or less to get in a DUI case if one is needed - no matter where the officer is in the state. There has been extensive training statewide for LEOs on the use of e-warrants. **(7)**



ARIZONA: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid.	<p>In Arizona, the implied consent law extends to drugs and supports the collection of blood, urine, and other bodily substances. The law allows for oral fluid testing, but this is not done in practice. <i>Ariz. Rev. Stat. Ann. § 28-1321</i></p> <p>Identify barriers to the use of oral fluid testing when drug impairment is suspected.</p> <ul style="list-style-type: none">• No real barriers.• We choose to collect blood instead. <p>Comments: Due to leadership from the Governor's Office of Highway Safety, Arizona has very strong law enforcement phlebotomy and electronic search warrant programs. Accordingly, unlike most states, we collect blood and have it tested in at least 99% of our DUI drug cases. Even in cases where the DUI suspect refuses the blood draw, it only takes an officer minutes to get a warrant and then one of our law enforcement phlebotomists collects the blood. We do not have the need to collect oral fluid that other states may have.</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests.	<p>The implied consent law in Arizona authorizes the collection of a specimen or specimens for multiple tests when drug impairment is suspected.</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>The implied consent law provides that the test or tests will be chosen by the law enforcement agency. Accordingly, DUI suspects are not permitted to choose they type of test that will be used.</p>
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).	<p>In Arizona, LEOs are authorized to collect and test specimens for DUI/DUID arrestees with probable cause. <i>Ariz. Rev. Stat. Ann. § 28-1381; Ariz. Rev. Stat. Ann. § 28-1321</i></p> <p>Comments: Arizona has very strong law enforcement phlebotomy and electronic search warrant programs. Accordingly, unlike most states, we collect blood and have it tested in at least 99% of our DUI drug cases. Even if the DUI suspect refuses the blood draw, it only takes minutes to get a warrant and then our law enforcement phlebotomists collect the blood. Our crime labs test blood for drugs. Due to Governor's Office of Highway Safety support, Arizona labs test for more drugs than most other states.</p>
3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.	<p>Any driver suspected of drug impairment can be tested with probable cause under Arizona's DUI/DUID and Implied Consent statutes. <i>Ariz. Rev. Stat. Ann. § 28-1381; Ariz. Rev. Stat. Ann. § 28-1321</i> Case law prevents testing surviving drivers if there is no probable cause. There is no law related specifically to drug testing surviving drivers involved in a crash resulting in death or serious injury.</p> <p>Identify barriers to a law or policy to conduct drug testing on surviving drivers in crashes resulting in death or serious injury (include barriers to getting drug test results reported to a central state database):</p>

	<ul style="list-style-type: none"> For surviving drivers for whom probable cause of impairment exists, there are no barriers. Arizona law enforcement officers see to it that this is done. Usually they automatically get a warrant, a few agencies will try consent first. If there is only probable cause that the fatally injured driver is impaired and no probable cause that the surviving driver is impaired, our case law prevents us from obtaining a blood sample. <i>See for example, State v. Quinn</i>, 218 Ariz. 66 (App. 2008). <p>Action Steps:</p> <ul style="list-style-type: none"> None. We already do what our law allows.
4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all <i>fatally</i> injured drivers.	<p>Arizona law and policies do not mandate drug testing for all fatally injured drivers.</p> <p>Identify barriers to enacting a law or implementing policies mandating testing for all fatally injured drivers.</p> <ul style="list-style-type: none"> No legislative mandate in statute. <p>Action Steps:</p> <ul style="list-style-type: none"> Legislative bill
4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.	<p>There are no state law or policies in Arizona mandating the reporting of drug test results for all fatally injured drivers.</p> <p>Identify barriers to a law or policy in Arizona mandating the reporting of drug test results to a central state database for all fatally injured drivers:</p> <ul style="list-style-type: none"> No legislative mandate.
<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data.</p> <p><i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>Alcohol and drug impaired driving cases are reported separately for crashes. The Governor's Highway Safety Office has its own proprietary system that works well to record alcohol and drug cases separately.</p>
6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe for a first DUID offense.	<p>The administrative penalty in Arizona is the same for first DUID test refusers and first DUID offenders. Both receive a 12-month license suspension. <i>Ariz. Rev. Stat. Ann. § 28-1321</i></p> <p>Comments: Refusal rates in Arizona are much lower than the national average. Word has spread that any time a DUI suspect refuses a blood test, the officer will get a warrant and the blood will be collected and tested.</p>

<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>In Arizona, they have a statewide email warrant system.</p> <p>Comments: Due to efforts by the Arizona Governor's Office of Highway Safety, the email warrant system has expanded state-wide. These e-warrants are available 24 hours a day. Accordingly, it now takes an average of 15 minutes or less to get a warrant in a DUI case if one is needed - no matter where the officer is in the state. So far since the e-warrant system went live on 8/1/18, a total of 3,824 officers have been trained in Arizona from over 56 law enforcement agencies.</p>
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ARKANSAS: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law does not preclude the collection of a specimen or specimens for multiple tests. **(1b)**
- + The implied consent law does not permit suspects to choose the type of test(s). **(1c)**
- + LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause to suspect drug impairment and a warrant for a blood draw. **(2)**
- + State law mandates testing surviving drivers involved in crashes resulting in death or serious injury, when there is probable cause to suspect impairment. A warrant is required for a blood draw. **(3a)**
- + Reporting the drug test results for surviving drivers is required. **(3b)**
- + State law mandates drug test fatally injured drivers. **(4a)**
- + State law mandates the reporting of drug test results for fatally-injured drivers. **(4b)**
- + State databases can distinguish among impaired driving offenses for alcohol and/or drugs. **(5)**
- + The administrative license suspension penalty for first DUID refusal is the same for first DUID offenders. **(6)**

Partially aligned with recommendations:

- o Electronic warrants are in use in as many jurisdictions as is possible and practical. **(7)**

Not aligned with recommendations:

- The implied consent law extends to drugs and authorizes the collection of breath, saliva, and urine, but not blood. Saliva is not collected. **(1a)**

Notable Findings:

SCOTUS has recently concluded that when a driver is unconscious and cannot be given a breath test, the exigent-circumstances doctrine generally permits a blood test without a warrant. **(3a)**



ARKANSAS: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>The implied consent law extends to drugs and supports the collection of breath, saliva, and urine. Ark. Code Ann. § 5-65-205 8/1/17, blood collection was removed from the implied consent law.</p> <p>Oral fluid testing is allowed by law but not done in practice. What are the barriers to collecting oral fluid when drugged driving is suspected?</p> <ul style="list-style-type: none">• Time, training, legal, and financial restraints exist with respect to testing oral fluid, as well as breath, hair, urine, or blood.• LEO training and manpower is also an issue.• Alcohol is still the focus in impaired driving cases. <p>Action Steps:</p> <ul style="list-style-type: none">• A larger study of the various jurisdictions is needed.• Training elements should be consulted. <p>Comments: Blood was removed from the list of authorized tests 8/1/2017 as a preemptive measure. This was a result of changes were made to Arkansas Implied Consent laws to comply with the Constitution after the US Supreme Court decided Birchfield v. North Dakota. We knew the decision made an aspect of our Implied Consent law unconstitutional.</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The law provides for 1 or more tests to be done. LEO's choose the test they wish to utilize under Implied Consent. Those tests are breath, saliva, or urine. Ark. Code Ann. § 5-65-202 A search warrant must be obtained for blood.</p> <p>What are the barriers to collecting multiple specimens?</p> <ul style="list-style-type: none">• Logistical issues prevent the testing of multiple samples. <p>Action Steps:</p> <ul style="list-style-type: none">• LEO training elements and jurisdictions should be consulted to address their individual policies. <p>Comments: Challenges to the 4th amendment constitutionality of saliva tests appear to be being made.</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>LEO's choose the test they wish to utilize under Implied Consent. Ark. Code Ann. § 5-65-202</p> <p>Comments: A variety of factors go into the officers' decision. Usually breath tests are found most useful for suspected alcohol impairment. ARIDE/DRE observations in conjunction with obtaining a search warrant for blood are most helpful for drug/poly cases. This has more to do with LEO, Crime Lab, and local concerns.</p>

<p>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).</p>	<p>LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause (and with a warrant for a blood test.) <i>Ark. Code Ann. § 5-65-102; Ark. Code Ann. 5-65-103</i></p> <p>Identify barriers to <u>increasing</u> the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none"> • Training requirements for individuals to perform procedures such as blood draws. • Issues with practicality of increasing the testing loads on labs. • Blood drawn improperly may not be admissible.
<p>3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.</p>	<p>State law mandates testing surviving drivers involved in crashes resulting in death or serious physical injury and reporting the test results. This statute only applies to breath, saliva, or urine. Blood draws can only be done pursuant to a warrant. <i>Ark. Code Ann. § 5-65-208</i></p> <p>Comments: SCOTUS has recently concluded that when a driver is unconscious and cannot be given a breath test, the exigent-circumstances doctrine generally permits a blood test without a warrant. This would likely apply to some situations envisioned by 5-65-208.</p>
<p>4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.</p>	<p>State law mandates testing drivers who are fatally injured in crashes. <i>Ark. Code Ann. § 5-65-208</i></p>
<p>4b. Enact laws and/or implement policies mandating reporting of drug test results for all fatally injured drivers.</p>	<p>State law mandates reporting the drug results on fatally injured drivers to the state FARS database. <i>Ark. Code Ann. § 5-65-208</i></p>
<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data.</p> <p><i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>Although the law does not distinguish between DUI-alcohol and DUI-drugs, state data systems (arrest, crash, tox results) do distinguish between impairing substances.</p>
<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p>	<p>The license suspension penalty is 6 months for both first DUID refusal and first DUID offense. <i>Ark. Code Ann. § 5-65-205 - Refusal</i> <i>Ark. Code Ann. § 5-65-104 - Conviction</i></p>
<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>There is no state law related to electronic warrants, but they are used in as many jurisdictions as it is possible and practical.</p>

	Comments: Individual departments and jurisdictions are better situated to address their individual policies and financial situations. Technology exists and is utilized to expedite warrants.
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CALIFORNIA: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + In California, the implied consent law does extend to drugs and supports the collection of blood and urine, but not oral fluid. **(1a)**
- + The implied consent law authorizes the collection of a specimen or specimens for multiple tests when drug impairment is suspected. **(1b)**
- + Drivers suspected of DUID do not have a choice of tests; they must complete a blood test. **(1c)**
- + LEOs are authorized to collect and test specimens for drugs for DUI arrestees with probable cause and a warrant for a blood test. **(2)**
- + State law allows for the testing of surviving drivers involved in a crash resulting in death or serious injury when there is probable cause to suspect impairment. **(3a)**
- + As of 2014, impaired driving laws distinguish between drug impaired driving, alcohol impaired driving, or a combination of drugs and alcohol. They can be distinguished in the crash database and the CA Department of Justice database. **(5)**
- + The administrative penalty in California is more severe for first-time DUID test refusers than for first-time DUID offenders. **(6)**

Partially aligned with recommendations:

- o Electronic warrants are used in many jurisdictions. It is a local issue left to the discretions of counties. **(7)**

Not aligned with recommendations:

- There is no policy related to reporting the drug test results from surviving drivers involved in a serious injury or fatal crash. The results are available via individual counties and crime labs. **(3b)**
- The law does not mandate drug testing in all fatalities, although county coroners are required to test for alcohol levels and have the discretion to test for drugs. **(4a)**
- There is no mandate or policy to report drug test results for all fatally injured drivers. **(4b)**

Notable Findings:

In oral fluid pilot studies, the testing devices have been primarily used for screening, as opposed to implied consent testing. **(1a)**

Drug testing fatally injured drivers is considered to be a local issue left to the discretion of each individual county and crime laboratory, which may vary based on available resources and equipment. California does not currently have a statewide mandate for drug testing all fatalities. **(4a)**



CALIFORNIA: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In California, the implied consent law does extend to drugs and supports the collection of blood and urine, but not oral fluid. <i>Cal. Veh. Code § 23612</i></p> <p>Comments: Some counties have implemented pilot programs to test suspected drugged drivers using oral fluid testing devices. In these studies, the oral fluid testing devices have been primarily used for screening, as opposed to implied consent testing.</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The implied consent law in California authorizes the collection of a specimen or specimens for multiple tests when drug impairment is suspected. <i>Cal. Veh. Code § 23612</i></p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>The law allows a person arrested for impaired driving the option of a blood or breath test and, in some cases, a urine test (e.g., when blood and breath testing are unavailable). However, a person suspected of drug influence must complete a blood test, for purposes of determining the drug content of their blood. <i>Cal. Veh. Code § 23612</i></p>
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).	<p>Statutes allow for the arrest of impaired drivers <i>Cal. Veh. Code § 23152 and 23153</i>, the testing of specimens for drugs <i>Cal. Veh. Code § 23612</i> and the seeking of a warrant in refusal cases. <i>California Penal Code § 1524</i></p>
3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in serious injury crashes (and report results) when there is probable cause that impairment was a factor.	<p>Although State law in California authorizes drug testing for any driver, in any crash, in which there is probable cause to suspect that the driver is under the influence of drugs, it does not address the testing of surviving drivers not suspected of impairment who are involved in a crash resulting in death or serious injury. <i>Cal. Veh. Code § 23612</i></p> <p>The drug test results on surviving drivers are not available in a central state database. The results are available via individual counties and crime labs.</p>
4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.	<p>State law in California requires the coroner to take blood and urine samples from any person deceased in a motor vehicle crash and perform chemical tests to determine and report the <u>alcohol</u> content. The law also states, “...the coroner may perform other chemical tests...as deemed appropriate.” Although drug testing is not mandated, some county coroners also conduct drug testing of the specimens obtained. <i>Cal. Government Code § 27491.25</i></p> <p>Comments: Drug testing of all fatally injured drivers is a local issue left to the discretion of each individual county and crime laboratory, which may vary based on available resources and equipment. California does not currently have a statewide mandate for drug testing in all fatalities.</p>

<p>4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.</p>	<p>There is no mandate to report drug test results for all fatally injured drivers in California.</p>
<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data. <i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>Impaired driving laws were amended in 2014 to distinguish between drug impaired driving, alcohol impaired driving, or a combination of drugs and alcohol. They can be distinguished separately in the crash database. <i>Cal. Veh. Code § 23152 and 23153</i></p>
<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p>	<p>The administrative penalty in California is more severe for first-time DUID test refusers who receive a one-year license suspension. <i>Cal. Veh. Code § 13353</i> First-time DUID offenders receive a six-month license suspension. <i>Cal. Veh. Code § 13352</i></p>
<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>Although currently in use in many jurisdictions throughout California, the use of electronic warrants is a local issue left to the discretion of each individual county. California does not currently have a statewide electronic warrant system for collecting specimens during impaired driving investigations.</p>



COLORADO: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The expressed consent law does extend to impairment by drugs and supports the collection of breath, blood, saliva, and urine, although in practice urine is rarely collected and saliva is not collected. Note there is no “DUID” offense in Colorado. **(1a)**
- + The expressed consent law authorizes the collection of a specimen or specimens for multiple tests. **(1b)**
- + LEOs determines the type of testing but only if drug impairment is suspected. **(1c)**
- + LEOs are authorized to collect and test specimens for drugs with probable cause and a warrant for a blood test. **(2)**
- + State law allows testing surviving drivers involved in crashes resulting in death or serious injury, when there is probable cause to suspect drug impairment. **(3a)**
- + State law mandates drug testing a driver fatally injured in a crash. **(4a)**
- + State law mandates reporting the drug test results for a driver fatally injured in a crash. **(4b)**
- + The administrative license suspension penalty for a first DUI drug test refusal is more severe than for a first DUI/DWAI offense. **(6)**

Partially aligned with recommendations:

- Some judicial districts use electronic warrants to reduce delay in collecting specimens in some cases. **(7)**

Not aligned with recommendations:

- There is no policy related to reporting the drug test results from surviving drivers involved in a serious injury or fatal crash. **(3b)**
- DUI/DWAI by alcohol and DUI/DWAI by drugs are not recorded separately in a state database. This distinction is not possible given that there is no separate “DUID” offense in Colorado. **(5)**

Notable findings:

The Expressed Consent Law in Colorado authorizes an involuntary blood draw with a search warrant when there is probable cause to suspect drug impairment for certain listed crimes (criminally negligent homicide, vehicular homicide-DUI, 3rd degree assault or vehicular assault-DUI). **(3a)**



COLORADO: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In Colorado, the Expressed Consent Law applies to all DUI/Driving While Ability Impaired (DWAI) cases which includes impairment by drugs. C.R.S.A. § 42-4-1301.1 (Note there is no “DUID” offense in Colorado.) The collection of breath, blood, saliva, urine is allowed although in practice urine is rarely collected and saliva is not collected.</p> <p>Identify barriers to the collection of oral fluid/saliva:</p> <ul style="list-style-type: none">• No toxicology support for analysis.• No case law referencing admissibility of results in court.• No scientific reliability to allow admissibility. <p>Comments: Colorado State Patrol uses oral fluid screening test devices as part of a pilot, although participation has not been high.</p> <p>The preliminary breath test statute does not include oral fluid tests. There isn't a statute prohibiting it, but scientists here would likely not support the use of rapid screening devices. Saliva is in the Expressed Consent web site, but there is no toxicology support and no case law referencing admissibility of results in court.</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The Expressed Consent Law in Colorado authorizes the collection of a specimen or specimens for multiple tests.</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>Drivers in Colorado may select blood or breath but not if there is probable cause to suspect drug impairment. C.R.S.A. § 42-4-1301.1 (2) (a)</p> <p>Comments: The statute is quite clear that if the officer suspect alcohol only, he must give the driver a choice of blood or breath. If drug impairment is suspected, the LEO must get a warrant for a blood draw that is involuntary or a warrant requirement exception under certain circumstances.</p> <p>Currently, only blood tests can produce useful evidentiary tests for drugs. If an arresting officer has no PC to believe that a driver is impaired by drugs, he must offer the driver a choice pursuant to Colorado's Expressed Consent law. If the driver chooses blood, the sample could be tested for drugs, but if the driver chooses breath (or refuses), an officer would have to establish PC that there was drug impairment then either get a warrant or have a warrant requirement exception to obtain a blood sample for drug testing to be possible.</p>

<p>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).</p>	<p>LEOs in Colorado are authorized to collect and test specimens when there is probable cause to suspect drug impairment. C.R.S.A. § 42-4-1301.1 A warrant is required for an involuntary blood draw.</p> <p>Identify barriers in Colorado to increasing the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none"> • More drug testing would be more expensive for LEAs and for the Colorado Bureau of Investigations Lab, most likely requiring more equipment and personnel. • Agencies must pay for kits and testing and hope to get restitution. • Availability of witnesses for court • Ability to refuse test (which is allowed constitutionally) <p>Action Steps:</p> <ul style="list-style-type: none"> • A funding source to pay for the costs of increased drug testing. • A legislative change to allow officers to apply for warrants in more cases. <p>Comments: In all cases, a blood sample would be sent to a certified lab for testing. However, each lab has its own protocols for the scope of its testing, with more comprehensive tests costing more money and taking more time. For particular drugs, such as synthetic cannabinoids, the sample may be sent to an out-of-state lab for testing. Officers may collect urine (rarely) when heroin use is suspected</p>
<p>3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.</p>	<p>The law in Colorado allows for testing surviving drivers when there is probable cause that impairment was a factor. The Expressed Consent Law in Colorado authorizes an involuntary blood draw with a search warrant when there is probable cause to suspect drug impairment for certain listed crimes (criminally negligent homicide, vehicular homicide-DUI, 3rd degree assault or vehicular assault-DUI). C.R.S.A. § 42-4-1301.1(3)</p> <p>Reporting the results is not required.</p> <p>Identify barriers to reporting the results to a central state database:</p> <ul style="list-style-type: none"> • Depending on the agency, driver privacy protection and HIPPA laws would need to be updated to allow departments to send this information.

<p>4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.</p>	<p>Colorado law does mandate testing of fatally injured drivers. (Blood and urine) C.R.S.A § 42-4-1304 The Dept. of Public Health and Environment is mandated to collect samples.</p> <p>If drug testing is not consistently done in all fatal crashes, what are the barriers to ensuring that all fatally injured drivers are drug tested?</p> <ul style="list-style-type: none"> • Reporting by the coroner is voluntary, but CDOT tries to get compliance for all fatalities. • Coroners are not medical examiners. • Cost <p>Action Steps:</p> <ul style="list-style-type: none"> • Funding
<p>4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.</p>	<p>Colorado law does mandate the reporting of test results on fatalities. C.R.S.A. § 42-4-1304</p> <p>Comments: The results are reported to FARS.</p>
<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data.</p> <p><i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>State data collection and reporting systems do not distinguish among impaired driving offenses. There is no separate “DUID” offense.</p>
<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p>	<p>In Colorado, the license suspension period for drug test refusal is 12 months versus 9 months for a conviction. Further, refusers are required to have an interlock device for two years.</p> <p>C.R.S.A. § 42-2-126</p> <p>Comments: License suspension penalty application is more complicated than stated above.</p>
<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>Some judicial districts in Colorado use electronic warrants for some cases.</p> <p>Identify barriers to increasing the use of electronic warrants to collect specimens to avoid delay:</p> <ul style="list-style-type: none"> • Some rural areas lack the IT infrastructure for electronic warrants. • Cost • Staffing <p>Action Steps:</p> <ul style="list-style-type: none"> • Funding



CONNECTICUT: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law extends to drugs and authorizes the collection of blood and urine, but not oral fluid. **(1a)**
- + The implied consent law allows the collection of a specimen or specimens for multiple tests. **(1b)**
- + The implied consent law does not permit suspects to choose the type of test(s). **(1c)**
- + LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause and a warrant for a blood test. **(2)**
- + State law requires testing surviving drivers involved in crashes resulting in death or serious injury, when there is probable cause to suspect impairment. **(3a)**
- + State law mandates drug testing for all fatally injured drivers. **(4a)**
- + The administrative license suspension penalty for first DUID refusal and first DUID offenders is the same. **(6)**

Not aligned with recommendations:

- There is no policy related to reporting the drug test results from surviving drivers involved in a serious injury or fatal crash. **(3b)**
- There is no law or policy that mandates the reporting of drug test results for fatally-injured drivers. **(4b)**
- The state's data collection and reporting systems do not distinguish among impaired-driving offenses. **(5)**
- Electronic warrants are not used. **(7)**

Notable Findings:

The barriers to oral fluid testing would depend on how it was to be implemented (e.g., for probable cause versus evidentiary). This would affect issues such as whether new legislation is necessary. **(1a)**



CONNECTICUT: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In Connecticut, the implied consent law does extend to drugs and supports the collection of blood, breath samples and urine, but not of oral fluid. C.G.S.A. § 14-227 a and b</p> <p>Identify barriers to extending the implied consent law to the collection of oral fluid: Barriers would depend on how oral fluid testing was to be implemented (e.g., for probable cause versus evidentiary). This would affect issues such as whether new legislation is necessary.</p> <ul style="list-style-type: none">• There would need to be a push from somewhere to begin consideration of oral fluid testing.• There are potential problems related to costs. <p>Action Steps: Research the ramifications of oral fluid testing, including looking at the experience of other states.</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The implied consent law authorizes the collection of a specimen or specimens for multiple tests. If drug use is suspected urine is collected in addition to breath and blood.</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>The implied consent law prohibits the choice of tests by suspects and allows the officer to choose. C.G.S.A. § 14-227b(b)</p>
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).	<p>In Connecticut, LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause, although policies and procedures are not in place to test all arrestees. C.G.S.A. § 14-227a</p> <p>Identify barriers in Connecticut to increasing the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol – BAC .08 or higher):</p> <ul style="list-style-type: none">• The cost of processing additional tests• Staffing• Lack of legislation mandating it <p>Action Steps:</p> <ul style="list-style-type: none">• A new law would have to be passed.

<p>3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.</p>	<p>The current law requires drug testing of all surviving drivers in fatal and serious crashes where there is probable cause. C.G.S.A. § 14-227c There is no state law or policy requiring reporting of results.</p> <p>Identify barriers to reporting drug test results to a central state database:</p> <ul style="list-style-type: none"> Costs and limited resources <p>Action Steps:</p> <ul style="list-style-type: none"> New legislation mandating reporting would have to be passed and implemented.
<p>4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.</p>	<p>State law requires drug testing on all fatally injured drivers. C.G.S.A § 14-227c</p> <p>Comments: Currently, there are no barriers for mandating drug testing for fatally injured drivers because C.G.S.A. § 14-227c (a) requires a blood sample for all fatally injured operators that “shall be examined for the presence and concentration of alcohol and any drug.</p>
<p>4b. Enact laws and/or implement policies mandating <u>reporting</u> of drug test results for all fatally injured drivers.</p>	<p>There is no law or policy that mandates the reporting drug test results for fatally-injured drivers.</p> <p>Identify barriers to reporting drug test results for fatally-injured drivers:</p> <ul style="list-style-type: none"> Limited technological resources Staffing <p>Action Steps:</p> <ul style="list-style-type: none"> New legislation mandating reporting would have to be passed and implemented.
<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data. <i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>The DUI/DUID statute in Connecticut does not distinguish between arrests for DUI-alcohol and DUID. C.G.S.A. § 14-227a There is no central reporting system with data that distinguishes among impaired driving offenses.</p> <p>Identify barriers to distinguishing between the types of offenses in reporting systems:</p> <ul style="list-style-type: none"> Cost Lack of personnel and resources <p>Action Steps:</p> <ul style="list-style-type: none"> There would need to be new legislation enacted to mandate reporting.
<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p>	<p>In Connecticut, the administrative penalty is the same for first DUID test refusers and first DUID offenders. Both receive a 45-day license suspension. C.G.S.A § 14-227a(g); C.G.S.A § 14-227 (h), 14-227b</p>

<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>Electronic warrants are not used in Connecticut.</p> <p>Identify barriers to the use of electronic warrants to avoid delay:</p> <ul style="list-style-type: none"> • The judicial branch has not agreed to use electronic warrants. • There currently is no law in place authorizing electronic warrants. <p>Action Steps:</p> <ul style="list-style-type: none"> • A new law would have to be passed and law enforcement and the judicial branch would need to implement the use of electronic warrants.
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DELAWARE: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law does extend to drugs and supports the collection of breath, blood, and urine, but not oral fluid. **(1a)**
- + The implied consent law authorizes the collection of a specimen or specimens for multiple tests. If drugs are suspected and the BAC is below .08, two vials of blood are taken because specimens for alcohol and drugs are tested in two different labs. **(1b)**
- + The implied consent law provides that the test or tests will be chosen by the law enforcement agency. **(1c)**
- + LEOs are authorized to collect and test specimens for DUI/DUID arrestees with probable cause. **(2)**
- + State law allows for the testing of surviving drivers involved in a crash resulting in death or serious injury when there is probable cause to suspect impairment. **(3a)**
- + State law mandates drug testing a driver fatally injured in a crash, although the statute does not create a separate authority when the death is from a fatal collision as compared to any other type untimely death. **(4a)**
- + The administrative license suspension penalty is the same for first time drug test refusals and for first DUID offenders, however license suspension requires that the arresting officer appear at the DMV hearing; this rarely occurs. **(6)**
- + Electronic warrants are used to reduce delay with a statewide electronic warrant system. **(7)**

Not aligned with recommendations:

- There are no policy related to reporting the drug test results from surviving drivers involved in a serious injury or fatal crash. **(3b)**
- There is no law or policy that requires reporting the drug results for fatally injured drivers. **(4b)**
- Alcohol and drug impaired driving cases are recorded separately only in that lab results are analyzed and kept at two different labs. **(5)**

Notable Findings:

In instances of late occurring deaths, sometimes after days or weeks in a hospital, autopsies might not be performed. In any event, toxicology reports from the autopsy would not address the issue of impairment at the time of the collision. In those instances, the victim's hospital records would be the sole source of toxicology information and testing for the victim on the date of the collision, if such testing occurred in the ordinary course of the treatment rendered. **(4a)**

To reduce drug testing delay, there are magistrates available 24-7 that an officer can appear in front of via video phone to present/swear to the electronically transmitted and/or faxed hardcopies of the warrants. **(7)**



DELAWARE: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid.	<p>In Delaware, the implied consent law does extend to drugs and supports the collection of breath, blood, and urine, however in practice, urine is very rarely collected. The law does not support the collection of oral fluid. <i>Del. Code Ann. Tit. 21 § 2740</i></p> <p>Identify barriers to the collection of oral fluid when drug impairment is suspected.</p> <ul style="list-style-type: none">• Lack of technologies that meet evidentiary grade testing• Costs and resources• Training• Division of Forensic Science (DFS) does not have methods to complete testing of oral fluids, as there is no statutory authority allowing for the collection of such samples in Delaware and there is therefore no need for them to have such methods in place. <p>Action Steps:</p> <ul style="list-style-type: none">• Change to law that allows for oral fluid collection
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests.	<p>The implied consent law in Delaware allows the collection of a specimen or specimens for multiple tests. <i>21 Del. C. 2741(b)</i> If drugs are suspected and the BAC is below .08, two vials of blood are taken because specimens for alcohol and drugs are tested in two different labs.</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>The implied consent law in Delaware does not allow the suspect to choose the test. The law permits the officer to choose the type of test given.</p>
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).	<p>In Delaware, LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause and a search warrant or suspect consent. Blood must be drawn by a person qualified to administer test. <i>Del. Code Ann. Tit. 21 § 2740</i></p> <p>Identify barriers in Delaware to increasing the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none">• Having statewide on-call phlebotomists is part of the Delaware State Police (DPS) Crime Lab policy/protocol; on-call phlebotomists are costly.• Cost and resources of testing for drugs when a BAC is above the legal limit.• There are no additional penalties for alcohol plus drugs, therefore, aside from the advantages derived from the additional data from a public health perspective, there is no need to perform the additional testing for criminal justice purposes for which the sample is obtained in the first place. <p>Action Steps:</p> <ul style="list-style-type: none">• An additional legal necessity or requirement.

	<ul style="list-style-type: none"> • Additional funding to cover the increase in testing. • Municipal police agencies must fund 100% of the cost for blood draws. Grant or state funding needed to cover the cost.
<p>3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.</p>	<p>Delaware law does authorize drug testing for <i>surviving drivers</i> in <u>fatal</u> crashes when there is probable cause that drug impairment was a factor and a warrant or consent is obtained for blood. If the case involves a fatality and there is no PC, the officer must specify that in their report per 2740(b). The statute does not create a separate authority for fatal or injury collisions that moves it from the usual PC requirements. <i>Del. Code Ann. Tit. 21 § 2740 (b)</i></p> <p>There is no specific chemical testing law related to <u>serious crash</u> injuries. Reporting the results of the chemical testing is not required in the law.</p> <p>Identify barriers to increasing the number of drug tests done on surviving drivers in crashes resulting in death or serious injury:</p> <ul style="list-style-type: none"> • Whether the blood obtained for testing is from a DUI suspect or a DUI suspect that caused a serious injury, is not relevant for testing purposes. • In terms of reporting the results, there is no separate database that aggregates case file results to a list of only fatal or serious injury crashes. Once tested, the data remains in the testing laboratory's case file database and is shared on a case-by-case basis with prosecutors. • This is further complicated by the fact that samples related to vehicular fatalities get automatically tested at the Division of Forensic Science, but Serious Physical Injury cases start at the Delaware State Police Crime Lab and only go to the Division of Forensic Science for additional drug toxicology testing, if viable and needed. • To the extent alcohol is tested for at one laboratory and drugs are tested at another, those laboratories maintain separate databases from each other and share the case by case results with the prosecutors, but not each other. The labs do not track whether the test results are from surviving drivers in serious injury crashes or non-injury DUIs or fatalities. <p>Action Steps:</p> <ul style="list-style-type: none"> • A section could be added to 21 Del. C. 4177 to include a carve out for serious physical injury and death cases. • Resources would need to be acquired and dedicated to adding that task/tracking to protocols <p>Comments: Under the Delaware Constitution, citizens are sometimes afforded higher levels of protection than under the Federal constitution. It is unlikely that a defendant's probable cause-based warrant requirements for the seizure of a defendant's blood for purposes of a DUI investigation would be allowed to be curtailed simply because the end consequence of their driving behavior resulted in serious physical injury or death.</p>

<p>4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.</p>	<p>State law mandates drug testing a driver fatally injured in a crash, however the statute does not create a separate authority or requirement for the testing of a decedent's toxicology when their death is from a fatal collision as compared to any other type untimely death. <i>Del. Code Ann. Tit. 21 § 2740 (b)</i></p> <p>Identify barriers to drug testing all fatally injured drivers?</p> <ul style="list-style-type: none"> • The Division of Forensic Science does post-mortem toxicology analysis in due course as part of an autopsy, but that is done at the discretion of the assigned pathologist. Autopsies are also not necessarily performed on all cases. • Resources would need to be acquired and dedicated to adding that task/tracking to protocols. • In instances of late occurring deaths, sometimes after days or weeks in a hospital, autopsies might not be performed. In any event, toxicology reports from the autopsy would not address the issue of impairment at the time of the collision. In those instances, the victim's hospital records would be the sole source of toxicology information and testing for the victim on the date of the collision, if such testing occurred in the ordinary course of the treatment rendered. <p>Action Steps:</p> <ul style="list-style-type: none"> • A section could be added to <i>21 Del. C. 4177</i> to include a carve out for serious physical injury and death cases. • Request for the Division of Forensic Science to mandate it on all cases, that are otherwise not late deaths from the hospital.
<p>4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.</p>	<p>Delaware law or policies do not mandate the reporting of results for fatally injured drivers.</p>
<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data.</p> <p><i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>In Delaware, state data collection and reporting systems distinguish between DUI and DUID offenses only in that the results are reported from separate laboratories. When more than one blood specimen is collected, testing for alcohol and drugs are conducted at two different labs. It is possible that a DFS result on a fatality (whether surviving driver or decedent) could have both alcohol and drug results.</p> <p>Comments: The results for alcohol and drugs are kept separately, with the ability to add positive results in both fields.</p>
<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p>	<p>In Delaware, the license suspension period for a first DUID offense test refusal and a first DUID conviction is the same; 12 months. <i>Del. Code Ann. Tit. 21, § 4177A</i></p> <p>Comments: The suspension through DMV alone requires that the officer appear at a separate DMV hearing. In reality, very few officers attend these hearings.</p>

<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>In Delaware, all warrants are electronic.</p> <p>Comments: Warrants are electronic via the LEISS (Law Enforcement Investigative Support System) but require appearance before a Magistrate. Search warrants must be faxed or sworn in person. Effective January 14, 2019, arrest warrants are completely electronic with no faxing required. There is an automated warrant application that can have an affidavit of probable cause transmitted to the magistrates. There are magistrates available 24-7 that an officer can appear in front of via video phone to present/swear to the electronically transmitted and/or faxed hardcopies of the warrants.</p>
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DISTRICT OF COLUMBIA: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law extends to drugs and authorizes the collection of blood, breath, and urine, but not oral fluid. **(1a)**
- + The implied consent law allows the collection of a specimen or specimens for multiple tests. **(1b)**
- + Law enforcement elects the type of test except if person objects on valid religious or medical grounds; then only breath or urine may be collected. **(1c)**
- + LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause to suspect drug impairment and a warrant for a blood draw. **(2)**
- + D.C. law allows testing surviving drivers involved in crashes resulting in death or serious injury, when there is probable cause to suspect impairment. **(3a)**
- + D.C. policy requires drug testing fatally injured drivers. **(4a)**
- + D.C. policy requires reporting the drug test results for fatally injured drivers. The Office of Chief Medical Examiner reports out on all testing done. **(4b)**
- + Impaired driving offenses for DUI-alcohol and DUID can be distinguished in a database. **(5)**
- + The administrative license suspension penalty for first DUID refusal is more severe than for first DUID offenders. **(6)**

Partially aligned with recommendations:

- o Policy allows the use of telephonic/electronic warrants, but they are not widely used. **(7)**

Not aligned with recommendations:

- There is no policy related to reporting the drug test results from surviving drivers involved in a serious injury or fatal crash. The Office of the Chief Medical Examiner (OCME) does maintain any drug test results on specimens collected from surviving drivers. **(3b)**

Notable findings:

A suggested action step for increasing testing for suspected DUID includes the creation of palm cards that officers can keep in their cruisers for quick reference. **(2)**



DISTRICT OF COLUMBIA: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In the District of Columbia, the implied consent law does extend to drugs and supports the collection of blood, breath, and urine, but not oral fluid. <i>D.C. Code § 50-1905; D.C. Code § 50-1904.02</i></p> <p>Identify barriers to the regular use of oral fluid testing when drug impairment is suspected:</p> <ul style="list-style-type: none">• Police agencies do not have the equipment/supplies to conduct oral fluid testing <p>Action Steps:</p> <ul style="list-style-type: none">• Purchase equipment• Officer Training
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The implied consent law in the District of Columbia authorizes the collection of a specimen or specimens for multiple tests when drug impairment is suspected.</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>Law enforcement elects the type of test(s) collected except if person objects on valid religious or medical grounds. If person objects to a blood test because of valid medical/religious grounds then only breath or urine may be collected. <i>D.C. Code 19-1402(b)</i></p>
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).	<p>In the District of Columbia, LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause. <i>D.C. Code § 50-1901; D.C. Code § 50-1905</i></p> <p>Identify barriers in the District of Columbia to increasing the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none">• Need increased ARIDE and DRE training for officers so that they can better identify DUI-D cases. <p>Action Steps:</p> <ul style="list-style-type: none">• ARIDE and DRE training• In service training to provide quick information about DUI-Drugs• Create palm cards officers can keep in cruisers for quick reference
3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.	<p>D.C. law allows drug testing a surviving driver involved in a crash resulting in death or serious injury when drug impairment is suspected. <i>D.C. Code § 15-1904.02 Chemical Testing After Arrest</i> If a specimen is collected, it is tested and the OCME maintains and reports the drug test results.</p> <p>Identify barriers to a law or policy to increase drug testing for surviving drivers involved in a crash resulting in death or serious injury (with probable cause and warrant as needed).</p>

	<ul style="list-style-type: none"> • Availability of on call judges to issue warrants <p>Comments: Should a specimen be collected in a suspected DUI case, the Office of the Chief Medical Examiner (OCME) will automatically test for “drugs of abuse” and may send to outside lab to test for other less common drugs.</p>
4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.	There is a policy that requires drug testing fatally injured drivers (36 CFR 4.23)
4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.	There is a policy that requires reporting the drug test results for a driver fatally injured in a crash. (36 CFR 4.23) The Office of the Chief Medical Examiner reports out on all testing done.
5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data. <i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i>	Impaired driving offenses for alcohol and drugs are reportedly coded separately in database(s).
6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.	The administrative penalty is more severe for first DUID test refusers who receive a 12-month license suspension. <i>D.C. Code § 50-1905</i> First DUID offenders receive a 3-month license suspension. <i>D.C. Mun. Regs. tit. 18, § 306</i>
7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.	<p>Telephonic/electronic warrants are authorized, but not widely used. <i>DC Code 23-522 (a):</i> “Each application for a search warrant shall be made in writing, or by telephone or other appropriate means, including facsimile transmissions or other electronic communications, upon oath or affirmation to a judicial officer, pursuant to the Superior Court Rules of Criminal Procedure.”</p> <p>Rule of Criminal Procedure, Rule 41(d)(2)(D) Requesting Warrant by Telephonic or other Reliable Electronic Means: “ ... a judge may issue a warrant based on information communicated by telephone or other reliable electronic means.”</p> <p>Identify barriers to the increased use of electronic warrants for specimen collection to reduce delay when drug impairment is suspected:</p> <ul style="list-style-type: none"> • Equipment • Training



Aligned with recommendations:

- + The implied consent law authorizes the collection of a specimen or specimens for multiple tests. **(1b)**
- + The implied consent law prohibits suspects from choosing the type of test. **(1c)**
- + The administrative license suspension penalty for a first DUI drug test refusal is more severe than for a first DUID offense. **(6)**

Partial alignment with recommendations:

- o The implied consent law extends to drugs (chemical and controlled substances) and authorizes the collection of urine or blood but only under certain conditions, not oral fluid. **(1a)**
- o LEOs are authorized to collect and test specimens for drugs with probable cause and a warrant for a blood draw, but not for misdemeanors due to case law. **(2)**
- o State law allows testing surviving drivers involved in crashes resulting in death or serious injury, when there is probable cause and a warrant for a blood draw. Some elements of the implied consent law might restrict testing. **(3a)**
- o Electronic warrants are used for felonies only (3rd offense DUI). **(7)**

Not aligned with recommendations:

- There is no policy related to reporting the drug test results from surviving drivers involved in serious injury or fatal crashes. **(3b)**
- State law does not mandate drug testing a driver fatally injured in a crash. **(4a)**
- State law does not mandate reporting the drug test results for a driver fatally injured in a crash. **(4b)**
- The state's data collection and reporting systems currently do not distinguish among impaired-driving offenses. **(5)**

Notable Findings:

Florida is one of a few states that does not allow a warrant for a blood draw in misdemeanor DUI/DUID cases. **(2)**

Blood can be tested but only if certain circumstances are met F.S.A. 316.1932(1)(c); specifically, blood can be requested under Implied Consent if: (1) Probable cause of alcohol or drug impairment exists; (2) the suspect appears for treatment at a medical facility; and (3) the administration of a breath or a urine test is impracticable or impossible. **(1a)**



FLORIDA: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In Florida, the implied consent law extends to drugs (chemical and controlled substances) with probable cause when drug impairment is suspected. The law authorizes the collection of urine or blood (under certain conditions) for DUID, but not oral fluid. <i>F.S.A. Section § 316.1932 (1)(a) 1.b (urine); F.S.A. Section § 316.1932(1)(c) (blood)</i></p> <p>Pursuant to F.S.A. Section 316.1932(1)(a) 1.b., drug testing via urine can be requested in any DUI case in which a subject has been arrested and where there is probable cause of impairment based on chemical or controlled substance. Chemical substances are defined by F.S.A. Section 877.111 and Controlled substances are defined by F.S.A. Section 893.03. If there is no indication of chemical or controlled substance impairment, pursuant to Implied Consent, no urine drug testing would be permissible.</p> <p>Blood can be tested if certain circumstances are met under F.S.A. 316.1932(1)(c); specifically, blood can be requested under Implied Consent if: (1) Probable cause of alcohol or drug impairment exists; (2) the suspect appears for treatment at a medical facility; and (3) the administration of a breath or a urine test is impracticable or impossible.</p> <p>Identify barriers to supporting the collection of oral fluid:</p> <ul style="list-style-type: none">• Oral fluid is not currently recognized as a valid testing method in the state of Florida.• If oral fluid were recognized in Florida, there is not funding or staff available within the current State Toxicology labs to properly handle such testing. <p>Action Steps:</p> <ul style="list-style-type: none">• Increase funding to the Florida Department of Law Enforcement (FDLE) alcohol testing program and toxicology sections to allow for the increased staff and technology required for such testing. <p>Comments: Chemical substances are defined by F.S.A. § 877.111 and Controlled substances are defined by F.S.A. Section 893.03.</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The implied consent law in Florida does authorize the collection of a specimen or specimens for multiple tests. If the LEO suspects both alcohol and chemical/controlled substance impairment, a LEO will make separate requests for breath and urine. If blood is requested, it can be tested for both alcohol and drugs if there is probable cause of impairment by both.</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>The implied consent law in Florida does prohibit drivers from selecting the type of test.</p>

	<p>Comments: Pursuant to Section 316.1932(1)(f)(3), a suspect CAN request an independent blood test; however, he is not entitled to such a test until he/she has first provided the specimen requested by law enforcement.</p>
<p>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).</p>	<p>In Florida, LEOs are authorized to test for drugs with probable cause to suspect drug impairment, but they are unable to obtain warrants for blood in misdemeanor DUI cases due to case law. <i>F.S.A. Section § 316.1932 (1)(a)1.b (urine); F.S.A. Section § 316.1932(1)(c) (blood); State v. Geiss, 70 So.3d 642 (2011)</i></p> <p>Pursuant to F.S.A. Section 316.1932(1)(a)1.b., drug testing via urine can be requested in any DUI case in which a subject has been arrested and where there is probable cause of impairment based on chemical or controlled substance. Chemical substances are defined by F.S.A. Section 877.111 and Controlled substances are defined by F.S.A. Section 893.03. If there is no indication of chemical or controlled substance impairment, pursuant to Implied Consent, no urine drug testing would be permissible.</p> <p>Blood can be tested if certain circumstances are met under F.S.A. 316.1932(1)(c); specifically, blood can be requested under Implied Consent if: (1) Probable cause of alcohol or drug impairment exists; (2) the suspect appears for treatment at a medical facility; and (3) the administration of a breath or a urine test is impracticable or impossible.</p> <p>Identify barriers in Florida to <u>increasing</u> the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none"> • In Florida LEOs are unable to obtain warrants for blood in misdemeanor DUI cases; this is due to the Florida 5th District Court of Appeal's ruling in <i>State v. Geiss, 70 So.3d 642 (2011)</i>
<p>3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.</p>	<p>State law in Florida allows for the testing of surviving drivers involved in a crash resulting in death or serious injury when there is probable cause to suspect impairment and the surviving driver caused or contributed to the crash. <i>F.S.A. § 316.1932</i></p> <p>Identify barriers to consistently getting the drug test results reported to a central state database?</p> <ul style="list-style-type: none"> • Funding/Staffing • Confidentiality issues due to public record requests. The only way to insure confidentiality is to only release such information to LEOs and prosecutors.
<p>4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.</p>	<p>Pursuant to Implied Consent in Florida, a LEO would need probable cause that the suspect driver was impaired by either alcohol/chemical/controlled substance and that the suspect driver caused or contributed to causing a death/injury. Absent probable cause and causation, the request would not be permitted under Implied Consent. In Florida, if a suspect is fatally injured by his own actions, no testing is required by law. <i>F.S.A. § 316.1932</i></p>

	<p>Identify barriers to drug testing all fatally injured drivers (with probable cause to suspect drug impairment).</p> <ul style="list-style-type: none"> There currently is not enough funding and staffing to promptly handle testing on living suspects.
4b. Enact laws and/or implement policies mandating reporting of test results for all fatally injured drivers.	There is no state law or policy in Florida mandating the reporting of drug test results for fatally injured drivers.
<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data.</p> <p><i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	In Florida, DUI alcohol and DUI drugs are covered under the same statute, and no separate tracking mechanism is currently available to distinguish between them.
6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.	<p>The administrative license penalty is more severe for a test refusal. The law in Florida requires a 12-month license suspension for first DUID test refusers <i>F.S.A. § 316.1932(1)(a)1.b</i> versus a 180-day license suspension for a first DUID offense. <i>F.S.A. § 322.28</i></p> <p>Comments: There are no other penalties for first refusal.</p>
7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.	<p>In Florida, electronic warrants are used for felonies only (3rd offense DUI). Misdemeanor DUIs are not eligible for search warrants at this time.</p> <p>Identify barriers to increasing the use of electronic warrants to collect more specimens from suspected drugged drivers to avoid delay:</p> <ul style="list-style-type: none"> It is up to each individual elected State Attorney or Law Enforcement Agency to determine if electronic warrants are used.



GEORGIA: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law does extend to drugs and supports the collection of blood, bodily fluids (oral fluid), and urine. In practice, oral fluid is not collected. **(1a)**
- + The implied consent law authorizes the collection of a specimen or specimens for multiple tests. **(1b)**
- + LEOs designate which tests are to be conducted. **(1c)**
- + LEOs are authorized to collect and test specimens for drugs with probable cause and a warrant for a blood test. **(2)**
- + State law allows testing surviving drivers involved in crashes resulting in death or serious injury, when there is probable cause. **(3a)**
- + The administrative license suspension penalty for a first DUID refusal is more severe than for a first DUID offense. **(6)**

Not aligned with recommendations:

- There is no policy related to reporting the drug test results from surviving drivers involved in serious injury or fatal crashes. **(3b)**
- State law does not mandate drug testing drivers fatally injured in a crash. **(4a)**
- There is no law or policy that requires the reporting of drug test results of fatally injured drivers. **(4b)**
- The state's data collection and reporting systems do not distinguish among impaired-driving offenses. **(5)**
- Electronic warrants are not in use. Georgia law limits the manner in which law enforcement may apply for warrants. **(7)**

Notable Findings:

Criminal penalties for drug impaired defendants are the same as those for alcohol impaired defendants. However, a drug impaired defendant has less access to a limited driving privilege during the period of license suspension than a defendant convicted of DUI-Alcohol. **OCGA § 40-5-75 (d). (5)**



GEORGIA: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In Georgia, the implied consent law does extend to drugs and supports the collection of blood, breath, bodily fluid (includes oral fluid), and urine. <i>Ga. Code Ann. § 40-5-67.1</i> In practice oral fluid is not collected.</p> <p>Identify barriers to the collection of oral fluid for drug impairment.</p> <ul style="list-style-type: none">• Chemical tests, to be admitted in evidence Georgia, must be performed under methods approved by the Division of Forensic Sciences (DOFS) of the Georgia Bureau of Investigation (GBI). (OCGA § 40-6-392 (a)).• Currently, the GBI only has approved rules and methods for blood and urine testing. Ga. Comp. R & Regs. R. 92-3-.06.• Georgia has conducted no testing to determine the best equipment and methods for oral fluid testing.• The GBI DOFS has no validated method for toxicological oral fluid testing and will not perform such tests.• To secure a conviction under OCGA § 40-6-391(a)(6), Georgia's "Per Se" DUI-Drug statute, the state is required to prove the presence of illicit drugs, or metabolites of those drugs, in the Defendant's blood or urine, or both. The presence of illicit drugs in either the blood or urine is, therefore, an element that must be proved beyond a reasonable doubt to secure a conviction. <p>Action Steps:</p> <ul style="list-style-type: none">• Pilot program is needed to determine the best equipment and methods for Georgia.• Following a satisfactory pilot program, the GBI would need to promulgate regulations for oral fluid testing.• Amend OCGA § 40-6-391(a)(6) to allow the presence of drugs to be shown by oral fluid testing. <p>Comments: Amending OCGA § 40-6-392 to specifically allow for oral fluid is a possibility, but not necessary, due to the inclusion of "other bodily substances in the statute." Other states have already embarked upon pilot programs for oral fluid testing, including Alabama and Michigan, and they have offered to make their data available upon request.</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The implied consent law in Georgia authorizes the collection of a specimen or specimens for multiple tests when drug impairment is suspected.</p> <p>Comments: Once a sample is taken, it can be tested whenever and however necessary. See <i>Jackson v. State</i>, 340 Ga. App. 228 (2017).</p>

<p>1c. Implied consent laws should not permit suspects to choose the type of test(s).</p>	<p>Officers are designating which type of tests are given. OGCA § 40-5-67.1 (b) appears to give the officer the discretion to select the test most appropriate for the case.</p> <p>Comments: If a Defendant asks for an alternative testing method to satisfy the officer's request for a state-administered test, the officer may acquiesce. However, the officer is not required to accede to the Defendant's request. Case law has held that a suspect who asks for a different type of test than the officer requests has refused the state-administered test. <i>Sigerfoos v. State</i>, A19A0276 (6/14/19).</p> <p>Once a Defendant has submitted to a chemical test at the request of an officer and pursuant to our implied consent statute, the Defendant has the right to an independent chemical test of their blood, breath, urine, or other bodily substance, at their own expense and from a qualified person of their own choosing. In this instance, it is the Defendant's responsibility to ensure that the sample is tested. Results of independent tests would not be made available to law enforcement unless the Defendant elected to make them available.</p>
<p>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).</p>	<p>In Georgia, LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause. Ga. Code Ann. § 40-5-67.1; Ga. Code Ann. § 40-6-391</p> <p>Identify barriers in Georgia to increasing the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none"> • Testing every blood sample for drugs would burden an understaffed GBI Crime Lab and result in increased delays in obtaining test results. • Due to constraints on resources, the GBI DOFS will not conduct additional testing on a sample if an impairing alcohol level is found. <p>Action Steps:</p> <ul style="list-style-type: none"> • Increased resources for the GBI – more manpower / equipment to test more samples.
<p>3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.</p>	<p>Georgia law does not require that a driver be tested for DUID when involved in a collision that results in injury or death, but it is common for a warrant to be obtained if the defendant refuses testing. Ga. Code Ann. § 40-5-67.1 (d)</p> <p>There is no state law or policy related to reporting the results.</p> <p>Identify barriers to a law or policy to get drug test results reported to a central state database:</p> <ul style="list-style-type: none"> • Law would need to be passed setting up a repository for data • That agency would need to be prepared to handle receipt and reporting of data. <p>Action Steps:</p> <ul style="list-style-type: none"> • Legislation designating agency as recipient of data and requiring reporting. • Resources allocated to allow that agency to carry out this task.

	<p>Comments: OCGA § 40-5-67.1 doesn't <i>require</i> a chemical test be done in a fatal crash. See 40-5-67.1 (d), providing for treatment when a defendant in such a case refuses testing. The law is simply an additional situation where implied consent is taken.</p> <p>While obtaining a warrant is very common in crash cases where a suspect does not consent to a test, it is not universal, and there will always be situations where crashes occur where no test is taken.</p>
<p>4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.</p>	<p>State law or policy in Georgia does not require drug testing on fatally injured drivers. <i>Ga. Code Ann. § 40-5-67.1</i></p> <p>Identify barriers to drug testing <i>all</i> fatally injured drivers</p> <ul style="list-style-type: none"> • There is no legal requirement that every fatally injured driver be tested. • Law enforcement agencies may consider it superfluous in certain crash cases. • Additional chemical samples for testing will place a burden on GBI <p>Action Steps:</p> <ul style="list-style-type: none"> • Legislation passed to require such testing, and to authorize a repository for receipt and reporting of such data. • Resources to ensure that additional testing can be done in a timely manner.
<p>4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.</p>	<p>There is no law or policy requiring that drug test results be reported on fatally injured drivers.</p>
<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data. <i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>The types of impaired driving offenses are not coded separately in reporting systems.</p> <p>Comments: Drug test results are not, to our knowledge, recorded in any central database. For legal purposes, it doesn't matter what drug or how much of the drug a suspect is under, only whether they are less safe to drive (OCGA § 40-6-391 (a)(2)) or whether they have an illicit drug present in their system. OCGA § 40-6-391 (a)(6). Less safe driving due to drug impairment can be proved even when no test is conducted establishing the amount of any drug in the defendant's body.</p> <p>The GBI may possess internal data on the number of tests performed and their results.</p>
<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p>	<p>In Georgia, the administrative penalty is more severe for first DUID test refusers who receive a 12-month license suspension. <i>Ga. Code Ann. § 40-5-67.1</i> First DUID offenders receive a 6-month license suspension. <i>Ga. Code Ann. § 40-5-75</i></p> <p>Comments: Criminal penalties for drug impaired defendants are the same as those for alcohol impaired defendants. However, a drug impaired defendant has less access to a limited driving privilege during the period of license suspension than a defendant convicted of DUI-Alcohol. (See OCGA § 40-5-75 (d)).</p>

<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>In Georgia, electronic warrants are currently not in use.</p> <p>Identify barriers to increase the use of electronic warrants to avoid delay:</p> <ul style="list-style-type: none"> Georgia law limits the manner in which law enforcement may apply for warrants. See generally OCGA §§ 17-5-20 through 17-5-32. Electronic warrants are not contemplated in Georgia's current legal structure. <p>Action Steps:</p> <ul style="list-style-type: none"> Legislation authorizing use of e-warrants. Development of a system to facilitate submission and review of e-warrants. <p>Comments: Other states allow for the use of electronic warrants. Utah and Arizona are two states that do it and would be willing to assist other states in setting up a similar system.</p>
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HAWAII: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law does extend to drugs and supports the collection of blood and urine, but not oral fluid. **(1a)**
- + The implied consent law authorizes the collection of a specimen or specimens for multiple tests. **(1b)**
- + LEOs are authorized to collect and test specimens for DUI/DUID arrestees with probable cause and a warrant for a blood test. **(2)**
- + The administrative license suspension penalty is the same for first time drug test refusals and for first DUID offenders. **(6)**

Partially aligned with recommendations:

- o State law allows for the testing of surviving drivers involved in a crash resulting in death or serious injury when there is probable cause to suspect impairment. Because suspects are allowed a choice of tests, this could affect ability to get good test results. **(3a)**

Not aligned with recommendations:

- The implied consent law does allow drivers suspected of drug impairment to elect the type of specimen (blood or urine) collected for testing. **(1c)**
- There is no policy related to reporting the drug test results from surviving drivers involved in a serious injury or fatal crash. **(3b)**
- State law does not require drug testing for fatally injured drivers. **(4a)**
- There are no laws or policies that require reporting drug test results for fatally injured drivers. **(4b)**
- Impaired driving offenses are not distinguishable in a state database. **(5)**
- Electronic warrants are not used but there is a pending legislative bill that would authorize their use. Telephone warrants are in use, but it is noted that they are somewhat cumbersome. **(7)**

Notable Findings:

Not all hospitals are conducting blood draws for OVUII enforcement. Different stakeholders are working on identifying the barriers to hospitals collecting blood samples for OVUII cases. **(2)**

More drug testing when the BAC is .08 or higher might lead to more refusals. **(2)**

Sharing and accessing data with personal identifiers would be extremely challenging. **(3b)**

Improved policies, procedures and education, as well as an e-search warrant system would be more effective in getting drug testing for all fatally injured drivers. **(7)**



HAWAII: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid.	<p>In Hawaii, the implied consent law does extend to drugs and supports the collection of blood and urine, but not oral fluid. <i>Haw. Rev. Stat. Ann. § 291E-11</i></p> <p>Identify barriers to extending the implied consent law to the collection of oral fluid:</p> <ul style="list-style-type: none">• Hawaii Revised Statutes currently don't include oral fluid collection and testing in the Operating a Vehicle Under the Influence of an Intoxicant (OVUII) statute.• There are no administrative rules that address oral fluid collection and testing. <p>Action Steps:</p> <ul style="list-style-type: none">• Introduce legislation allow for the collection and testing of oral fluid specimens for OVUII cases.• Once legislation is passed, Hawaii Administrative Rules may need to be drafted and adopted for oral fluid collection and testing for OVUII cases. <p>Comments: LEOs do not use oral fluid screening tests. While there are currently no laws concerning oral fluid test devices, agencies are interested in a pilot.</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests.	<p>The implied consent law in Hawaii authorizes the collection of a specimen or specimens for multiple tests when drug impairment is suspected.</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>The implied consent law in Hawaii does allow drivers to elect the type of specimen collected for testing.</p> <p>Identify barriers to changing the law to prohibit suspects from choosing the type of test(s)?</p> <ul style="list-style-type: none">• Hawaii allows persons for whom there is probable cause to believe they operated a vehicle under the influence of alcohol to choose between a breath, blood or urine test. If there is probable cause to believe the person is under the influence of other drugs, then the person may only elect a blood or urine test, by statute. Any modification to limit a person's choice of testing would require a legislative amendment. <p>Action Steps:</p> <ul style="list-style-type: none">• Hawaii would need to establish a state forensic toxicology testing lab before introducing legislation to change the implied consent law to prohibit suspects from choosing the type of test(s).

<p>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).</p>	<p>LEOs are authorized to collect and test specimens for suspected drug use with probable cause. <i>Haw. Rev. Stat. Ann. § 291E-61; Haw. Rev. Stat. Ann. § 291E-11</i></p> <p>Identify barriers in Hawaii to increasing the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none"> • Telephonic search warrants are not established in all counties. • Law enforcement agencies are not authorized to use electronic search warrants, and none of the counties have an electronic search warrant system in place. • Not all hospitals are conducting blood draws for OVUII enforcement. • There isn't a separate OVUII charge/section for OVUII-drugs so there's no reason for law enforcement officers to test for drugs if the BAC is .08+. • Increase in refusals leads to less testing. <p>Action Steps:</p> <ul style="list-style-type: none"> • Pass legislation to authorize law enforcement to use electronic search warrants. • Introduce and pass legislation for separate OVUII-drug and poly-drug sections. • Work with hospitals to identify barriers to blood sample collection for OVUII cases. <p>Comments:</p> <ul style="list-style-type: none"> • There is currently a bill going through Hawaii's Legislature that would legalize/authorize the use of electronic search warrants. • Different stakeholders are working on identifying the barriers to hospitals collecting blood samples for OVUII cases.
<p>3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.</p>	<p>State law in Hawaii allows for the testing of surviving drivers involved in a crash resulting in death or serious injury when there is probable cause to suspect impairment. <i>Haw. Rev. Stat. Ann. § 291E-21</i> There is no law specifically related to testing surviving drivers. There is no law or policy requiring the reporting of the results.</p> <p>Identify barriers to getting drug test results reported to a central state database:</p> <ul style="list-style-type: none"> • Hawaii doesn't have a central OVUII state database. <p>Action Steps:</p> <ul style="list-style-type: none"> • Establish a central OVUII state database. <p>Comments:</p> <ul style="list-style-type: none"> • Data sharing and access to data, especially any data with personal identifiers would be extremely challenging. • Haw. Rev. Stat. Ann. §291E-21 is only applicable where: (1) the police have probable cause to believe that the person has committed an OVUII offense and that the blood sample will evidence

	that offense, (2) exigent circumstances are present, and (3) the sample is obtained in a reasonable manner.
4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.	<p>State law in Hawaii does not require drug testing for fatally injured drivers with probable cause and warrant for blood draws under certain conditions. <i>Haw. Rev. Stat. Ann. § 291E-21</i></p> <p>Identify the barriers to ensuring that all fatally injured drivers are drug tested?</p> <ul style="list-style-type: none"> Our laws are already in place, but interpretations of the law, education and training may be the obstacles. <p>Action Steps:</p> <ul style="list-style-type: none"> Improved policies, procedures and education, as well as an e-search warrant system would be more effective in getting drug testing for all fatally injured drivers.
4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.	<p>There is no state law in Hawaii that requires the reporting of drug test results for all fatally injured drivers.</p> <p>Identify the barriers to a law or policy that requires the reporting of drug test results on fatally injured drivers to a central state database:</p> <ul style="list-style-type: none"> There is no central state database to report to. <p>Action Steps:</p> <ul style="list-style-type: none"> Create a central state database that tracks OVUII cases, crashes, incidences, etc. Introduce legislation to require reporting of drug test results on fatally injured drivers to a central state database.
<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data.</p> <p><i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>The DUI/DUID statute in Hawaii does not distinguish between arrests for DUI-alcohol and DUID <i>Haw. Rev. Stat. Ann. § 291E-61</i> and the test results are not reported separately.</p> <p>Identify barriers to get test results reported separately in state reporting systems?</p> <ul style="list-style-type: none"> Forensic toxicology testing is costly, and since there is no separate section for OVUII drugs, law enforcement officers don't pursue drug testing if alcohol (BAC .08+) is present in the subject's system. There is no central reporting system. <p>Action Steps:</p> <ul style="list-style-type: none"> Create a central state database that tracks OVUII cases, crashes, incidences, etc. Introduce legislation to require reporting of drug test results on fatally injured drivers to a central state database. Introduce and pass legislation for separate OVUII-drug and poly-drug sections.

<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p>	<ul style="list-style-type: none"> In Hawaii, the administrative penalty is the same for first DUID test refusers and for first DUID offenders. Both receive a 12-month license suspension. The law applies to OVUII-alcohol and OVUII-drugs. <i>Haw. Rev. Stat. Ann. § 291E-41</i>
<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>Electronic warrants are not used in Hawaii, although in some cases telephone warrants are used. Telephone warrants serve the same purpose to avoid testing delay, although they are somewhat cumbersome because phone conversations need to be transcribed for telephone warrants.</p> <p>Identify barriers to the use of electronic warrants to collect specimens to avoid delay:</p> <ul style="list-style-type: none"> Hawaii Revised Statutes don't authorize use of electronic search warrants. There are no electronic search warrant systems for OVUII in Hawaii. <p>Action Steps:</p> <ul style="list-style-type: none"> Legalize the use of electronic search warrants for OVUII cases. Establish electronic search warrant systems in each county. <p>Comments: There is currently a bill going through Hawaii's Legislature that would legalize/authorize the use of electronic search warrants.</p>



IDAHO: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law in Idaho does extend to drugs and supports the collection of breath, blood and urine, but not oral fluid. **(1a)**
- + The implied consent law authorizes the collection of a specimen or specimens for multiple tests when drug impairment is suspected. **(1b)**
- + The implied consent law does not allow drivers to choose the type of specimen collected for testing. **(1c)**
- + LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause and a warrant. **(2)**
- + State law allows for the testing of surviving drivers involved in a crash resulting in death or serious injury when there is probable cause to suspect impairment. **(3a)**
- + State law requires drug testing on all fatally injured drivers. **(4a)**
- + State law requires the reporting of test results on all fatally injured drivers. **(4b)**
- + The administrative license suspension penalty is more severe for first time drug test refusals than for first DUID offenders. **(6)**

Not aligned with recommendations:

- Reporting the test results to a central database on surviving drivers involved in serious injury or fatal crashes is not required. However, the test results are kept by the Idaho State Police Forensic Service. **(3b)**
- DUI and DUID are not distinguishable in a state database. **(5)**
- Electronic warrants are not in use. **(7)**

Notable Findings:

More drug testing might affect the ability of the labs to process the results in a timely way to avoid speedy trial court requirements and other evidentiary issues. **(2)**



IDAHO: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>The implied consent law in Idaho does extend to drugs and supports the collection of breath, blood and urine, but not oral fluid. <i>Idaho Code § 18-8002; 18-8002A; 18-8004</i></p> <p>Identify barriers to extending the implied consent law to the collection of oral fluid:</p> <ul style="list-style-type: none">• Legislation to amend the implied consent laws to include “oral fluid.”• Funding for the program implementation, instruments, laboratory testing, personnel, training of laboratory personnel, law enforcement officers, prosecutors, judges and all other associated costs to add oral fluid testing. <p>Comments: The state is monitoring current research and development of oral fluid testing to determine the necessity, reliability, accuracy, feasibility and costs associated to implementing oral fluid testing as an evidentiary test. Currently, the collection of blood evidence is the preferred evidentiary test to determine drug impairment in the majority of drug cases.</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The implied consent law authorizes the collection of a specimen or specimens for multiple tests when drug impairment is suspected.</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>Suspects are prohibited from choosing the type of test. The choice as to the test to be given the driver under Idaho’s implied consent law is the police officer’s, not the drivers. <i>Matter of Griffiths, 113 Idaho 364, 744 P.2d 92 (1987)</i></p>
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).	<p>LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause. <i>Idaho Code § 18-8004; Idaho Code § 18-8002 and 18-8002A</i></p> <p>Identify barriers to increasing the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none">• The additional costs of laboratory testing to identify additional intoxicating drugs when the BAC is 0.08 or higher.• The increased timing which could impact the ability to provide the courts with the results in a timely fashion to avoid speedy trial and other evidentiary issues.
3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.	<p>Under Idaho’s DUI/DUID and Implied Consent laws, any driver suspected of drug impairment can be tested with probable cause to believe the driver is impaired and the impairment was a contributing factor to the crash. <i>Idaho Code § 18-8002</i> There is no law in Idaho related specifically to drug testing surviving drivers involved in a crash resulting in death or serious injury.</p> <p>Reporting the test results is not required, but they are kept by the Idaho State Police Forensic Service.</p>

<p>4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.</p>	<p>State law requires drug testing on all fatally injured drivers. <i>Idaho Code § 49-1314</i></p>
<p>4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.</p>	<p>State law in Idaho mandates the reporting of drug test results for all fatally injured drivers. <i>Idaho Code § 49-1314</i></p>
<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data.</p> <p><i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>The DUI/DUID statute in Idaho does not distinguish between arrests for DUI-alcohol and DUID <i>Idaho Code § 18-8004</i> and there is no central database that distinguishes among impaired driving offenses.</p> <p>Identify barriers to distinguishing between the types of offenses in reporting systems:</p> <ul style="list-style-type: none"> • There are not separate DUI/DUID statutes in Idaho distinguishing which intoxicating substance is impairing the driver. Amending the statute to distinguish the 3-types of offenses just for statistical reasons is not a reasonable solution as it would create numerous systemic problems. • Even if there were a central reporting system, the reporting may not be accurate based on a variety of circumstances. For example, if offender provides an evidentiary test showing their blood alcohol concentration is in excess of the 0.08 per se limit, the lab will not test the blood for additional drugs, unless specifically requested by the prosecutor. This is due to the increased costs and time required to perform this extra testing. The increased turn-around time for testing is a huge issue for both the laboratory and the court system. • The most accurate reporting would be to test every offender for all drugs, which is too expensive and time consuming, and there may be legal barriers to conducting blanket testing for all suspected impaired drivers.
<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p>	<p>In Idaho, the administrative penalty is more severe for first DUID test refusers who receive a one-year license suspension. <i>Idaho Code § 18-8002A</i> Drivers who fail an evidentiary test for the first time receive a 90-day license suspension. <i>Idaho Code § 18-8002</i></p>

<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>Electronic warrants are not in use in Idaho.</p> <p>Identify barriers to increase the use of electronic warrants to collect specimens to avoid delay:</p> <ul style="list-style-type: none"> • Costs associated with implementation training and personnel. • Current statutes and criminal court rules. • 24/7 availability of judges. <p>Action Steps:</p> <ul style="list-style-type: none"> • Funding to create and maintain a statewide electronic warrant system, which would include the associated implementation costs, ongoing maintenance, training costs and personnel costs for law enforcement, prosecutors and judges. • Modify Idaho Statutes and Idaho Criminal Rules to establish proper procedures for issuance of an electronic warrant. • Establish process where Idaho judges would be available 24/7 to review and sign electronic warrants.
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ILLINOIS: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law does extend to drugs and supports the collection of blood, urine, and other bodily fluids. In practice, oral fluid is not collected. **(1a)**
- + The implied consent law allows the collection of a specimen or specimens for multiple tests when drug impairment is suspected. **(1b)**
- + The implied consent law prohibits drivers from choosing the type of specimen collected for testing. **(1c)**
- + LEOs are authorized to collect and test specimens for drugs for DUID arrestees with probable cause and a warrant. **(2)**
- + State law allows for drug testing of fatally injured drivers. There is a mandatory blood draw for fatalities. **(4a)**
- + The license suspension penalty is more severe for first time drug test refusals than for first DUID offenders. **(6)**

Partially aligned with recommendations:

- o State law allows for the testing of surviving drivers involved in a crash resulting in death or serious injury when there is probable cause to suspect impairment, but only if there is an at-fault arrest. **(3a)**
- o Reporting the test results for surviving drivers involved in a serious injury or fatal crash is not required. If results exist, they are sometimes included in the crash database. **(3b)**
- o The DMV does have arrest/citations by specific structure, however the database is difficult to query. **(5)**
- o Policy allows the use of electronic warrants; they are in use in a few counties but they must be authorized by State Attorney and generally are used for serious crashes, or drivers with prior DUI arrests. **(7)**

Not aligned with recommendations:

- There is no state law or policy mandating the reporting of drug test results for all fatally injured drivers. **(4b)**

Notable Findings:

The action plan for testing more suspected drug-impaired drivers includes: Educate medical facilities regarding no civil liability for conducting blood draws at the request of law enforcement officer on individuals charged with DUI and Aggravated DUI. **(2)**

It is not practical to think that prosecutors will pursue a case against a deceased individual. **(4a)**

Most of the barriers and actions steps to obtaining drug tests and/or reporting drug test results are the same whether it's a DUI arrest, crash injury, or crash fatality. **(2,3,4)**



ILLINOIS: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid.	<p>In Illinois, the implied consent law does extend to drugs and supports the collection of blood, urine, and other bodily fluids. In practice, oral fluid is not collected. 625 Ill. Comp. Stat. Ann. 5/11-501.1</p> <p>Identify barriers to the collection of oral fluid when drug impairment is suspected.</p> <ul style="list-style-type: none">• Officer training• Collection of oral fluid is not practical• Statutory time constraints placed on testing• Availability of labs to conduct confirmatory testing• Scientific uncertainty regarding roadside oral fluid testing devices• Blood is better for quantifying THC levels. <p>Action Steps:</p> <ul style="list-style-type: none">• Determine the effectiveness of roadside oral fluid testing devices.• Disseminate model policy for device use• Legislative and regulation change <p>Comments: Oral fluid testing devices have not passed scrutiny for admission into court (no Frye hearing).</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests.	<p>The implied consent law in Illinois allows the collection of a specimen or specimens for multiple tests when drug impairment is suspected.</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>The implied consent law in Illinois prohibits drivers from choosing the type of specimen collected for testing.</p>
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).	<p>LEOs are authorized to collect and test specimens for drugs for DUI/DUID arrestees with probable cause and a warrant. 625 Ill. Comp. Stat. Ann. 5/11-501; 625 Ill. Comp. Stat. Ann. 5/11-501.1</p> <p>Identify barriers in Illinois to increasing the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none">• Law enforcement training• Time constraints placed on them by statute• Other roadside priorities in crash situations• Uncooperative medical personnel/hospital policies

	<ul style="list-style-type: none"> • Statute only mandates in cases involving great bodily harm and/or death, but only if an at-fault arrest occurs • Probable cause must be developed, and search warrant obtained <p>Action Steps:</p> <ul style="list-style-type: none"> • Provide training and encourage law enforcement officers in Advanced Roadside Impaired Driving Enforcement (ARIDE) and Drug Recognition Expert (DRE) to detect and identify the drug impaired driver. • Encourage the use of electronic search warrants to obtain blood tests from individuals charged with DUI or Aggravated DUI. • Educate medical facilities regarding no civil liability for conducting blood draws at the request of law enforcement officers on individuals charged with DUI and Aggravated DUI. • Educate medical facilities regarding no civil liability for the truthful reporting of blood and urine tests performed on individuals charged with DUI and Aggravated DUI and encourage reporting of those tests. • State labs must be equipped to quantitatively test for cannabis and other drugs in a timely manner. • Encourage Standardized Field Sobriety Testing (SFST) refresher training for all patrol officers every four years. • Consider ways to train officers regarding forensic phlebotomy. <p>Comments: Most barriers and actions steps to obtaining drug tests and/or reporting drug test results are the same whether it's a DUI arrest, crash injury, or crash fatality.</p>
<p>3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.</p>	<p>State law in Illinois allows for the testing of surviving drivers involved in a crash resulting in death or serious injury when there is probable cause to suspect impairment. <i>625 Ill. Comp. Stat. Ann. 5/11-501.1 An at-fault arrest is required however.</i></p> <p>Reporting the test results is not required, but they are sometimes included in the crash database.</p> <p>Identify barriers to increase the number of drug tests done on surviving drivers in crashes resulting in death or serious injury:</p> <ul style="list-style-type: none"> • Law enforcement training • Time constraints placed on them by statute • Other roadside priorities in crash situation • Uncooperative medical personnel/hospital policies • Statute only mandates in cases involving great bodily harm and/or death, but only if an at-fault arrest occurs • Probable cause must be developed, and a search warrant obtained.

	<p>Action Steps:</p> <ul style="list-style-type: none"> • Legislative change mandating testing • Provide training and encourage law enforcement officers in Advanced Roadside Impaired Driving Enforcement (ARIDE) and Drug Recognition Expert (DRE) to detect and identify the drug impaired driver. • Encourage the use of search warrants to obtain blood tests from individuals charged with DUI or Aggravated DUI. • Educate medical facilities regarding no civil liability for conducting blood draws at the request of law enforcement officer on individuals charged with DUI and Aggravated DUI. • Educate medical facilities regarding no civil liability for the truthful reporting of blood and urine tests performed on individuals charged with DUI and Aggravated DUI and encourage reporting of those tests. • Support funding of laboratories equipped to test for cannabis and other drugs. • Encourage Standardized Field Sobriety Testing (SFST) refresher training for all patrol officers every four years. • Consider ways to train officers regarding forensic phlebotomy.
<p>4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.</p>	<p>State law in Illinois allows for drug testing of fatally injured drivers. There is a mandatory blood draw for fatalities, but some county prosecutors need a warrant. <i>625 Ill.Comp. Stat. Ann. 5/11-501.1</i></p> <p>If drug testing is not consistently done in practice, what are the barriers to ensuring that all fatally injured drivers are drug tested?</p> <ul style="list-style-type: none"> • Law enforcement training • Prosecutors won't pursue evidence for individuals who cannot be prosecuted. • Forensic lab constraints <p>Action Steps:</p> <ul style="list-style-type: none"> • Encourage law enforcement officers to utilize crash reconstruction experts. • Encourage law enforcement to include test results in crash reports. • Support funding of laboratories equipped to test for cannabis and other drugs.
<p>4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.</p>	<p>Comments: It is not practical to think prosecutors will pursue case against a deceased individual.</p> <p>There is no state law or policy in Illinois mandating the reporting of drug test results for all fatally injured drivers.</p> <p>Identify barriers to getting drug test result reported to a central state database:</p> <ul style="list-style-type: none"> • The same issues as listed above regarding obtaining test results • Lack of data linkage among state agency databases; i.e. DMV and IDOT fall under different constitutional elected officials

	<ul style="list-style-type: none"> • Lack of DUI Tracking System <p>Action Steps:</p> <ul style="list-style-type: none"> • Encourage law enforcement officers to utilize crash reconstruction experts. • Encourage law enforcement to include test results in crash reports. • Support funding of laboratories equipped to test for cannabis and other drugs. • Proliferation of e-citations. • 100% electronic crash data collection. • Law enforcement training • Update DMV database • Forensic laboratory improvements
<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data.</p> <p><i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>The DUI/DUID statute in Illinois does not distinguish between arrests for DUI-alcohol and DUID. 625 Ill. Comp. Stat. Ann. 5/11-501 The DMV does have DUI arrests/citation information by specific sub-statute, however the data system is not searchable and it does not include test results.</p> <p>Identify barriers to be able to distinguish impaired driving offenses separately in state reporting systems:</p> <ul style="list-style-type: none"> • While the Illinois DMV does have DUI arrests/citations by specific statute, the data system is difficult to query and contains no test results. • Lack of data linkage among state agency databases; i.e. DMV and IDOT fall under different constitutional elected officials • Lack of DUI Tracking System <p>Action Steps:</p> <ul style="list-style-type: none"> • Proliferation of e-citations • 100% electronic crash data collection • Law enforcement training • Update DMV database • Toxicology laboratory improvements
<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p>	<p>The administrative license suspension penalty is more severe for drug test refusals. Test refusers receive a 12-month license suspension, while DUID offenders receive a 6-month suspension. 625 Ill. Comp. Stat. Ann. 5/11-501.9</p>
<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>There is no state law regarding the use of electronic warrants, but they are used in a few counties. Electronic warrants must be authorized by a State Attorney and generally are used for serious crashes, or drivers with prior DUI arrests.</p>

	<p>Identify barriers to the increased use of electronic warrants to collect specimens to avoid delay:</p> <ul style="list-style-type: none"> • Cost • Lack of internet access in rural areas • Judges unwillingness to utilize electronic warrants in DUI cases and/or electronic warrants • Law enforcement training • State's Attorneys unwillingness to seek electronic warrants in DUI cases and/or utilize electronic warrants <p>Action Steps:</p> <ul style="list-style-type: none"> • Encourage state's attorneys and law enforcement to use electronic search warrants to obtain blood tests from individuals charged with DUI or Aggravated DUI. • Train willing state's attorneys and law enforcement to use electronic search warrants to obtain blood tests from individuals charged with DUI or Aggravated DUI. • Educate medical facilities regarding no civil liability for conducting blood draws at the request of law enforcement officer on individuals charged with DUI and Aggravated DUI. • Educate medical facilities regarding no civil liability for the truthful reporting of blood and urine tests performed on individuals charged with DUI and Aggravated DUI and encourage reporting of those tests. • Support funding of laboratories equipped to quantitatively test for cannabis and other drugs. • Consider ways to train officers regarding forensic phlebotomy. • Leverage counties already using electronic warrants to encourage their use in counties that are not yet using them. • Train state's attorneys and law enforcement to use electronic warrants in DUI cases in their jurisdictions.
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INDIANA: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law does extend to drugs and supports the collection of blood, urine, and saliva, although saliva collection is not routine. Some police agencies regularly use quick screen oral fluid testing devices. **(1a)**
- + The implied consent law authorizes the collection of a specimen or specimens for multiple tests. **(1b)**
- + The implied consent law prohibits suspects from choosing the type of test. **(1c)**
- + LEOs are authorized to collect and test specimens for drugs with probable cause and a warrant for a blood draw. **(2)**
- + The implied consent law allows testing surviving drivers involved in crashes resulting in death or serious injury. **(3a)**
- + State law mandates drug testing drivers fatally injured in a crash. **(4a)**
- + DUI-alcohol and DUI-drugs are distinguished in the state crash database and the department of toxicology. **(5)**
- + The administrative license suspension penalty for a first DUID refusal is more severe than for a first DUID offense. **(6)**

Partially aligned with recommendations:

- o There is no state law, but electronic warrants are in use in some counties depending on the circuit court judges. **(7)**

Not aligned with recommendations:

- There is no policy related to reporting the drug test results from surviving drivers involved in a serious injury or fatal crash. Any results are maintained by the department of toxicology. **(3b)**
- There is no law or policy to require the reporting of drug test results of drivers fatally injured in a crash. **(4b)**

Notable Findings:

The first ever for Indiana, Phlebotomy for Law Enforcement Course is planned for October 2019. Funding for the Phlebotomy Program will include support for overtime costs for response and collection of blood samples. In 2018, Indiana began funding support for overtime costs for DRE (Drug Recognition Expert) call-out response for DUI Drug traffic stops or crashes. **(2)**

For FY20 Highway Safety Grants, the Indiana Highway Safety Office is requiring subgrantees to have zero (0) unreported results where a sample was collected for FY18 to be eligible. **(4b)**

An action step listed for improving the testing rate of fatally injured drivers: Reintegrate the Indiana Coroner's Association to the Traffic Records Coordinating Committee. **(4)**



INDIANA: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In Indiana, the implied consent law does extend to drugs and supports the collection of blood, urine, and saliva. <i>Ind. Code Ann. § 9-30-6-1; Ind. Code Ann. § 9-30-6-6</i></p> <p>Saliva collection is not routine, but some police agencies regularly use quick screen oral fluid testing devices.</p> <p>Identify barriers in Indiana to the regular use of oral fluid screening for suspected drug impaired drivers:</p> <ul style="list-style-type: none">• Laboratory analysis is not available for oral fluids within the State's current capabilities for evidentiary confirmation.• Cost of oral fluid screening devices are significant in comparison to those available for alcohol <p>Action Steps:</p> <ul style="list-style-type: none">• Pathway for agencies to fund and provide training to officers for use and administration <p>Comments: Some agencies within Indiana regularly use quick screen oral fluid testing devices through funding from Prosecutor Diversion Funding or Drug and Alcohol Penalty Funds. The use of the test results vary by police agency; they may contact a DRE to conduct an evaluation or use the results to assist in establishing Probable Cause.</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	The implied consent law in Indiana authorizes the collection of a specimen or specimens for multiple tests when drug impairment is suspected.
1c. Implied consent laws should not permit suspects to choose the type of test(s).	The implied consent law in Indiana prohibits drivers from choosing the type of specimen collected for testing. <i>Ind. Code Ann. § 9-30-6-2</i>
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).	<p>In Indiana, LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause. <i>Ind. Code Ann. § 9-30-5-1</i></p> <p>Identify barriers to <u>increasing</u> the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none">• Officer education to collecting blood samples whenever drug impairment is suspected regardless of the known or suspected BAC• Time efficient access to collection sites or collection personnel to decrease the impact on out of service time to complete thorough collection of necessary samples

	<p>Action Steps:</p> <ul style="list-style-type: none"> • Initiate a Phlebotomy for Law Enforcement Program in Indiana. • Provide funding to necessary to support law enforcement to mitigate financial burden of extended on-duty time costs. <p>Comments: First ever, for Indiana, Phlebotomy for Law Enforcement Course is planned for October 2019. Funding for Phlebotomy Program will include support for overtime costs for response and collection of blood samples. In 2018, Indiana began funding support for overtime costs for DRE (Drug Recognition Expert) call-out response for DUI Drug traffic stops or crashes.</p>
<p>3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.</p>	<p>State law in Indiana allows the testing of surviving drivers involved in a crash resulting in death or serious injury. <i>Ind. Code Ann. § 9-30-7-3; Ind. Code Ann. § 9-30-6-1</i></p> <p>The drug test results are not maintained by a central state database but are kept by the Indiana Department of Toxicology.</p> <p>Identify barriers to increasing the number of drug tests done on surviving drivers in crashes resulting in death or serious injury:</p> <ul style="list-style-type: none"> • Access to qualified blood sample collection personnel, when resources are taxed beyond available need at serious/fatal crashes. • Access to blood draw equipment to collect the sample with provided Sample Collection Kits from the State <p>Action Steps:</p> <ul style="list-style-type: none"> • Provide Blood Draw Kits to officers in addition to the Sample Collection Kits to facilitate availability of necessary equipment to collect samples. Program launch is planned for October 2019 including the distribution of Blood Draw Kits. • Initiate the Law Enforcement Phlebotomy Training Program for Indiana. <p>Comments: The Implied Consent law provides testing of all drivers involved in a fatal or serious bodily injury crashes.</p>
<p>4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.</p>	<p>State law in Indiana mandates drug testing on all fatally injured drivers. <i>Ind. Code Ann. § 9-30-7-3</i></p> <p>Identify barriers to drug testing all fatally injured drivers:</p> <ul style="list-style-type: none"> • Educate Officers to collect a sample from fatally injured drivers • Assure Coroner results are reported when collected through Coroner Office <p>Action Steps:</p> <ul style="list-style-type: none"> • Reintegrate the Indiana Coroner's Association to the Traffic Records Coordinating Committee

<p>4b. Enact laws and/or implement policies mandating reporting of test results for all fatally injured drivers.</p>	<p>State law or policy in Indiana does not currently require the reporting of test results for all fatally injured drivers.</p> <p>If the drug test results for all fatally injured drivers are not consistently reported to a central state database, what are the barriers to accomplishing this?</p> <ul style="list-style-type: none"> Redefine expectations and directions within the Indiana Standard Officer Crash Report. <p>Action Steps:</p> <ul style="list-style-type: none"> For FY20 Highway Safety Grants, the Indiana Highway Safety Office is requiring subgrantees to have zero (0) unreported results where a sample was collected for FY18 to be eligible.
<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data.</p> <p><i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>The DUI/DUID statute in Indiana does not distinguish between arrests for DUI-alcohol and DUID, however crash reports distinguish among impaired driving offenses. Indiana Code 9-30-5-1(C): separates BAC offenses from DUI-Drug for Schedule I and II substances</p> <p>Action Steps:</p> <ul style="list-style-type: none"> Further deploy the Indiana Electronic OWI affidavit to facilitate offense collection and toxicology results. <p>Comments: The Indiana Officers Standard Crash Report collects information as to if an arrest was affected and the crash report separates alcohol, drug, and alcohol drugs combined as the central repository for all impaired driving crashes. All samples submitted to the Indiana Department of Toxicology are separated currently to these standards.</p>
<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p>	<p>The penalty in Indiana is more severe for first DUID test refusers; they receive a one-year license suspension versus first DUID offenders who receive a 180-day license suspension. Ind. Code Ann. § 9-30-6-9</p>
<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>There is no specific state law, but the use of electronic warrants is county-specific and depends on the circuit court judges.</p> <p>Action Steps to increase the use of electronic warrants to collect specimens to avoid delay:</p> <ul style="list-style-type: none"> The Indiana Highway Safety Office participates annually at the Indiana Judicial College to provide education to the Indiana Judiciary. This is facilitated through the Judicial Outreach Liaison (JOL) Program <p>Comments: Indiana has deployed a statewide free resource for e-warrants available to all police agencies at no cost. Circuit Court judges remain the deciding authority on the acceptance of e-warrants.</p>



IOWA: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law does extend to drugs and supports the collection of blood and urine, but not oral fluid. **(1a)**
- + The implied consent law authorizes the collection of a specimen or specimens for multiple tests. **(1b)**
- + LEOs are authorized to collect and test specimens for drugs with probable cause and a warrant. **(2)**
- + State law allows testing a surviving driver involved in a crash resulting in death or serious injury. **(3a)**
- + Arrest and crash databases record alcohol and drugs offenses separately. **(5)**
- + The administrative license suspension penalty is more severe for a first DUID refusal than for a first DUID offense. **(6)**

Partially aligned with recommendations:

- o State law allows testing a surviving driver involved in a crash resulting in death or serious injury. Because suspects are allowed a choice of tests, this could affect the ability to get good test results. **(3a)**

Not aligned with recommendations:

- State law permits drivers to elect the type of specimen collected; they can opt for a urine test rather than a blood test. **(1c)**
- There is no policy related to reporting the drug test results for surviving drivers involved in serious injury or fatal crash. **(3b)**
- State law does not mandate testing a driver fatally injured in a crash. **(4a)**
- State law does not mandate reporting test results for a driver fatally injured in a crash. **(4b)**
- A law was passed authorizing the use of electronic warrants, but it is not in effect until the State Supreme Court promulgates the rules regarding processes and procedures. **(7)**

Notable Findings:

In 2017, state law was amended to allow the filing of electronic warrants, however those changes will not go into effect until the Supreme Court promulgates rules regarding the processes and procedures for electronic search warrants and submits them to the Legislative Council. **(7)**

Barriers listing for testing all fatally injured drivers include: Possible strong pushback from families when single vehicle crash and no one other than the driver was injured; Demonstrating a strong rationale for the additional financial burden for completing testing when only the potentially impaired driver has been harmed. **(4a)**



IOWA: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>The implied consent law does extend to drugs and supports the collection of blood, but not oral fluid. <i>Iowa Code § 321J.6</i></p> <p>Identify barriers to the use of oral fluid testing when drug impairment is suspected:</p> <ul style="list-style-type: none">• The Iowa Code would need to be changed to allow for oral fluid testing, once a reliable test is established. <p>Action Steps:</p> <ul style="list-style-type: none">• I believe we should have extremely reliable roadside oral fluid tests before even considering implementation. <p>Comments: Oral fluid testing does not say anything about impairment and the current oral fluid tests on the market have been found to not be the most reliable and they also don't test for all drugs. Leaving the question if a peace officer observes obvious signs of impairment for drugs and the oral fluid test shows negative where does that leave the officer?</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>In Iowa, the collection of a specimen or specimens for multiple tests is allowed. <i>Iowa Code § 321J.6</i></p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>State law permits drivers to elect the type of specimen collected, in that they can opt for a urine test rather than a blood test. <i>Iowa Code § 321J.6</i></p> <p>Identify barriers to changing law to disallow suspects from choosing test type:</p> <ul style="list-style-type: none">• Must change legislators and courts opinions on allowing refusal of blood test when a peace officer has reasonable suspicion of DUID <p>Action Steps:</p> <ul style="list-style-type: none">• Legislative change to not be able to refuse blood under implied consent when peace officer has reasonable suspicion of DUID.
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).	<p>State law authorizes LEOs to collect blood and test for drugs on DUI/DUID arrestees with probable cause and a warrant. <i>Iowa Code § 321J.6 and 321J.2</i></p> <p>Identify any barriers to <u>increasing</u> the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none">• More ARIDE and DRE training including funding and manpower to support it.• Iowa does not have any law enforcement phlebotomists and some hospitals are refusing to draw blood for officers.

	<p>Action Steps:</p> <ul style="list-style-type: none"> • More federal funds to host, manage and implement increased ARIDE and DRE training. • Train law enforcement officers to be phlebotomists.
<p>3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.</p>	<p>State law allows testing a driver involved in a crash resulting in death or serious injury. <i>Iowa Code § 321J.6 and 321J.10</i> There is no policy requiring the reporting of test results.</p> <p>Identify barriers to require or encourage the reporting of test results to a state database:</p> <ul style="list-style-type: none"> • Funding to test all driver's involved in serious injury and fatal collisions. <p>Action Steps:</p> <ul style="list-style-type: none"> • Law change making collection and reporting mandatory.
<p>4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.</p>	<p>State law does not mandate testing a driver fatally injured in a crash.</p> <p>Identify barriers to enacting laws and/or implementing policies mandating drug testing for all fatally injured drivers:</p> <ul style="list-style-type: none"> • Possible strong pushback from families when single vehicle crash and no one other than the driver was injured. • Demonstrating a strong rationale for the additional financial burden for completing testing when only the potentially impaired driver has been harmed. <p>Action Steps:</p> <ul style="list-style-type: none"> • Law change to require the mandatory drug testing for all fatally injured drivers.
<p>4b. Enact laws and/or implement policies mandating <u>reporting</u> of drug test results for all fatally injured drivers.</p>	<p>State law does not mandate reporting test results for a driver fatally injured in a crash.</p> <p>Identify barriers to enacting laws and/or implementing policies mandating reporting of drug test results for all fatally injured drivers:</p> <ul style="list-style-type: none"> • Possible strong pushback from families when single vehicle crash and no one other than the driver was injured. <p>Action Steps:</p> <ul style="list-style-type: none"> • Law change to require the mandatory drug testing for all fatally injured drivers.
<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data.</p> <p><i>The expert panel report notes the need for updates to the state citation, adjudication,</i></p>	<p>While the law does not distinguish between DUI-alcohol and DUI-drug <i>Iowa Code § 321J.2</i>, arrest and crash databases record alcohol and drugs offenses separately.</p>

<p><i>driver records, and crash record data systems.</i></p>	
<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p>	<p>The administrative license penalty is more severe for first DUID test refusers who receive a 12-month license suspension. <i>Iowa Code § 321J.9</i> First DUID offenders receive a 6-month license suspension. <i>Iowa Code § 321J.12</i></p>
<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>There is currently no law or policy in effect regarding electronic warrants.</p> <p>Identify barriers to the use of electronic warrants to avoid delays when warrants are necessary:</p> <ul style="list-style-type: none"> • A law was passed in 2017 that allows LEOs to file electronic search warrants, however the law is not in effect until the rules are promulgated. <p>Comments: In 2017, the Iowa Legislature passed S.F. 358 that amended various statutes in Iowa Chapter 808 governing search warrants. S.F. 358 provides the ability for law enforcement officers to file electronic search warrants; however, S.F. 358 does not go into effect until the Iowa Supreme Court promulgates rules regarding the processes and procedures for electronic search warrants and submits them to the Legislative Council. The Iowa Supreme Court has not yet submitted any rules to the Legislative Council.</p>



KANSAS: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law does extend to drugs and supports the collection of blood, urine and oral fluid, and authorizes the use of roadside oral fluid devices. **(1a)**
- + The implied consent law authorizes the collection of a specimen or specimens for multiple tests. **(1b)**
- + LEOs determines the type of testing. **(1c)**
- + LEOs are authorized to collect and test specimens for drugs with probable cause and a warrant. **(2)**
- + State law allows testing surviving drivers involved in crashes resulting in death or serious injury with probable cause. **(3a)**
- + State law exists mandating reporting of drug tests for fatally injured drivers, but there is no penalty for not reporting so test results are not consistently being reported. **(4b)**
- + DUI-alcohol, DUI-drugs, and a combination of alcohol and drugs are coded separately in driver records. **(5)**
- + The administrative license suspension penalty is more severe for a first DUID refusal than for a first DUID offense. **(6)**

Partially aligned with recommendations:

- o Electronic warrants can be used for a blood draw; their use varies by district. **(7)**

Not aligned with recommendations:

- There is no policy related to reporting drug test results of surviving drivers involved in serious injury or fatal crashes. **(3b)**
- State law allows but does not mandate drug testing for all fatally injured drivers. **(4a)**

Notable Findings:

Uniquely, the implied consent law specifically authorizes the collection of roadside oral fluid. **(1a)**

An oral fluid pilot study was completed and published in the *Drug Testing and Analysis Journal* in 2018:

<https://www.ncbi.nlm.nih.gov/pubmed/28879663>. The project evaluated the performance of a roadside oral fluid testing device. **(1a)**

Some jurisdictions are implementing protocols to reduce blood-draw refusals. **(2)**

Recent appellate cases have stripped away much of our previous implied consent exceptions allowing for warrantless blood draws. **(2)**

Barrier to testing all fatalities: If it is not required by statute, many jurisdictions will not test to avoid incurring cost of testing and to avoid potential shame or embarrassment for the family of the deceased. **(4a)**

A recommended action step related to fatal crashes: Adopt a standardized investigation protocol for fatal crashes to be reviewed by a statutorily authorized review board (traffic death review board), similar to the child death review board. **(4a)**



KANSAS: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>The implied consent law does extend to drugs and supports the collection of blood, urine and oral fluid. <i>Kan. Stat. Ann. § 8-1005</i> The implied consent law also authorizes the use of roadside oral fluid devices. <i>Kan. Stat. Ann. § 8-1001</i></p> <p>Identify barriers to the collection of oral fluid when drugged driving is suspected:</p> <ul style="list-style-type: none">• At this point, in-state labs are not certified for the testing of oral fluids• Expert testimony will be needed to establish the reliability of this testing in relation to impaired driving. <p>Action Steps:</p> <ul style="list-style-type: none">• One or all of the labs will need to become certified to test oral fluids.• Uniform laboratory standards will need to be established regarding cutoff levels and training for LEO's and prosecutors.• A "Daubert" hearing will likely need to be conducted to establish the reliability of oral fluids. <p>Comments 5-1-19: An oral fluid pilot study was completed and published in a peer-reviewed journal: https://www.ncbi.nlm.nih.gov/pubmed/28879663 The project evaluated the performance of a roadside oral fluid testing device. The authors found that the device performed well, but because it does not test for all potentially impairing drugs, they consider the opinion of the police officer to be most important for arrest and further action.</p> <p>The state is planning to engage a select number of DRE's and Prosecutors for field testing of oral fluid units. The units are considered preliminary testing units and will just be used to confirm the DRE testing and subsequent blood testing.</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>Collection of a specimen or specimens for multiple tests is authorized. <i>K.S.A. 8-1001 (b)(1)</i> provides that one or more tests may be requested by LEO.</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>Testing is to be at the direction of LEO who determines the type of testing. <i>K.S.A. § 8-1001(a)</i></p>
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).	<p>LEOs are authorized to test for drugs via blood, urine and saliva when drug impairment is suspected. <i>Kan. Stat. Ann. § 8-1001; 8-1005</i></p>

	<p>Identify barriers in Kansas to increasing the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none"> • There is a higher cost of time and resources and a financial cost to test a sample for drugs if it is already over .08 for alcohol. • Recent appellate cases have stripped away much of our previous implied consent exceptions allowing for warrantless blood draws. • Some jurisdictions face resistance from the court or from medical providers for blood draws. • Technology in rural areas and access to judicial personnel. <p>Action Steps:</p> <ul style="list-style-type: none"> • Adopt a standardized investigation protocol for fatal crashes to be reviewed by a statutorily authorized review board (traffic death review board), similar to the child death review board. • Adopt higher penalties for drivers impaired by both alcohol and drugs. • Adopting oral fluid testing which could potentially remove the requirement to obtain a warrant. <p>Comments 5-1-19: In cooperation with prosecutors and judges, several jurisdictions have implemented no-refusal protocols. This protocol allows for a more seamless approach to receiving a court order for a blood draw. As the process becomes more widespread, implementation around the state can occur. Technology in rural areas and access to judicial personnel are the biggest barriers to increasing the number of drug tests.</p>
<p>3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.</p>	<p>State law allows testing (“may be requested”) a surviving driver involved in a crash resulting in death or serious injury. <i>Kan. Stat. Ann. § 8-1001</i></p> <p>There is no state law or policy regarding reporting drug test results. The courts are required to report to the KS Dept. of Revenue any finding regarding the alcohol concentration of the offender’s blood or breath. <i>K.S.A. § 8-1567(h)</i></p> <p>Identify barriers to implementing a law or policy requiring the reporting of drug test results for surviving drivers in fatal and serious injury crashes to a central state database:</p> <ul style="list-style-type: none"> • There is a higher cost of time and resources and a financial cost to testing. • There is not a standardized investigation protocol for fatal crashes. <p>Action Steps:</p> <ul style="list-style-type: none"> • Adopt a standardized investigation protocol for fatal crashes to be reviewed by a statutorily authorized review board (traffic death review board), similar to the child death review board. • Adopting oral fluid testing which could potentially remove the requirement to obtain a warrant. <p>Comments 5-1-19: Single vehicle fatalities typically don’t receive blood testing. Cost and understanding the importance of the data are probably the most significant factors in increasing the number of blood</p>

	<p>tests on surviving drivers. Education and funding for the additional testing should be able to increase the number of surviving drivers tested.</p>
<p>4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.</p>	<p>State law allows drug testing (“may be requested”) for all fatally injured drivers. <i>Kan. Stat. Ann. § 8-1001</i></p> <p>If testing on all fatally injured drivers is not done in practice, what are the barriers to increasing the reporting rate?</p> <ul style="list-style-type: none"> • Cost, education, higher workload, and awareness. • If it is not required by statute, many jurisdictions will not test to avoid incurring cost of testing and to avoid potential shame or embarrassment for the family of the deceased. <p>Action Steps:</p> <ul style="list-style-type: none"> • Adopt a standardized investigation protocol for fatal crashes to be reviewed by a statutorily authorized review board (traffic death review board), similar to the child death review board • Adopting oral fluid testing which could potentially remove the requirement to obtain a warrant <p>Comments: In 2018 there was a change in Kan. Stat. Ann. § 8-1001. Prior to the change, language specifically stated that dead or unconscious drivers could <i>not</i> be considered to have consented to testing. This created a barrier to testing. In 2018 that language was removed. While this removes a barrier to testing, it doesn’t create the inducement to testing that would be created by a law mandating it.</p> <p>Comments 5-1-19: Single vehicle fatalities typically don’t receive blood testing. Cost and understanding the importance of the data are probably the most significant factors in increasing the number of surviving drivers blood results. Education and funding for the additional testing should be able to increase the number of surviving drivers tested.</p>
<p>4b. Enact laws and/or implement policies mandating <u>reporting</u> of drug test results for all fatally injured drivers.</p>	<p>State law mandates reporting drug test results for all fatally injured drivers. <i>Kan. Stat. Ann. § 8-1611</i></p> <p>Identify barriers to getting the drug tests results for fatally injured drivers reported to a central state database:</p> <ul style="list-style-type: none"> • State law already exists but there are no penalties for non-compliance. <p>Action Steps:</p> <ul style="list-style-type: none"> • The state plans to work with the three large labs and coroners in the state to address the issue. <p>Comments 5-1-19: State law already exists but there are no penalties for non-compliance. The state plans to work with the three large labs and coroners in the state to address the issue.</p>

<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data.</p> <p><i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>DUI-alcohol and DUI-drugs are not separate offenses or statutes, but subsections of the law distinguish among three impaired driving offenses. <i>Kan. Stat. Ann. § 8-1567</i></p> <p>Three offenses, DUI-alcohol, DUI-drugs, and a combination of alcohol and drugs are coded separately in driver records.</p> <p><u>Alcohol</u></p> <p>8-1567a1 - BAC in the person's blood or breath as shown by any competent evidence, including other competent evidence is .08 or more</p> <p>8-1567a2 – BAC in a person's blood or breath within 3 hours of operating or attempting to operate a vehicle is .08 or more</p> <p>8-1567a3 - under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle</p> <p><u>Drugs</u></p> <p>8-1567a4 - under the influence of any drug or combination of drugs to a degree that renders the person incapable of safely driving a vehicle</p> <p><u>Combination of Alcohol and Any Drug(s)</u></p> <p>8-1567a5 - under the influence of a combination of alcohol and any drug or drugs to a degree that renders the person incapable of safely driving a vehicle</p> <p>Comments: These offenses are coded separately by the Department of Revenue on the driving record. The DC-9 contains the different codes assigned. <u>DC-9</u></p>
<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p>	<p>The administrative penalty is more severe for first DUID test refusers who receive a one-year license suspension. First DUID offenders receive a 30-day license suspension. <i>Kan. Stat. Ann. § 8-1014</i></p> <p>Comments 5-1-19: Increased severity for refusing the test was implemented to discourage refusals. Criminal refusal was stricken from state statute in 2018, but the administrative additional sanctions still apply.</p>
<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>The use of electronic warrants varies by district. LEOs can get electronic warrants for drawing of blood. E-warrants can and are used for blood testing for drugs. However, blood testing for drugs for drivers over .08 is unlikely.</p> <p>Identify barriers to increasing the use of electronic warrants to avoid delays when warrants are necessary:</p> <ul style="list-style-type: none"> • There is a higher cost of time and resources and a financial cost to test a sample for drugs if it is already over .08 for alcohol. Because the sanctions are not greater for the combination of alcohol and drugs than for alcohol alone, it is unlikely testing for drugs will occur for a driver over .08. • Some jurisdictions face resistance from the court or from medical providers. <p>Action Steps:</p> <ul style="list-style-type: none"> • Education and increased resources in order to implement more widespread testing practices.

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| | <ul style="list-style-type: none">• Centralized or regional magistrates available to review and approve warrants would provide consistency and could address issues in rural jurisdictions and jurisdictions where judges refuse to review warrant applications in DUI cases. |
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LOUISIANA: Laws & Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- The implied consent law authorizes the collection of a specimen or specimens for multiple tests. **(1b)**
- The implied consent law prohibits suspects from choosing the type of test. **(1c)**
- LEOs are authorized to collect and test specimens for drugs with probable cause and a warrant for a blood draw. **(2)**
- State law requires testing surviving drivers involved in crashes resulting in death or serious injury, when there is probable cause. **(3a)**
- State law requires drug testing drivers fatally injured in a crash. **(4a)**
- State law mandates reporting of drug test results of drivers fatally injured in a crash. **(4b)**
- The administrative license suspension penalty for a first DUID refusal is the same as for a first DUID offense. **(6)**

Partially aligned with recommendations:

- o The implied consent law extends to drugs only if the suspect refuses a chemical test. **(1a)**
- o The law allows the use of e-warrants, but they are only used in jurisdictions where judges are amenable to the practice. **(7)**

Not aligned with recommendations:

- There is no policy related to reporting drug test results from surviving drivers involved in serious injury or fatal crashes. **(3b)**
- DUI-alcohol and DUI-drugs are not distinguished in a central state database but they are available in the state's toxicology lab records. **(5)**

Notable Findings:

Action Steps to improve reporting of drug test results: Meet with FARS and Traffic Records Coordinator Committee and get point person; meet with the three crime labs to determine easiest way to report BAC and Toxicology results to FARS. **(3b)**

The implied consent law extends to drugs only if the suspect refuses a chemical test. The DUI/DUID statute does however support the collection of blood, urine, and oral fluid, but in practice oral fluid is not collected. **(1a)**



LOUISIANA: Laws & Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In Louisiana, the implied consent law extends to drugs only in that if a suspected drug-impaired driver refuses a chemical test, he/she is subject to implied consent consequences. The DUI Statute supports the collection of blood, urine, and oral fluid, although oral fluid is not collected in practice. <i>La. Stat. Ann. § 32:661</i></p> <p>Identify barriers to extending the implied consent law to include drugs:</p> <ul style="list-style-type: none">There is no scientifically supported per se for drugs like there is for alcohol, and we do not want to unjustifiably impose consequences on someone who may not be impaired. <p>Comments: The only time implied consent consequences will be triggered for a submission is if the driver has a .08 or higher BAC. See La. R.S. 32:667. However, if the driver refused the chemical test, he would also be subject to implied consent consequences. That is the only way a drugged driver would be subject to Implied Consent consequences in LA.</p> <p>Identify barriers to the collection of oral fluid by LEOs:</p> <ul style="list-style-type: none">Very few oral fluid tests have been validated for evidentiary purposes. Very little caselaw from other states piloting oral fluid devices that allow oral fluid results for evidentiary purposes. It is wise to wait and see how these products develop and subsequent caselaw develops. <p>Action Steps:</p> <ul style="list-style-type: none">Wait and study other states' progress with their oral fluid devices for evidentiary purposes. <p>Comments: No oral fluid screening test devices are currently used.</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The implied consent law in Louisiana authorizes the collection of a specimen or specimens for multiple tests when drug impairment is suspected.</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>The implied consent law states that tests shall be administered at the direction of law enforcement. The LEO chooses the test or tests. <i>La. R.S. 32:661(A)(2)(a)</i></p>
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).	<p>In Louisiana, LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause to suspect drug impairment. <i>La. R.S. 32:661, 32:666</i></p> <p><i>State v. Green, 47,176 (La. App. 2 Cir. 2 9 12) 91 3d 315 allows officers to get warrants for blood draws when they have PC.</i></p>

	<p>Identify barriers in Louisiana to increasing the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none"> • Lack of training for officers on how and when to order blood draws. • LEO belief that urine is as valuable as blood draw for impaired evidence. • Lack of resources to test samples under .08 <p>Action Steps:</p> <ul style="list-style-type: none"> • We will continue training on DUID investigations and collecting blood draws. • More resources needed for LSP Crime Lab. <p>Comments: Currently LSP Crime Lab is only testing tox that is not .08. If it's .08 or above LSPCL does not run tox unless requested due to lack of resources for such tests.</p>
<p>3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.</p>	<p>State law in Louisiana requires testing of <i>surviving</i> drivers involved in a crash resulting in death or serious injury with probable cause to suspect drug impairment, but it does not require reporting the results. <i>La. Stat. Ann. § 32:681; La. R.S. 32:666.</i></p> <p>What are the barriers to a law or policy that requires that drug test results are reported to a central state database:</p> <ul style="list-style-type: none"> • LSP Crime Lab is only lab that consistently reports. <p>Actions Steps:</p> <ul style="list-style-type: none"> • Meet with FARS and Traffic Records Coordinator Committee and get point person; meet with 3 crime labs to determine easiest way to report BAC and Toxicology results to FARS.
<p>4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.</p>	<p>State law in Louisiana requires drug testing on all fatally injured drivers. <i>La. Stat. Ann. § 32:661; La. R.S. 32:681</i></p>
<p>4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.</p>	<p>State law in Louisiana mandates the reporting of drug test results for fatally injured drivers. <i>La. R.S. 32: 398</i></p> <p>Comments: La. R.S. 32: 398 requires the reporting of fatalities and circumstances to DPS/LHSC, but in practice, toxicology results are sent from the coroner's offices to Department of Transportation and Development (DOTD) who maintains FARS on behalf of Louisiana.</p>
<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data.</p> <p><i>The expert panel report notes the need for updates to the state citation, adjudication,</i></p>	<p>The DUI/DUID statute in Louisiana does not distinguish between arrests for DUI-alcohol and DUID, and they are not available in a central state database. However state toxicology lab records distinguish impaired driving offenses for alcohol and for drugs.</p>

<i>driver records, and crash record data systems.</i>	
<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p>	<p>In Louisiana, the administrative penalty is the same for first DUID test refusers and first DUID convictions; both receive a one-year license suspension. <i>La. Stat. Ann. § 32:667 (Refusal)</i> <i>La. R.S. § 32:414 (Offense)</i></p> <p>Comments: First DUID submissions receive a 90-day license suspension.</p>
<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>The law specifically allows electronic warrants but, they are only used in jurisdictions where judges are amenable to the practice. <i>La. Stat. Ann. § 9:2603.1</i></p> <p>Identify barriers to increase the use of electronic warrants to collect specimens to avoid delay:</p> <ul style="list-style-type: none"> • Reluctant judges. • Resources and training for electronic warrants. <p>Action Steps:</p> <ul style="list-style-type: none"> • Continue training on electronic warrants and educating on access to resources to pay cost of electronic warrants.



MAINE: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law extends to drugs and authorizes the collection of blood and urine, but not oral fluid. **(1a)**
- + The implied consent law allows the collection of a specimen or specimens for multiple tests. **(1b)**
- + The implied consent law does not permit suspects to choose the type of test(s). **(1c)**
- + LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause and a warrant. **(2)**
- + State law mandates drug testing for fatally injured drivers. **(4a)**
- + The administrative license suspension penalty for a first DUID refusal is more severe than for a first DUID offense. **(6)**

Partially aligned with recommendations:

- o The law requires drug testing surviving drivers in fatal crashes when there is probable cause, but it is not required for those involving serious injury. **(3a)**
- o Drug and alcohol offenses cannot be distinguished in a central database, but separate classification information can be obtained. **(5)**

Not aligned with recommendations:

- There is no policy related to reporting the drug test results of surviving drivers involved in serious injury or fatal crashes. **(3b)**
- There is no law or policy that mandates reporting drug test results for fatally-injured drivers but in practice they are reported to the FARS. **(4b)**
- Electronic warrants are not used, though efforts are being made to establish their use. **(7)**

Notable Findings:

Oral fluid is not used because officials do not consider the investigative value of oral fluid testing to be necessary for confirming the presence of a select number of drugs. **(1a)**



MAINE: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	The implied consent law extends to drugs and supports the collection of blood and urine, but not oral fluid. <i>Me. Stat. tit. 29, § 2521</i> Comments: At this time, Maine does not consider the investigative value of oral fluid testing to be necessary for confirming the presence of a select number of drugs. We will continue to use roadside testing and other chemical tests to determine the presence of a drug or drug metabolite.
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	Collection of a specimen or specimens for multiple tests is authorized. <i>Me. Stat. tit. 29, § 2521</i>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	The implied consent law specifies that the LEO chooses the type of test. <i>Me. Stat. tit. 29-A §2521 (2)</i>
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).	LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause. <i>Me. Stat. tit. 29, § 2521</i> Comments: LEO are already authorized to collect and test for drugs when deemed appropriate under 29-A §2521
3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.	State law requires testing surviving drivers involved in a crash resulting in death, but not for serious injury. <i>Me. Stat. tit. 29-A, § 2522 (2)</i> There is no state law or policy regarding reporting test results to state databases. Comments: 29-A §2522 (2) allows for mandatory submission to a test if there is probable cause to believe death has occurred or will occur as a result of the crash.
4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.	State law allows testing drivers fatally injured in crashes. <i>Me. Stat. tit. 29, § 2522</i> Comments: The law does not mandate testing for drugs. It mandates a test for an alcohol level or for the presence of a drug or drug metabolite.
4b. Enact laws and/or implement policies mandating <u>reporting</u> of drug test results for all fatally injured drivers.	Reporting the test results on fatally injured drivers to a state database is not required, however the test results are collected from various entities and included in the FARS data system.
5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data.	DUI-alcohol and DUI-drugs are not separate offenses. <i>Me. Stat. tit. 29, § 2411</i> Separate classification information can currently be obtained, but there are no separate databases housing the information.

<i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i>	
6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.	The administrative penalty is more severe for first DUID test refusers who receive a 275-day license suspension. <i>Me. Stat. tit. 29, § 2521</i> First DUID offenders receive a 150-day license suspension. <i>Me. Stat. tit. 29, § 2411</i>
7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.	Maine is working towards a system of e-warrants.



MARYLAND: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law authorizes the collection of a specimen or specimens for multiple tests. **(1b)**
- + The implied consent law prohibits suspects from choosing the type of test. **(1c)**
- + Reporting drug test results from surviving drivers involved in serious injury or fatal crashes is required. **(3b)**
- + State law mandates drug testing drivers fatally injured in a crash. **(4a)**
- + DUI-alcohol and DUI-drugs can be distinguished in a state database. **(5)**
- + The administrative license suspension penalty for a first DUID refusal is more severe than for a first DUID offense. **(6)**

Partially aligned with recommendations:

- The implied consent law does extend to drugs and supports the collection of blood, however only a DRE officer can request a blood sample. **(1a)**
- LEOs are authorized to collect and test specimens for drugs with probable cause, however only a DRE officer can request a blood sample. **(2)**
- State law allows testing surviving drivers involved in crashes resulting in death or serious injury, when there is probable cause. Because only a DRE officer can request blood, this could affect the ability to get a good test. **(3a)**
- At this time, electronic warrants are only used in fatal life-threatening situations. **(7)**

Not aligned with recommendations:

- Maryland law does not mandate the reporting of test results on fatalities, however in practice, the Medical Examiner's office maintains all the test results. The FARS analyst obtains toxicology results from both the OCME and other medical facilities as they are available. **(4b)**

Notable Findings:

The implied consent law applies to drugs, but the law specifically states that only a DRE officer can request a blood sample. **(1a)**

Comment: Drug concentration levels are not reported because there is no research that states at what nanograms of said drug have a certain effect on a person's ability to operate a vehicle. Research does show that alcohol impairs at certain levels (BAC). **(3a-b)**



MARYLAND: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In Maryland, the implied consent law applies to drugs, but only a DRE officer can request a blood sample (with probable cause and a warrant if not voluntary). The law does not support the collection of oral fluid. <i>MD Code Transportation § 16.205.1</i></p> <p>Identify barriers to allowing all officers to collect blood when drug impairment is suspected.</p> <ul style="list-style-type: none">• The law says only a certified DRE can draw blood for drug testing.• Violators can refuse the DRE request <p>Action Steps needed for all officers to collect blood when drug impairment is suspected.</p> <ul style="list-style-type: none">• Revise MD law, at legislative level.• Maybe start ARIDE certified officers. <p>Comments: MD has attempted this in the past but never made it out of committee.</p> <p>Identify barriers to the collection of oral fluid when drug impairment is suspected.</p> <ul style="list-style-type: none">• No program for oral fluid testing.• Couldn't be used in court. <p>Comments: The Montgomery County Police Department currently utilizes oral fluid testing as a critical component of their cannabis intoxication impaired driving lab workshops. The oral fluid data collected as a result of those workshops is used as a means of assisting in the determination of cannabis sobriety pre-lab and as a safeguard in providing concrete evidence of abstinence of use as requested by the workshop hosts. For a number of years, the hope was to pass legislation in an effort to get an oral fluid pilot program up and running throughout the State. Unfortunately, the General Assembly did not pass the bill in any of the years it was proposed.</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The implied consent law in Maryland allows the collection of a specimen or specimens for multiple tests.</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>Police officers choose the type of test.</p> <p>Comments: Alcohol breath test first by LEO, then if it shows no BAC or low BAC for level of present impairment, then DRE requests or tests blood sample.</p>

<p>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).</p>	<p>LEOs in Maryland are authorized to collect and test blood specimens when there is probable cause to suspect drug impairment, however only DRE officers can request a blood draw. <i>MD Code Transportation § 21-902</i></p> <p>Identify barriers in Maryland to increasing the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none"> • Legislative change in the law to allow non-DRE LEO's to draw blood • If BAC is .08 or higher, no reason to test for drugs due to the per se law.
<p>3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.</p>	<p>Maryland law does authorize drug testing for all surviving drivers in fatal and serious crashes when there is probable cause that drug impairment was a factor. <i>MD Transportation Code § 16-205.1</i></p> <p>Reporting the results is required. All drug test results are reported by police officers via the Automated Crash Reporting System (ACRS).</p> <p>Comments: Drug concentration levels are not reported because there is no research that states at what nanograms of said drug have a certain effect on a person's ability to operate a vehicle. Research does show that alcohol impairs at certain levels (BAC).</p>
<p>4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.</p>	<p>Maryland law does mandate testing of fatally injured drivers. <i>MD Transportation Code § 16-205.1</i> They consistently test all fatally injured drivers.</p>
<p>4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.</p>	<p>Maryland law does not mandate the reporting of results, however in practice, the Medical Examiner's office maintains all the test results. Maryland's FARS analyst obtains toxicology results from both the Office of the Chief Medical Examiner (OCME) and other medical facilities as they are available.</p>

<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data.</p> <p><i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>Maryland does not have separate statutes for DUI-alcohol and DUID, however subsections of the law do distinguish among impaired driving offenses. MD Transportation Code § 21-902 State data collection and reporting systems distinguish among DUI and DUID offenses in the ACRS.</p> <p>21-902(a) - Driving Under the Influence of Alcohol (.08+) 21-902(b) - Driving While Impaired by Alcohol (.07) 21-902(c) - Driving While Impair by Drugs or Drugs and Alcohol - the drugs here are generally prescription drugs 21-902(d) - Driving While Impaired by a Controlled Dangerous Substance</p> <p>Comments: In the case of crashes, the Maryland State Police report the offenses to ACRS.</p>
<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p>	<p>In Maryland, the license suspension period is 270 days for test refusal for a first DUID offense versus zero days suspension for a first DUID conviction, making the penalty more severe for refusers. MD Transportation Code § 16-205.1</p> <p>Comments: The conviction should carry the suspension as well.</p>
<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>Electronic warrants are only used in fatal or life-threatening situations in Maryland.</p> <p>Identify barriers to the use of electronic warrants to collect specimens to avoid delay in testing suspected drugged drivers:</p> <ul style="list-style-type: none"> • Remains the same in MD, however we are working on making changes. MD has held a weekend pilot of no refusals and has one coming up in August. • MD is holding trainings on eWarrants and blood testing and ATTEMPTING TO make it easier for the officer to get the warrant from a judge. <p>Action Steps:</p> <ul style="list-style-type: none"> • MD needs judiciary buy in to make eWarrants available, easier to obtain.



MASSACHUSETTS: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + DUI-alcohol and DUI-drugs are reported as separate offenses in citation data and reported to DMV as separate offenses. **(5)**
- + There is a policy that mandates reporting drug test results for fatally-injured drivers to FARS. **(4b)**

Partially aligned with recommendations:

- o LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause and a warrant, albeit because the lack of an implied consent law that applies to drugs will discourage drug testing. **(2)**

Not aligned with recommendations:

- Massachusetts is not in alignment with recommendations that depend on the application of implied consent laws to DUID because implied consent laws do not currently apply to DUID. Drug tests to determine DUID are voluntary. Legislation is being prepared to address this issue. **(1a) (1b) (1c)**
- Current law does not authorize or encourage drug testing for surviving drivers in fatal and serious injury crashes. **(3a)**
- Current law does not authorize or encourage reporting of drug test results for surviving drivers in fatal and serious injury crashes. **(3b)**
- Current law does not mandate drug testing for all fatally injured drivers. **(4a)**
- Because the implied consent does not currently apply to drugs, there is no administrative sanction for a drug test refusal. **(6)**
- Current law precludes the use of electronic warrants **(7)**

Notable Findings:

For several recommendations, the lack of alignment is a function of the fact that the state's implied consent law does not apply to drugs. Proposed legislation would bring Massachusetts in alignment with some, but not all, recommendations.



MASSACHUSETTS: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In Massachusetts, the implied consent law does not apply to drugs. Any drug tests for those suspected of DUI are voluntary. Legislation is being prepared that would include drugs in the implied consent law and support the collection of blood, urine and oral fluid when DUI is suspected.</p> <p>In 2016, Massachusetts legalized adult use marijuana. Recognizing that impaired driving incidents would likely increase with recreational marijuana use, and the need to protect the public, that same legislation created a Special Commission on Operating Under the Influence and Impaired Driving. January 1, 2018, the Commission submitted a report recommending legislative changes to increase public safety on the roadways. In response to that report, Governor Baker filed a bill (H71) An Act Implementing the Recommendations of the Special Commission on Operating Under the Influence and Impaired Driving.</p> <p>https://malegislature.gov/Bills/191/H71</p> <p>Identify barriers to the passage of proposed legislation:</p> <ul style="list-style-type: none">• Strong defense bar in Massachusetts with significant presence in the Legislature.• Current impaired driving laws heavily favor a defendant after arrest is made and through trial. <p>Action Steps:</p> <ul style="list-style-type: none">• Persuading legislatures to act favorably on the legislation• Establishing the reliability of testing methods <p>Comments: Section 13 of the Governor's Bill H71, adds oral fluid and the non-testimonial aspects of the DRE examination to the implied consent laws.</p> <p>The Oral Fluids Pilot Program was completed in November 2018. Work is reported in Pehrsson A., et al, An evaluation of on-site oral fluid drug screening devices DrugWipe 5+ and Rapid STAT using oral fluid for confirmation analysis. <i>J Anal Toxicol.</i> 2011 May;35(4):211-8.</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The current Implied Consent law Mass. Gen. Laws c.90, s.24 (1) (f) (1) supports the collection of blood and breath. Section 12 of the Governor's Bill H71 supports oral fluid and urine collection as part of the DRE examination.</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>Current and proposed new legislation specifies that LEOs choose test type.</p>

	<p>Comments: Massachusetts current implied consent law <i>Mass. Gen. Laws c.90, s.24 (1) (f) (1)</i>, does not allow the defendant to choose what type of test they submit to but rather allows the officer to choose. But a defendant can, at his own expense, also request a blood test (in addition to a breath sample).</p>
<p>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).</p>	<p>LEOs currently have the option to apply for a warrant for blood when DUI/DUID is suspected.</p> <p>Identify potential barriers to increasing the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none"> • Probable cause for alcohol impairment may not be sufficient to also test for drugs in all cases • Burden on state crime lab <p>Action Steps:</p> <ul style="list-style-type: none"> • Determine how many OUI arrests are made each year in the Commonwealth • Consult with legislators <p>Comments: There is no current law in Massachusetts that allows for the forced taking of any specimens. By including oral fluids and urine from the DRE evaluation into the implied consent language of our law, it allows for an administrative license suspension for a refusal. A refusal, by a defendant, to providing a specimen will result in a license suspension; however, that refusal evidence is not admissible in court. See <i>G.L. c. 90, s. 24 (1) (f) (1)</i>. The application of a warrant for blood has always been an option available to officers and remains an option today.</p>
<p>3a-b. Authorize and encourage drug testing for all surviving drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.</p>	<p>Current code and proposed legislation does not authorize or encourage drug testing for surviving drivers in fatal and serious injury crashes.</p> <p>Identify barriers to authorizing or encouraging drug tests for surviving drivers in fatal and serious injury crashes.</p> <ul style="list-style-type: none"> • Same issues as above • Access to a blood sample for many of these operators will be available by securing a search warrant for a blood sample taken by the treating hospital. <p>Comments: A number of bills have been filed over the years in various forms that would allow for drug testing after a fatal or serious injury crash. Nothing has passed. The Governor's bill does not include this statutory language.</p> <p>Identify barriers to authorize or encourage the reporting of drug test results for surviving drivers to a central state database:</p> <ul style="list-style-type: none"> • Need to create a centralized system • Will require communication and coordination between hospitals, police departments, crime labs, centralized data base, etc.

	<p>Action Steps:</p> <ul style="list-style-type: none"> • Need to create a system. • Funding
<p>4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.</p>	<p>Current code and proposed legislation does not mandate drug testing for all fatally injured drivers.</p> <p>Identify barriers to a law or policy to mandate drug tests for all fatally injured drivers.</p> <ul style="list-style-type: none"> • Constitutional issues • Due process: Probable cause? Warrant? <p>Action Steps:</p> <ul style="list-style-type: none"> • Research legal precedent, RE: constitutional rights of decedents. • Collateral issues – next of kin, lawsuits, etc. <p>Comments: A number of bills have been filed over the years in various forms that would allow for drug testing after a fatal or serious injury crash. Nothing has passed. The Governor’s bill does not include this statutory language.</p> <p>505 CMR 1:08 allows the medical examiner’s office to disclose an autopsy report to an agency for the purpose of gathering statistical data.</p>
<p>4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.</p>	<p>Currently drug test results on fatalities are required to be reported to the Fatality Analysis Reporting System (G.L. c. 90, §29), but not to central state databases such as crash or licensing databases.</p> <p>Identify barriers to a law or policy to require the reporting of drug test results for fatally injured drivers to a central state database:</p> <ul style="list-style-type: none"> • Would require a legislative amendment (often challenging) <p>Action Steps:</p> <ul style="list-style-type: none"> • Consult legislators. Demonstrate need for data in order to be able to properly address DUID
<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data.</p> <p><i>The expert panel report notes the need for updates to the state citation, adjudication,</i></p>	<p>It is possible to discriminate between drug and alcohol cases in citation data. Charges of OUI and OUI-drugs are reported to the DMV.</p> <p>Comments: It may be possible to collect this data through the breath test instrument if the impaired driving statute G.L. c. 90, §24 is updated to include drugs in the implied consent language.</p>

<i>driver records, and crash record data systems.</i>	
6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.	If the language in the Governor's Bill passes and DUID is included in the language of the implied consent statute, the administrative license suspensions will mirror the current suspensions for alcohol – 180 days for the first offense and for refusals, and up to life for subsequent offenses.
7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.	<p>In Massachusetts, current law requires that the LEO personally appear when requesting a warrant. The Governor's Bill H71 includes language in sections 68-70 to allow for electronic warrants.</p> <p>Identify barriers to the use or increased use of electronic warrants to collect specimens reduce delay:</p> <ul style="list-style-type: none"> • Amend the current law which is often difficult. • Need to establish infrastructure for a state-wide system. Which would include, at a minimum: trial court, clerk's office, judiciary, local and state police departments, etc. <p>Action Steps:</p> <ul style="list-style-type: none"> • Examine what electronic systems are already in place, such as the e-filing system. Currently, MA has the capacity to file for the issuance of a criminal complaint, and to request the issuance of an arrest warrant, electronically. Perhaps using one of these platforms to build a statewide system would be most efficient. • Research e-warrant systems in other states.



MICHIGAN: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law does extend to drugs and supports the collection of blood and urine, but not oral fluid. Separate legislation allows a large ongoing pilot study with oral fluid collection used for screening purposes. **(1a)**
- + The implied consent law allows the collection of a specimen or specimens for multiple tests. **(1b)**
- + The implied consent law does not allow suspects to choose the type of test. **(1c)**
- + LEOs are authorized to collect and test specimens for drugs with probable cause and a warrant for a blood. **(2)**
- + State law allows testing surviving drivers involved in crashes resulting in death or serious injury, when there is probable cause and a warrant for blood. **(3a)**
- + State law requires drug testing drivers fatally injured in a crash. **(4a)**
- + State law mandates the reporting of drug test results of drivers fatally injured in a crash. **(4b)**
- + DUI-alcohol and DUI-drugs can be distinguished in Michigan State Police database. **(5)**
- + The administrative license suspension penalty for a first DUID refusal is more severe than for a first DUID offense. **(6)**

Partial alignment with recommendations:

- o The use of electronic warrants is allowed. They are LE department specific. **(7)**

Not aligned with recommendations:

- There is no policy related to reporting drug test results from surviving drivers involved in serious injury and fatal crashes, although the test results are maintained by the toxicology lab. **(3b)**

Notable Findings:

An oral fluid pilot study that involved five counties was completed and findings reported in February 2019. Only DREs could collect oral fluid as part of the pilot program.

Michigan Public Act 618 of 2018 expands the Oral Fluid Roadside Analysis Pilot Program to additional counties. The Michigan State Police are working to acquire the necessary equipment and to develop specific policies, procedures, and data collection requirements to support the necessary analyses of the expanded pilot program.



MICHIGAN: Laws and Policies to Improve Data on Drugged Driving

<p>1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;</p>	<p>In Michigan, the implied consent law does extend to drugs and supports the collection of blood and urine, but not oral fluid. <i>Mich. Comp. Laws § 257.625c</i></p> <p>Identify barriers to extending the implied consent law to the collection of oral fluid:</p> <ul style="list-style-type: none">• Oral fluid is not included in Michigan implied consent law.• Any change to the implied consent law would require legislative action.• Once allowed then a Daubert hearing would be necessary. <p>Action Steps:</p> <ul style="list-style-type: none">• Legislative Action• Daubert Hearing <p>Comments: An oral fluid pilot study that involved five counties was completed and findings reported in February 2019. Only DREs could collect oral fluid as part of the pilot program. Michigan Public Act 618 of 2018 expands the Oral Fluid Roadside Analysis Pilot Program to additional counties. The Michigan State Police are working to acquire the necessary equipment and to develop specific policies, procedures, and data collection requirements to support the necessary analyses of the expanded pilot program. (Oral Fluid Roadside Analysis Pilot Program Report- February 2019, Michigan State Police) https://www.michigan.gov/documents/msp/Oral_Fluid_Report_646833_7.pdf</p> <p>The Michigan State Legislature authorized the oral fluid pilot test program: <i>Authority of peace officer certified as drug recognition expert to require person to submit to preliminary oral fluid analysis: arrest; admissibility of results; refusal; ordering person out of service.</i> <i>Mich. Comp. Laws § 257.625r</i></p> <p>Roadside Testing Pilot Program description – 5 counties. <i>Mich. Comp. Laws § 257.625t</i></p> <p>October 1, 2019, the Michigan State Police will be starting Phase 2 of the pilot program. It will be expanded to all counties in the state where there is a working certified DRE officer.</p>
<p>1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;</p>	<p>The implied consent law in Michigan authorizes the collection of either blood or urine when drug intoxication is suspected. Two vials of blood are collected for additional testing if needed.</p>
<p>1c. Implied consent laws should not permit suspects to choose the type of test(s).</p>	<p>The implied consent law in Michigan does not allow drivers to elect the type of specimen collected for testing.</p>

<p>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).</p>	<p>In Michigan, LEO's may request the operator to take a chemical test of either blood or urine to determine intoxication. <i>Mich. Comp. Laws § 257.625</i></p> <p>Identify barriers in Michigan to <u>increasing</u> the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none"> • Crime lab backlog • Understaffing & under-equipped of Crime Lab • No toxicologist at Crime Lab <p>Action Steps:</p> <ul style="list-style-type: none"> • Hire a toxicologist. • Upgrade and increase testing equipment. • Legislative change to allow LEO Phlebotomy Program.
<p>3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.</p>	<p>State law in Michigan authorizes testing of <i>surviving</i> drivers involved in a crash resulting in death or serious injury when there is probable cause that impairment was a factor. <i>Mich. Comp. Laws § 257.625a</i> Test results are maintained by the Forensic Advantage LIMS system.</p>
<p>4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.</p>	<p>State law in Michigan requires drug testing on all fatally injured drivers. <i>Mich. Comp. Laws § 257.625a</i></p>
<p>4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.</p>	<p>State law in Michigan mandates the reporting of drug test results for all fatally injured drivers to the investigating law enforcement agency who then reports to the Michigan State Police. <i>Mich. Comp. Laws § 257.625a</i></p>
<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data. <i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>The DUI/DUID statute in Michigan does not distinguish between arrests for DUI-alcohol and DUID. However, there are offense codes that courts and law enforcement can use to identify drug crimes specifically. These are separate from the alcohol convictions. There are distinguishable offenses in the Michigan State Police database. An example is provided for 2018 data:</p>

Drug Crime Offense Codes			
MI Veh Code Cite	Offense Code	Offense	# of Convictions in Calendar 2018
257.625(1)	1100	Operated Under Influence Controlled Substance	5
257.625(8)	1105	Operating with Presence of Drugs (OWPD) 333.7212, 7214 (a) (iv) Schedule 1	638
257.625(1)	1110	Combined Operated Under Influence Liquor and Controlled Substance	0
257.625(4)	1120	Operated Under Influence or While Impaired by Controlled Substance Causing Death	0
257.625(5)	1130	Operated Under Influence or While Impaired by Controlled Substance Causing Serious Injury	1
333.7341, 333.7401, 333.7402	1140	CDL Manu/Distrib Controlled Substance	5
257.625(3)	1210	Operated While Impaired by Controlled Substance or Other Intoxicating Substance	655
257.625(3)	1220	Combined Operated While Impaired by Liquor, Controlled Substance or Other Intoxicating Substance	48
333.7401 to 333.7461	9200	Drug Crime	23,395
	Total		24,747
<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p> <p>In Michigan, the administrative penalty is more severe for first DUID test refusers who receive a 12-month license suspension. <i>Mich. Comp. Laws § 257.625f</i> First DUID offenders receive a 6-month license suspension. <i>Mich. Comp. Laws § 257.319</i></p>			
<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p> <p>A statewide electronic warrant system is not in place in Michigan, but nothing statutorily prevents such a system from being considered. The use of electronic warrants is LE department specific.</p>			



MINNESOTA: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law does extend to drugs and supports the collection of blood, urine, and breath, but not oral fluid. **(1a)**
- + The implied consent law authorizes the collection of a specimen or specimens for multiple tests. **(1b)**
- + Case law provides that the LEO chooses the type of test. **(1c)**
- + LEOs are authorized to collect and test specimens for drugs with probable cause and a warrant for a blood draw. **(2)**
- + State law requires testing surviving drivers involved in crashes resulting in death or serious injury, when there is probable cause. **(3a)**
- + State law does require the reporting of drug test results of drivers fatally injured in a crash. **(4b)**
- + DUI-alcohol and DUI-drugs can be distinguished in the driver records database **(5)**
- + The administrative license suspension penalty for a first DUID refusal is more severe than for a first DUID offense. **(6)**
- + Policy allows the use of e-warrants and they are widely used statewide. **(7)**

Partially aligned with recommendations:

- There is no policy related to reporting drug test results from surviving drivers involved in serious injury or fatal crashes, but the results might be included in the state crash database. **(3b)**

Not aligned with recommendations:

- State law mandates alcohol testing drivers fatally injured in a crash, but it stipulates testing for drugs only if feasible. **(4a)**

Notable Findings:

A warrant is affirmatively required for urine as well as blood. **(1a)**

Per se offenses and convictions go on the Driver and Vehicle Services (DVS) driving record and show whether it was a drug or alcohol offense. **(5)**



MINNESOTA: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In Minnesota, the implied consent law does extend to drugs and supports the collection of blood, urine, and breath, but not oral fluid. <i>Minn. Stat. § 169A.51</i> A warrant is affirmatively required for blood and urine.</p> <p>Identify barriers to the use of oral fluid collection when drug use is suspected:</p> <ul style="list-style-type: none">• Admissibility as evidence in court hearings (new technology)• Prosecutor would have to provide proof of accuracy, etc.• Would a warrant be needed for oral fluid?• Legislation would be required to use oral fluid as a preliminary screening test <p>Action Steps:</p> <ul style="list-style-type: none">• Court acceptance, would take a number of cases before widely accepted• Would need to have Frye/Mack hearing to determine if saliva is generally accepted within scientific community.
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The implied consent law in Minnesota authorizes the collection of a specimen or specimens for multiple tests when drug impairment is suspected.</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>Case law provides that LEOs choose the type of test. Per <i>169A.51, Subd. 1</i>, the test must be administered at the direction of a peace officer.</p>
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).	<p>In Minnesota, LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause and a warrant. <i>Minn. Stat. § 169A.20; Minn. Stat. § 169A.51</i></p> <p>Identify barriers in Minnesota to increasing the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none">• There is not a statewide call center of judges to obtain warrants.• BCA stops testing if alcohol is above .08 or more.• Resistance of hospitals in assisting on blood draws. <p>Action Steps:</p> <ul style="list-style-type: none">• Need a coordinated effort by judges• Need more law enforcement phlebotomists
3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report	<p>State law requires drug testing a surviving driver involved in a crash resulting in death or serious injury with probable cause and a warrant for blood. <i>Minn. Stat. § 169A.51</i></p>

<p>results) when there is probable cause that impairment was a factor.</p>	<p>Identify barriers to increase drug tests for surviving drivers involved in a crash resulting in death or serious injury (with probable cause and warrant).</p> <ul style="list-style-type: none"> • Need indication of impairment to get a warrant for blood • More training for officers to recognize subtle signs of impairment that would create the probable cause for the warrant <p>Reporting the drug test results on surviving drivers is not required, but the results might be included in the state crash database.</p>
<p>4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.</p>	<p>Minnesota State law mandates alcohol testing a driver fatally injured in a crash for drivers who are hospitalized and die within 4 hours. <i>Minn. Stat. § 169A.51</i></p> <p>For drivers killed in crashes, the Coroner is required to conduct alcohol testing. They might test for drugs if feasible. <i>Minn. Stat. § 169.09, subd. 11</i></p> <p>Identify barriers to drug testing all fatally injured drivers:</p> <ul style="list-style-type: none"> • Standardization of what is tested for and a timeline requirement for reporting from medical examiners • The current statute that focuses on alcohol levels. It stipulates that drivers who are killed in crashes <i>and who die within four hours after the crash</i> shall be tested for presence and percentage of alcohol, <i>and drugs if feasible</i>, in the blood of the victim. Drugs are traceable in the blood beyond 4 hours. • Medical examiners and coroners are required to make a written report to the MN DPS Commissioner of the death of any driver fatally injured in a vehicle crash within 15 days of the death. DPS sends out Certificate requests to all ME/Coroner offices who have not responded. Some are never returned. • Some injured drivers are transported out of state. <p>Action Steps:</p> <ul style="list-style-type: none"> • Expand the required testing time beyond four hours. • Need stronger relationship with the Medical Examiner/Coroner community.
<p>4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.</p>	<p>Minnesota does require reporting the drug test results for a driver fatally injured in a crash for drivers who are hospitalized and die within 4 hours. <i>Minn. Stat. § 169A.51</i></p> <p>For drivers killed in crashes, the Coroner is required to report the test results within 15 days to the Department of Public Safety. <i>Minn. Stat. § 169.09, subd. 11</i></p> <p>Comments: The national FARs database collects drug test results on both fatal and surviving drivers. The Minnesota Crash database mirrors and records the drug results for the fatal crashes.</p>

<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data. <i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>DUI-alcohol and DUI-drugs are not separate offenses <i>Minn. Stat. § 169A.20</i>, but DUI-alcohol and DUID cases are recorded separately.</p> <p>Comments: Per se offenses and convictions go on the Driver and Vehicle Services (DVS) driving record and show whether it is drug or alcohol driving. Not sure if the courts keep a database that distinguishes the type of impaired driving offense.</p> <p>Increased penalties/sanctions for drivers with combination of alcohol and drugs.</p>
<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p>	<p>In Minnesota, the administrative penalty is more severe for first DUID test refusers who receive a 12-month license revocation. First DUID offenders receive a 90-day license revocation. <i>Minn. Stat. § 169A.52</i></p>
<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>There is no state law, but electronic warrants are allowed under <i>MN Rules of Criminal Procedure Rule 37</i>. They are widely used. E-search warrants went live statewide in mid-2017.</p>



MISSISSIPPI: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law extends to drugs and authorizes the collection of blood and urine, but not oral fluid. **(1a)**
- + LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause to suspect drug impairment. **(2)**

Partial alignment with recommendations:

- o State law allows testing surviving drivers involved in crashes resulting in death or serious injury, when there is probable cause to suspect impairment. Some elements of the implied consent law may prevent getting a good drug test. **(3a)**
- o DUI-alcohol and DUI-drug are reported separately by *some* law enforcement agencies who use the e-citation system. **(5)**

Not aligned with recommendations

- The implied consent law does not authorize the collection of a specimen or specimens for multiple tests when drug impairment is suspected. **(1b)**
- Suspects are not prohibited from choosing the type of test(s) when drug impairment is suspected. **(1c)**
- There is no policy related to reporting drug test results from surviving drivers involved in serious injury or fatal crashes. **(3b)**
- The state law that mandated testing for all fatalities was ruled unconstitutional in a 2000 MS Supreme DUI Case, McDuff v. State. **(4a)**
- The reporting of drug test results for fatally-injured drivers is not required, but in practice the results are entered into the states' FARS database if available. **(4b)**
- The administrative license suspension penalty for first DUID refusal is not more severe than for first DUID offenders. **(6)**
- There is no state law or policy related to electronic warrants. Caselaw in 2003 prevents the use of telephonic warrants. **(7)**

Notable Findings:

Comments regarding the recommendation for more drug testing: Education needs to be provided to Chiefs/Sheriffs about the importance of getting urine/blood from an offender even at the misdemeanor level. Many DUIs are lost in court without it. **(2)**



MISSISSIPPI: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In Mississippi, the implied consent law does extend to drugs and supports the collection of blood breath, and urine, but not oral fluid. <i>Miss. Code Ann. § 63-11-5</i></p> <p>Identify barriers to extending the implied consent law to the collection of oral fluid:</p> <ul style="list-style-type: none">• Not currently allowed in our laws. <p>Action Steps:</p> <ul style="list-style-type: none">• Amend the current law to allow it. <p>Comments: Some agencies were looking at piloting oral fluid testing in 2017, but they were not highly used. MS TSRP & DRE State Coordinator have recently discussed possibly starting to preliminarily use oral fluid testing with our DRE program, show the benefit, and then maybe get a law enforcement agency or 2 to agree to a pilot program. To use it with the DRE School candidates, additional funding will need to be provided through the training grant and our MS Office of Highway Safety. Furthermore, we are waiting on reports from other states as to their findings from their pilot programs (Alabama is one in particular).</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The implied consent law in Mississippi does not authorize the collection of a specimen or specimens for multiple tests when drug impairment is suspected.</p> <p>Identify barriers to authorizing the collection of a specimen or specimens for multiple tests when drug impairment is suspected:</p> <ul style="list-style-type: none">• If alcohol .08 or greater is identified by Intox 8000 (or urinalysis or blood testing), further drug testing by crime lab is not done unless specifically requested by officer.• If offender agreed to breath test, any additional testing would be at either the consent of the offender, or through a warrant. Not done often by the officer. <p>Action Steps:</p> <ul style="list-style-type: none">• Change in laws allowing for multiple tests if drugs are suspected.• Change in crime lab policy to start testing for multiple substances even if there is a BAC .08 or greater.• Continue education among officers to explain the importance of why additional tests would be necessary.
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>Suspects are not prohibited from choosing the type of test when drug impairment is suspected.</p>

	<p>Comments: Law allows for chemical testing of either breath, blood, or urine. For obvious cost reasons, if alcohol is suspected, the Intox. 8000 is utilized. Typically, if an offender refused the Intox. 8000, then many agencies offer a urine test or blood test. Our law allows for this through consent (whether written or verbal) by the offender, through a warrant, or possibly through probable cause with exigent circumstances. However, many agencies have policies to not seek urine and/or blood unless the DUI is a felony (some even won't unless a death is involved). Some agencies state the reason is money; however, a recent law now allows money to a certain amount (around \$400) to be reimbursed to the agency (even on a misdemeanor). Education needs to be provided to Chiefs/Sheriffs of the importance of getting urine/blood from an offender even at the misdemeanor level (I am not sure they really understand why it is necessary and that many DUIs are lost in court without it).</p>
<p>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).</p>	<p>In Mississippi, LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause and a warrant if needed. <i>Miss. Code Ann. § 63-11-5; Miss. Code Ann. § 63-11-30</i></p> <p>Identify barriers in Mississippi to increasing the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none"> • Some law enforcement agencies don't pursue urine or blood unless fatality. • Need Crime Lab to start testing for drugs even with alcohol BAC of .08 or greater <p>Action Steps:</p> <ul style="list-style-type: none"> • Crime lab not testing if .08 or greater is most likely due to lack of funding and/or sufficient # of staff. <p>Comments: Law allows for chemical testing of either breath, blood, or urine. For obvious cost reasons, if alcohol is suspected, the Intox. 8000 is utilized. Typically, if an offender refused the Intox. 8000, then many agencies offer a urine test or blood test. Our law allows for this through consent (whether written or verbal) by the offender, through a warrant, or possibly through probable cause with exigent circumstances. However, many agencies have policies to not seek urine and/or blood unless the DUI is a felony (some even won't unless a death is involved). Some agencies state the reason is money; however, a recent law now allows money to a certain amount (around \$400) to be reimbursed to the agency (even on a misdemeanor). Education needs to be provided to Chiefs/Sheriffs of the importance of getting urine/blood from an offender even at the misdemeanor level (I am not sure they really understand why it is necessary and that many DUIs are lost in court without it).</p>
<p>3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.</p>	<p>The law in Mississippi allows drug testing <i>surviving</i> drivers involved in a crash resulting in death or serious injury but only with probable cause to suspect drug impairment and suspect consent or a warrant or possible exigent circumstances. <i>Miss. Code Ann. § 63-11-5; Miss. Code Ann. § 63-11-30</i></p> <p>The drug test results are not reported to a central state database.</p>

	<p>Identify barriers to a law or policy to get drug test results reported to a central state database.</p> <ul style="list-style-type: none"> • No central state database. • No law to require reporting <p>Action Steps:</p> <ul style="list-style-type: none"> • Funding for a central state database • Law requiring reporting of test results • McDuff v. State would have to be overruled. <p>Comments: Section 63-11-8 was ruled unconstitutional by the MS Supreme Court case, McDuff v. State (2000). We do NOT have testing in a fatality case unless it is done by consent of the offender, by a warrant, or probable cause (and a showing of exigent circumstances as to why a warrant was not obtained).</p> <p>Any available drug test results are reported to the State's FARs system. Also, the State is in the process of implementing a new E-Crash System which should record this information.</p>
4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.	<p>The state law Miss. Code Ann. § 63-11-8 that mandated testing for all fatalities was ruled unconstitutional in a 2000 MS Supreme DUI Case, McDuff v. State.</p> <p>Identify barriers to drug testing all fatally injured drivers</p> <ul style="list-style-type: none"> • MS Caselaw prevents testing all fatally injured drivers <p>Action Steps:</p> <ul style="list-style-type: none"> • Overturning of MS Caselaw (statute [63-11-8] ruled unconstitutional)
4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.	<p>Reporting the drug test results on fatally injured drivers is not required, but they are entered into the State's FARs database if available.</p>
<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data.</p> <p><i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>The DUI/DUID statute in Mississippi Miss. Code Ann. § 63-11-30 does not distinguish between arrests for DUI-alcohol and DUID, but the types of impaired driving offenses are reported separately by some law enforcement agencies who use the e-citation system.</p> <p>Comments: Some agencies are using an e-citation system, so we are able to get some data through it, but that does not include conviction rates at this time. E-citation is used currently by the MS Highway Safety Patrol and approximately 15 other law enforcement agencies throughout the state. The DUI ticket lists the different ways one can get a DUI—i.e., alcohol, drug, etc. but if only alcohol was listed and the Intox. 8000 was utilized, many times drug use goes unreported since no additional tests (urine or blood) were done that would identify any other substances besides alcohol.</p>

<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p>	<p>In Mississippi, the administrative license suspension penalty for DUID test refusers is not as severe as the penalty for first DUID offenders. Refusers receive a 90-day license suspension. Offenders receive a 120-day suspension. <i>Miss. Code Ann. § 63-11-23 (Refusal); Miss. Code Ann. § 63-11-23 (Offense)</i></p> <p>Identify barriers to changing the law to make the license suspension penalty for refusers at least as severe as the penalty for first DUID offense:</p> <ul style="list-style-type: none"> Legislative barrier – our DUI laws have been amended many times throughout the last 5 or so years, and legislators really do not like to see DUI legislation at this point. Additionally, there are quite a few legislators who are attorneys practicing defense work so increasing DUI penalties is always very challenging. <p>Action Steps:</p> <ul style="list-style-type: none"> Change in legislation.
<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>There is no state law or policy regarding electronic warrants. Caselaw prevents the use of telephonic warrants.</p> <p>Identify barriers to increase the use of electronic warrants to collect specimens to avoid delay:</p> <ul style="list-style-type: none"> My understanding is a change would be needed in our Criminal Procedure Rules and a recent Rules committee did not entertain allowing the use of electronic warrant. MS Caselaw that prevents telephonic warrants—<i>White v. State</i>, 842 So.2d 565 (Miss. 2003). <p>Action Steps:</p> <ul style="list-style-type: none"> Further education to show why electronic warrants are necessary and trustworthy Overrule caselaw



MISSOURI: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law does extend to drugs and supports the collection of breath, blood and oral fluid, but in practice oral fluid is not collected. **(1a)**
- + The implied consent law authorizes the collection of a specimen or specimens for multiple tests. **(1b)**
- + LEOs determines the type of testing. **(1c)**
- + LEOs are authorized to collect and test specimens for drugs with probable cause and a warrant for a blood draw. **(2)**
- + State law allows testing surviving drivers involved in crashes resulting in death or serious injury, when there is probable cause. **(3a)**
- + State law requires coroners to drug test drivers fatally injured in a crash who die within 8 hours of the crash. **(4a)**
- + State law mandates reporting the drug test results for a driver fatally injured in a crash to the State Highway Patrol database. **(4b)**
- + DUI-alcohol and DUI-drugs are recorded separately in the state's Justice Information System and DWI Tracking System databases **(5)**
- + The administrative license suspension penalty for a first DUID refusal is more severe than for a first DUID offense. **(6)**

Partially aligned with recommendations:

- o Policy allows the use of electronic warrants when local capabilities exist; not all judges allow their use. **(7)**

Not aligned with recommendations:

- There is no policy related to reporting drug test results from surviving drivers involved in serious injury and fatal crashes. **(3b)**

Notable Findings:

Finding someone who is willing to draw blood is becoming a bigger hurdle all the time. Many hospitals and ambulance districts refuse to draw blood even when an officer has secured a search warrant. And, there is no penalty for doing so. **(2)**

Mo. Ann. Stat. § 577.021 permits pre-arrest testing of surviving drivers, but those results are not admissible in court to establish blood alcohol content. **(3a)**



MISSOURI: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In Missouri, the implied consent law does extend to drugs and supports the collection of breath, blood, and oral fluid <i>Mo. Ann. Stat. § 577.020</i>, but in practice oral fluid is not collected.</p> <p>Identify barriers to the collection of oral fluid:</p> <ul style="list-style-type: none">• Officers are not provided equipment or kits for the collection of oral fluid.• Officers are not trained on the collection of oral fluid• State lab does not have methodology in place to test oral fluid for drugs <p>Action Steps:</p> <ul style="list-style-type: none">• Provide necessary equipment for collection of oral fluid• Provide training on the collection of oral fluid• Develop a methodology for testing oral fluid <p>Comments: As far as I am aware, there is not sufficient research at this point supporting the use of oral fluid as a testing matrix for drug impairment.</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The implied consent law in Missouri authorizes the collection of a specimen or specimens for multiple tests when drug impairment is suspected.</p> <p>Comments: Missouri's implied consent law allows for the administration of two types of tests. When collecting a blood sample, the recommendation is to have two full tubes drawn at one time.</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>Missouri case law provides that it is the officer's choice as to which type of test to administer.</p>
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).	<p>In Missouri, LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause. <i>Mo. Ann. Stat. § 577.020; Mo. Ann. Stat. § 577.010</i></p> <p>Identify barriers in Missouri to increasing the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none">• Inability to find someone or somewhere that is willing to draw blood for an officer• Time to secure a search warrant where a person refuses a blood draw• Lack of training with regard to recognizing drug impaired drivers• Policy of lab not to test for drugs where alcohol is .08 or above

	<p>Action Steps:</p> <ul style="list-style-type: none"> • Ensure that officers can get blood drawn by enacting statutes requiring hospitals and/or ambulance districts to draw blood upon request • Develop accessible, statewide electronic search warrant system • Increase training on recognizing drivers impaired by drugs other than alcohol • Test samples of anyone suspected of drug impaired driving, regardless of alcohol level <p>Comments: Finding someone who is willing to draw blood is becoming a bigger hurdle all the time. Many hospitals and ambulance districts refuse to draw blood even when an officer has secured a search warrant. And, there is no penalty for doing so.</p>
<p>3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.</p>	<p>In Missouri, state law <i>allows</i> for drug testing <i>surviving drivers</i> involved in a crash resulting in death or serious injury. Mo. Ann. Stat. § 577.021</p> <p>Reporting the test results on surviving drivers is not required. If a DRE evaluation is performed and a blood test secured with a warrant, the test results would ultimately end up in the DRE database.</p> <p>Identify barriers to a law or policy to increase drug tests for surviving drivers involved in a crash resulting in death or serious injury (with probable cause and warrant as needed).</p> <ul style="list-style-type: none"> • Lack of willing people and/or entities to draw blood <p>Action Steps:</p> <ul style="list-style-type: none"> • Increase access to willing blood drawers for officers <p>Comments: Mo. Ann. Stat. § 577.021 permits pre-arrest testing of surviving drivers, but those results are not admissible in court to establish blood alcohol content.</p>
<p>4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.</p>	<p>Coroners are required to conduct drug testing on anyone who dies within 8 hours of a crash. Mo. Ann. Stat. § 58.445</p> <p>Identify barriers to drug testing <i>all</i> fatally injured drivers:</p> <ul style="list-style-type: none"> • Cost of testing where no arrest is made and no criminal charges will be brought <p>Action Steps:</p> <ul style="list-style-type: none"> • Identify funding sources for testing of fatally injured drivers
<p>4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.</p>	<p>State law mandates reporting the results of drug tests of fatally injured drivers. Mo. Ann. Stat. § 58.445 The results are reported to the State Highway Patrol database.</p>

<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data.</p> <p><i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>The DUI/DUID statute in Missouri <i>Mo. Ann. Stat. § 577.010</i> does not distinguish between offenses for DUI-alcohol and DUID, but the types of impaired driving offenses are coded separately in the Justice Information System (JIS) and the DWI Tracking System (DWITS).</p>
<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p>	<p>In Missouri, the administrative license penalty is more severe for first DUID test refusers who receive a one-year license suspension. First DUID offenders receive a 90-day license suspension. <i>Mo. Ann. Stat. § 302.574</i></p>
<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>There is no state law regarding electronic warrants. In practice, when capabilities exist in a jurisdiction, electronic warrants are used.</p> <p>Identify barriers to increase the use of electronic warrants to collect specimens to avoid delay:</p> <ul style="list-style-type: none"> • Not all judges allow the use of electronic warrants. • Lack of access to programs and equipment for electronic warrants • No statewide standard <p>Action Steps:</p> <ul style="list-style-type: none"> • Create statewide standard and/or system for electronic warrants • Encourage use in all courts



MONTANA: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law authorizes the collection of a specimen or specimens for multiple tests. **(1b)**
- + State law allows testing surviving drivers involved in crashes resulting in death or serious injury, even when impairment is not suspected. **(3a)**
- + The drug test results (presence of drugs) for surviving drivers involved in serious injury and fatal crashes are reported to the state's crash database. **(3b)**
- + State law requires drug testing on all fatally injured drivers. **(4a)**
- + State law mandates the reporting of drug test results for all fatally-injured drivers. **(4b)**
- + DUI-alcohol and DUI-drugs can be distinguished in the crash reporting system. **(5)**
- + The administrative license suspension penalty for first DUID refusal is more severe than for first DUID offenders. Even though first DUID refusers can avoid a blood test, they still receive the license suspension. **(6)**

Partially aligned with recommendations:

- The implied consent law extends to drugs and authorizes the collection of blood. However, for first DUID offenders who refuse a drug test, LEOs cannot obtain a warrant for blood. **(1a)**
- The implied consent law does not permit suspects to choose the type of test(s), but because first DUID offenders are allowed to refuse a blood test, they do have some choice. **(1c)**
- LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause to suspect drug impairment. However, for first DUID offenders who refuse a drug test, LEOs cannot obtain a warrant for blood. **(2)**
- Electronic warrants are authorized by code and are being used with more regularity. **(7)**

Notable Findings:

Montana appears to be unique in that allows drug testing surviving drivers involved in crashes resulting in death or serious injury, even when impairment is not suspected. **(3a)**

Montana laws allow for first DUID offenders to refuse a blood draw for drug test; LEOs cannot obtain a warrant for blood for first DUI/DUID offenders. Action plans include a legislative change to allow search warrants for first offenders. **(2)**



MONTANA: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In Montana, the implied consent law does extend to drugs and supports the collection of blood, but not oral fluid. <i>Mont. Code Ann. § 61-8-402</i> However, first DUI offenders are allowed to refuse a blood sample.</p> <p>Identify barriers to extending the implied consent law to the collection of oral fluid:</p> <ul style="list-style-type: none">• The Montana Legislature would need to be willing to change the law.• Costs associated with administering oral fluid testing statewide. <p>Action Steps:</p> <ul style="list-style-type: none">• A law change would be needed to allow oral fluid to be admissible evidence.• Data to support why oral fluid testing is needed and that it is accurate. <p>Comments:</p> <ul style="list-style-type: none">• Law enforcement and the crime lab would need additional equipment and training to implement oral fluid testing as well.
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The implied consent law in Montana does authorize the collection of a specimen or specimens for multiple tests when drug impairment is suspected. In addition to MCA 61-8-402 (Implied Consent), MCA 46-6-224 allows for the issuance of a warrant for collection of samples based on probable cause and may allow for multiple specimens to be collected if allowed by the scope of the warrant.</p> <p>Comments: Montana law does allow for the collection of both blood and breath tests if an officer requests them. The Montana crime lab also does multiple tests for drugs with a single blood currently when drug impairment is suspected.</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>The implied consent law in Montana designates that the officer may choose the type of test or tests administered. <i>Mont. Code Ann. § 61-8-401 2(b)</i> However, first offenders are allowed to refuse a blood test.</p>
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).	<p>In Montana, LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause. <i>Mont. Code Ann. § 61-8-402</i></p> <p>Identify barriers in Montana to increasing the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none">• Currently 1st Offense DUI offenders can refuse to provide a sample and a warrant cannot be applied for a blood sample.• More manpower and instruments so the crime lab can test every sample that has alcohol and drugs combined.

	<p>Action Steps:</p> <ul style="list-style-type: none"> • Have the Montana Legislature change the law to allow for 1st Offense DUI search warrants. • Increase the staffing and budget of the crime lab. <p>Comments: Currently the Montana Crime Lab is working at testing more of the blood samples that have alcohol and drugs combined.</p>
<p>3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.</p>	<p>State law in Montana allows testing of <i>surviving</i> drivers involved in a crash resulting in serious injury or a fatality, even if no impairment is suspected. Mont. Code Ann. § 61-8-402(b)</p> <p>The drug test results (types of drugs) for surviving drivers are reported to the crash database.</p> <p>Comments: The annual toxicology report also illustrates the types of drugs in drivers involved in serious injuries/fatalities, but it does not delineate between surviving drivers and fatal drivers.</p>
<p>4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.</p>	<p>State law in Montana requires drug testing on all fatally injured drivers. Mont. Code Ann. § 61-8-402</p> <p>Comments: Ensure that this testing is being completed all the time. Montana is one of the top testing states in the Nation.</p>
<p>4b. Enact laws and/or implement policies mandating reporting of test results for all fatally injured drivers.</p>	<p>State law in Montana mandates the reporting of drug test results for all fatally injured drivers. Mont. Code Ann. § 61-8-402</p> <p>Comments: All crash data is recorded in the state database. There are processes in place for reporting of drug test results into the Fatality Analysis Reporting System (FARS) stemming from crash fatalities. The crime lab publishes an annual toxicology report that illustrates drug test results.</p>
<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data.</p> <p><i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>The DUI/DUID statute in Montana does not distinguish between arrests for DUI-alcohol and DUID. Mont. Code Ann. § 61-8-401 but impaired driving offenses for alcohol and drugs can be distinguished in the crash database.</p> <p>Comments: Better data systems are needed to track all the data associated with impaired driving offenses from citation data to adjudication. With the exception of the per se marijuana DUI offense/citation (which is seldom used), DUI citations cannot be counted separately. However, the crash database does delineate between suspected drug involved or alcohol only, or both.</p>
<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p>	<p>Montana, the administrative penalty is more severe for first DUID test refusers who receive a 6-month license suspension. First DUID offenders don't receive a license suspension. Mont. Code Ann. § 61-8-402</p> <p>Comments: First offenders are allowed to refuse a blood test, but still receive the 6-month license suspension. Police officers cannot get a warrant in these cases. If an offender provides a sample currently, they can keep their license.</p>

<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>Electronic warrants are authorized in Montana and are being used with more regularity. Montana Code 46-5-222</p> <p>Identify barriers to increase the use of electronic warrants to collect specimens to avoid delay:</p> <ul style="list-style-type: none"> • Cost of the software • Telephonic search warrants have been effective in reducing delays in getting samples. <p>Action Steps:</p> <ul style="list-style-type: none"> • Find a funding source to have a standardized statewide electronic warrant system. <p>Comments: Electronic search warrants issued under MCA 46-5-222 are being used with more regularity within Montana. All TSRP trainings for prosecution and the courts have included advocacy for increased use of electronic search warrants.</p>
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NEBRASKA: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law does extend to drugs and supports the collection of blood and urine, but not oral fluid **(1a)**
- + The implied consent law authorizes the collection of a specimen or specimens for multiple tests. **(1b)**
- + The implied consent law does not permit suspects from choosing the type of test. **(1c)**
- + LEOs are authorized to collect and test specimens for drugs with probable cause and a warrant for a blood draw. **(2)**
- + State law allows testing surviving drivers involved in crashes resulting in death or serious injury, when there is probable cause. **(3a)**
- + The law requires reporting drug test results from surviving drivers involved in a serious injury or fatal crash. **(3b)**
- + The law requires the reporting of drug test results of drivers fatally injured in a crash. **(4b)**
- + The administrative license suspension penalty for a first DUID refusal is the same as for a first DUID offense. **(6)**

Partially aligned with recommendations:

- o There is no law related to e-warrants, but any search warrant may be submitted electronically. Some agencies may be using e-warrants. **(7)**

Not aligned with recommendations:

- State law permits but does not mandate drug testing drivers fatally injured in a crash. **(4a)**
- DUI-alcohol and DUI-drugs are not distinguished in state databases. **(5)**

Notable Findings:

Nebraska is a “urine state” for drug testing purposes and although the SCOTUS decision on *Birchfield* addressed blood specifically requiring a search warrant and addressed breath specifically excluding breath from the need for a search warrant, the decision did not specifically address urine. The need for a search warrant for urine is determined at the local level as directed by the local county attorney. **(7)**



NEBRASKA: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In Nebraska, the implied consent law does extend to drugs and supports the collection of blood and urine, but not oral fluid. <i>Neb. Rev. Stat. § 60-6,197</i></p> <p>Action Steps needed to extend the implied consent law to include the collection of oral fluid.</p> <ul style="list-style-type: none">• Change State Statutes.• Change the Rules and Regulations. <p>Comments: Oral fluid screening test devices are not used. Oral fluid testing would require legislative changes and none are underway or planned.</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The implied consent law in Nebraska authorizes the collection of a specimen or specimens for multiple tests when drug impairment is suspected.</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>The implied consent law does not permit suspects to choose the type of test. <i>Neb. Rev. Stat. § 60-6,197 (2)</i></p>
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).	<p>In Nebraska, LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause. <i>Neb. Rev. Stat. § 60-6,197</i></p> <p>Comments: Nebraska has a robust Drug Evaluation and Classification Program.</p>
3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.	<p>State law in Nebraska allows for drug testing <i>surviving</i> drivers involved in a crash resulting in death or serious injury with probable cause. <i>Neb. Rev. Stat. § 60-6,197; Neb. Rev. Stat. § 60-6,103</i></p> <p>Reporting the test results is required. The law requires that the results be reported to and tabulated by the Director/State Engineer of the Department of Transportation, <i>Neb. Rev. Stat. § 60-6,103</i></p>
4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.	<p>State law in Nebraska allows drug testing on fatally injured drivers. <i>Neb. Rev. Stat. § 60-6,197; Neb. Rev. Stat. § 60-6,102</i></p>
4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.	<p>State law in Nebraska mandates the reporting of drug test results for all fatally injured drivers. <i>Neb. Rev. Stat. § 60-6,101—60-6,103</i></p>
5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data.	<p>The DUI/DUID statute in Nebraska does not distinguish between arrests for DUI-alcohol and DUID, therefore, there is no database that captures the arrest information separately for DUI and DUID.</p>

<i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i>	
6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.	In Nebraska, the administrative penalty is the same for first DUID test refusers and first DUID offenders. Both receive a 6-month license suspension. <i>Neb. Rev. Stat. § 60-6,197.03</i>
7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.	<p>There is no law related to electronic warrants, but any search warrant may be submitted electronically.</p> <p>Comments: Some agencies in Nebraska may be using electronic search warrants. Nebraska is a urine state for drug testing purposes and although the SCOTUS decision on Birchfield addressed blood specifically requiring a search warrant and addressed breath specifically excluding breath from the need for a search warrant, the decision did not specifically address urine. The need for a search warrant for urine is determined at the local level as directed by the local county attorney.</p>



NEVADA: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law does extend to drugs and supports the collection of blood, breath, urine, and oral fluid although oral fluid is not collected. **(1a)**
- + The implied consent law authorizes the collection of a specimen or specimens for multiple tests. **(1b)**
- + If drug impairment is suspected, the suspect has no choice of tests; blood is the only option. **(1c)**
- + LEOs are authorized to collect and test specimens for drugs with probable cause and a warrant. **(2)**
- + Surviving drivers involved in fatal and serious injury crashes are drug tested if impairment is suspected. **(3a)**
- + The law requiring the recording of crash report data is generally considered to include all drug test results, including surviving drivers involved in a serious injury or fatal crash. **(3b)**
- + State law requires drug testing a driver fatally injured in a crash. **(4a)**
- + State law requires reporting the drug test results for a driver fatally injured in a crash. **(4b)**
- + DUI-alcohol and DUI-drugs are recorded separately in the state's crash database. **(5)**
- + The administrative license suspension penalty for a first DUID refusal is more severe than that for a first DUID offense. **(6)**

Partially aligned with recommendations:

- o Policy allows the use of electronic warrants in some jurisdictions. Each LEA operates independently. **(7)**

Notable Findings:

An action step for testing all surviving drivers involved in a serious injury crash or fatal crash include: Legislation requiring all drivers involved in fatal crashes to provide a blood test regardless if impairment is suspected.



NEVADA: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In Nevada, the implied consent law does extend to drugs and supports the collection of breath, blood, urine and oral fluid (bodily substance), although oral fluid is not collected. <i>Nev. Rev. Stat. § 484C.160</i></p> <p>Identify barriers to the regular collection of oral fluid to test for drug impairment:</p> <ul style="list-style-type: none">• No training on “other bodily fluid” collection• No means of collection. For instance, officers are provided with blood kits for the purpose of collecting blood. No kit is provided for the collection of other fluids• Unknown if laboratories in Nevada are equipped to test for other bodily fluids <p>Action Steps:</p> <ul style="list-style-type: none">• Training for officers• Equipment (oral fluid kits) for officers• Acceptance by Nevada Laboratories
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The implied consent law in Nevada authorizes the collection of a specimen or specimens for multiple tests when drug impairment is suspected. <i>Nev. Rev. Stat. § 484C.160</i></p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>If drug impairment is suspected, the suspect has no choice of tests; blood is the only option. If only alcohol impairment is suspected, drivers are given a choice between blood or breath if both are available.</p>
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).	<p>In Nevada, LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause. <i>Nev. Rev. Stat. § 484C.110; Nev. Rev. Stat. § 484C.160</i></p> <p>Identify barriers in Nevada to <u>increasing</u> the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none">• Laboratories in Nevada are not required by statute to test blood for all substances. At this time not all labs in Nevada test beyond the first substance once the per se’ limit is reached because it is cost prohibitive. If the lab tests for alcohol and the result is above the per se’ limit, they may not test for additional substances. <p>Action Steps:</p> <ul style="list-style-type: none">• Funding at the state level for all DUI/DUID suspects to be tested for all substances requested
3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report	<p>Surviving drivers involved in fatal and serious injury crashes are drug tested if impairment is suspected. There is no law that specifically mentions reporting drug test results to state databases, however the law requiring recording crash report data is generally considered to include drug test results. <i>Nev. Rev. Stat. § 484C.110; Nev. Rev. Stat. § 484C.160</i></p>

results) when there is probable cause that impairment was a factor.	<p>Identify barriers to a law or policy to require drug tests for drivers suspected of DUID in crashes resulting in serious injury and reporting results to a central state database:</p> <ul style="list-style-type: none"> • 484C.170 only requires testing on deceased persons. • Surviving drivers are only tested if impairment is suspected. <p>Action Steps:</p> <ul style="list-style-type: none"> • Legislation requiring all drivers involved in fatal crashes to provide a blood test regardless if impairment is suspected
4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.	<p>State law does mandate testing a driver fatally injured in a crash. <i>NRS § 484C.170</i></p> <p>Comments: The coroner is required to test all deceased drivers in a crash within 8 hours of the crash.</p>
4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.	<p>State law does mandate reporting of test results for all fatally injured drivers. <i>NRS § 484C.170</i></p> <p>Comments: The coroner is required to report deceased drivers test results to the DMV.</p>
<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data.</p> <p><i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>The DUI/DUID statute in Nevada <i>Nev. Rev. Stat. § 484C.110</i> does not distinguish between DUI-alcohol and DUID, but they are coded separately in crash reports.</p> <p>NRS484C.110 covers DUI and DUID. Each offense is codified in the Nevada Offense Codes. Each per se' substance does not have a specific offense code assigned. There is an offense code for alcohol DUI and a separate offense code for all controlled substances.</p> <p>Comments: Drug test results are reported to DMV driver's license division. Drug test results are captured in arrest records within each LE agency.</p> <p>Drug results are not captured in crash data. Drug test results are not always captured in conviction records.</p>
6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.	<p>In Nevada, the administrative penalty is more severe for first DUID test refusers, who receive a one-year license suspension <i>Nev. Rev. Stat. § 484C.210</i> whereas first DUID offenders receive a license suspension of no less than 185 days. <i>Nev. Rev. Stat. § 483.460</i></p>
7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.	<p>Electronic warrants are in use by some law enforcement agencies in Nevada.</p> <p>Identify barriers to authorize and/or increase the use of electronic warrants to avoid delay:</p> <ul style="list-style-type: none"> • Not all agencies have electronic warrants • Each agency that does have electronic warrants operates independently. <p>Action Steps:</p> <ul style="list-style-type: none"> • Create a statewide electronic warrants system



NEW JERSEY: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + LEOs are authorized to collect and test specimens for drugs with probable cause and signed permission from the suspect or a warrant for a blood draw. **(2)**
- + State law allows testing surviving drivers involved in crashes resulting in death or serious injury, when there is probable cause. **(3a)**
- + State law mandates drug testing drivers fatally injured in a crash. **(4a)**
- + State policy mandates the reporting of drug test results of drivers fatally injured in a crash. **(4b)**
- + The administrative license suspension penalty for a first DUID refusal is the same as for a first DUID offense. **(6)**

Partially aligned with recommendations:

- o The implied consent law prohibits suspects from choosing the type of test, however, a breath test is the only option. **(1c)**
- o Electronic warrants are in use; the process for accepting/using them varies by county and is determined by the sitting County prosecutor. **(7)**

Not aligned with recommendations:

- The implied consent law does not extend to drugs. The law supports the collection of breath samples only. **(1a)**
- At this time, the implied consent law does not authorize the collection of specimens for multiple tests. **(1b)**
- There is no policy related to reporting drug test results from surviving drivers involved in serious injury or fatal crashes. **(3b)**
- DUI-alcohol and DUI-drugs are not distinguished in state databases. **(5)**

Notable Findings:

Ongoing action steps include creating a link for drug test results from EMS and hospital records to crash records and to Motor Vehicle Commission driver records.



NEW JERSEY: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In New Jersey, the implied consent does not extend to drugs. The law supports the collection of breath samples only and not blood, urine, or oral fluid. <i>N.J. Stat. Ann. § 39:4-50.2 (alcohol only)</i></p> <p>Action Steps needed to extend the implied consent law to include drugs.</p> <ul style="list-style-type: none"> Legislature to propose a new bill or amend 39:4-50.2 <p>Comments: Bills have been proposed many times over the years. Support for this issue has been soft.</p> <p>Identify barriers to extending the implied consent law to the collection of oral fluid:</p> <ul style="list-style-type: none"> Acceptance and knowledge <p>Action Steps:</p> <ul style="list-style-type: none"> Frye hearing to determine the scientific reliability of oral fluid testing. Pilot program for oral fluid.
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	At this time, the implied consent law in New Jersey does not authorize the collection of a specimen or specimens for multiple tests when impairment is suspected
1c. Implied consent laws should not permit suspects to choose the type of test(s).	The law does not allow drivers to elect the type of test. <i>N.J. Stat. Ann. § 39:4-50.2</i> However, a breath test is the only option under implied consent.
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).	<p>In New Jersey, LEOs collect and test specimens for drugs with probable cause. They must obtain written consent from the suspect or a search warrant. <i>N.J.S.A. § 39:4-50</i></p> <p>Identify barriers in New Jersey to <u>increasing</u> the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none"> Implied consent only pertains to breath samples <p>Action Steps:</p> <ul style="list-style-type: none"> Create a new implied consent law or amend the current implied consent law to include blood, urine, oral fluid, and/or any approved bodily substance.
3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.	Policy in New Jersey allows for drug testing <i>surviving</i> drivers involved in a crash resulting in death or serious injury with probable cause. <i>Attorney General Law Enforcement Directive, No.2004-2, Subsection 4.a. "Blood samples shall be obtained in lieu of chemical breath tests, upon a probable cause determination." Subsection 4.b. "A urine sample may be requested, upon a probable cause determination."</i>

	<p>Reporting the test results is required for the court case file, but it is not required to be reported to a central database.</p> <p>Identify barriers to a law or policy to get drug test results reported to a central state database:</p> <ul style="list-style-type: none"> Currently there is no link to blood test results for surviving drivers to crash reports or a central database. Office of Emergency Medical Services does keep a central database for such drivers but only if they are injured and require ambulance transport. <p>Action Steps:</p> <ul style="list-style-type: none"> Creating a link to crash reports to EMS and hospital records has been under construction, along with linking to Motor Vehicle Commission driver records.
4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.	<p>Policy in New Jersey mandates drug testing on fatally injured drivers.</p> <p><i>Attorney General Law Enforcement Directive, No.2004-2. Subsection 4.a. "Blood samples shall be obtained in lieu of chemical breath tests, upon a probable cause determination." Subsection 4.b. "A urine sample may be requested, upon a probable cause determination."</i></p>
4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.	<p>State policy in New Jersey mandates the reporting of drug test results for all fatally injured drivers.</p> <p>Comments: Reported in FARS. Toxicology results on deceased has improved markedly over the years.</p>
<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data.</p> <p><i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>The DUI/DUID statute in New Jersey does not distinguish between arrests for DUI-alcohol and DUID <i>N.J.S.A. § 39:4-50</i>, and the types of impaired driving offenses are not coded separately in reporting systems.</p> <p>Identify barriers to distinguishing among DUI-Alcohol, DUID, and DUI-both alcohol and drugs separately in central state databases:</p> <ul style="list-style-type: none"> As DUI-Alcohol and DUID are the same offense, they have the same parameters. Breath only for implied consent for example. <p>Action Steps:</p> <ul style="list-style-type: none"> Separate legislation for drugs
6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.	<p>In New Jersey, the administrative penalty for first DUID refusers is the same as for first DUID and/or DWI offenders. Both receive a 6-month license suspension penalty. <i>N.J.S.A. § 39:4-50</i> (The license penalty for drivers with a blood alcohol concentration of .08 but less than .10% is a 3-month suspension.)</p>

	Comments: In addition to what is stated above, defendants suspected of drug impaired driving can refuse participation in a DRE exam with no penalty. Further, the DRE is REQUIRED to share this information as directed by the Attorney General.
7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.	There is no law related to electronic warrants, however the process for accepting/using electronic warrants varies by county and is determined by the sitting County prosecutor.



NEW MEXICO: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law authorizes the collection of specimens for multiple tests. **(1b)**
- + The implied consent law prohibits suspects from choosing the type of test. **(1c)**
- + State law allows testing surviving drivers involved in crashes resulting in death or serious injury, when there is probable cause. **(3a)**
- + The law mandates the reporting of drug test results of drivers fatally injured in a crash. **(4b)**
- + The administrative license suspension penalty for a first DUID refusal is more severe than for a first DUID offense. **(6)**

Partially aligned with recommendations:

- o The implied consent law does extend to drugs and supports the collection of blood, however, the law prohibits a warrant for a blood draw in misdemeanor cases. **(1a)**
- o LEOs are authorized to collect and test specimens for drugs with probable cause and a warrant for a blood draw. However, the law prohibits a warrant for a blood draw in misdemeanor cases. **(2)**

Not aligned with recommendations:

- There is no law or policy related reporting drug test results from surviving drivers involved in serious injury or fatal crashes, other than for prosecution. **(3b)**
- State law allows but does not mandate drug testing drivers fatally injured in a crash. In practice however, fatalities are drug tested. **(4a)**
- DUI-alcohol and DUI-drugs are not distinguished in state databases. **(5)**
- There is no law or policy that allows the use of electronic warrants. **(7)**

Notable Findings:

New Mexico law prohibits a warrant for a blood draw in misdemeanor cases. It is noted that this is a huge obstacle in the prosecution of DUID cases. **(1a, 2)**



NEW MEXICO: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In New Mexico, the implied consent law does extend to drugs and supports the collection of blood, but not oral fluid. <i>N.M. Stat. Ann. § 66-8-107</i></p> <p>Identify barriers to extending the implied consent law to the collection of oral fluid:</p> <ul style="list-style-type: none">• The courts do not recognize oral fluid as reliable.• The legislature is slow to review and enact new legislation.• Oral Fluid identifies the presence of drugs, which isn't necessarily indicative of impairment <p>Action Steps:</p> <ul style="list-style-type: none">• Amend the state statute to include oral fluid testing. <p>Comments: Oral fluid could be an effective roadside tool in determining the recent use of drugs, but its practical use could be compared to that of a P.B.T. in alcohol cases. Blood is much more reliable, and a D.R.E. Evaluation is ideal in determining <u>impairment</u> from/as oppose to mere presence of drugs.</p> <p>Comments: Due to Birchfield, officers read breath test Implied Consent Advisory first. If it is a refusal, it's an automatic DWI. They are allowed to ask for an independent test once they have provided a sample. Case law states that they don't have a right to an independent test if they do not provide a sample to law enforcement first.</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The collection of a specimen or specimens for multiple tests is allowed.</p> <p>Comments: As a standard practice, two vials of blood are drawn, and the panel is a standard 18 drug panel unless law enforcement indicates that specific drugs are possible.</p> <p>D.R.E. Toxicology reports are submitted to the labs with blood any time a D.R.E. evaluation is completed. This also assists the labs in how to gear their testing after the 17-panel test.</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>Suspects are not allowed to choose the type of test.</p> <p>Comments: Due to Birchfield, officers read breath test Implied Consent Advisory first. If it is a refusal, it's an automatic DWI. They are allowed to ask for an independent test once they have provided a sample. Case law states that they don't have a right to an independent test if they do not provide a sample to law enforcement first.</p>
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).	<p>In New Mexico, LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause. However, the law prohibits a warrant for a blood draw in misdemeanor cases. <i>N.M. Stat. Ann. § 66-8-107; N.M. Stat. Ann. § 66-8-102</i></p>

	<p>Identify barriers in New Mexico to <u>increasing</u> the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none"> • We don't screen for drugs (our lab will not do it) if the BAC is .08 or higher. Also, this is not consistent with DRE protocols either. DREs will not continue an evaluation if the BAC is above a .08. • Our lab is incredibly backed up. • Officers don't seem to know the indications of drug use. <p>Action Steps:</p> <ul style="list-style-type: none"> • Fund our state lab • Change laws to support this (we have a misdemeanor prohibition where we cannot get a warrant for a blood draw on misdemeanor cases, this is a HUGE factor) • The law prohibiting the issuance of a blood warrant for misdemeanor DUI cases is a huge obstacle in the prosecution of DUI-Drug cases. • Encourage judges and attorneys to accept these as reliable • Educate law enforcement
<p>3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.</p>	<p>State law in New Mexico allows drug testing <i>surviving</i> drivers involved in a crash resulting in death or serious injury with probable cause. <i>N.M. Stat. Ann. § 66-8-108</i></p> <p>There is no law or policy that requires reporting the test results other than for prosecution.</p> <p>Identify barriers to a law or policy to get drug test results on surviving drivers reported to a central state database:</p> <ul style="list-style-type: none"> • Privacy concerns • Funds to manage a database <p>Action Steps:</p> <ul style="list-style-type: none"> • Provide the infrastructure
<p>4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.</p>	<p>State law in New Mexico allows but does not mandate drug testing on fatally injured drivers, <i>N.M. Stat. Ann. § 66-8-108</i> however, blood toxicology is still performed by the NM Scientific Lab Division on fatal cases.</p> <p>Identify barriers to drug testing <i>all</i> fatally injured drivers</p> <ul style="list-style-type: none"> • Resources <p>Action Steps:</p> <ul style="list-style-type: none"> • Implement a policy with the Office of the Medical Investigator
<p>4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.</p>	<p>State law in New Mexico mandates the reporting of drug test results for all fatally injured drivers. <i>N.M. Stat. Ann. § 66-8-108</i></p>

<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data. <i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>The DUI/DUID statute in New Mexico does not distinguish between arrests for DUI-alcohol and DUID, <i>N.M. Stat. Ann. § 66-8-102</i>, and the types of impaired driving offense cannot be distinguished in reporting systems except if a DRE evaluation was conducted.</p> <p>Comments: Our Scientific Laboratory Division sends the D.R.E. State Coordinator copies of all drug test results in cases in which a D.R.E. evaluation was conducted. The D.R.E. State Coordinator enters these results into a National Database maintained by NHTSA. Unknown if they also maintain a copy of the results.</p> <p>A dilemma we have in differentiating between DUI alcohol and DUI drugs is it is the same statute in New Mexico, meaning when agencies provide their UCR reports to the FBI, all DUI (alcohol and drugs) are reported as one.</p>
<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p>	<p>The administrative penalty is more severe for first DUID test refusers who receive a one-year license suspension. Refusers receive an administrative penalty if the MVD hearing is sustained or if they are found guilty at trial. First DUID offenders who submit to a test, receive no administrative penalty regardless of case outcome.</p> <p><i>N.M. Stat. Ann. § 66-8-111 (Refusal)</i> <i>N.M. Stat. Ann. § 66-5-29 (Offense)</i></p>
<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>There is no law or policy in New Mexico related to the use of electronic warrants.</p> <p>Identify barriers to initiate or increase the use of electronic warrants to avoid delay:</p> <ul style="list-style-type: none"> • Attempts to create an electronic warrant system have been hampered by lack of willingness by the legislature. • Lack of on-call judges in most parts of the state. <p>Action Steps:</p> <ul style="list-style-type: none"> • Legislative fix <p>Comments (2017): The Transportation Department has offered to make funding available to ease the burdens currently identified.</p>



NORTH CAROLINA: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law does extend to drugs and supports the collection of blood, urine, and other bodily fluid or substance, but in practice oral fluid is not collected. **(1a)**
- + The implied consent law authorizes the collection of a specimen or specimens for multiple tests. **(1b)**
- + The implied consent law prohibits suspects from choosing the type of test. **(1c)**
- + LEOs are authorized to collect and test specimens for drugs with probable cause and a warrant for a blood draw. **(2)**
- + State law allows testing surviving drivers involved in crashes resulting in death or serious injury, when there is probable cause. **(3a)**
- + State law mandates drug testing drivers fatally injured in a crash. **(4a)**
- + The administrative license suspension penalty for a first DUID refusal is the same as it is for a first DUID offense. **(6)**

Not aligned with recommendations:

- There is no policy related to reporting drug test results from surviving drivers involved in serious injury or fatal crashes. **(3b)**
- Reporting of drug test results for drivers fatally injured in a crash is not required. **(4b)**
- DUI-alcohol and DUI-drugs are not distinguished in state databases. **(5)**
- The law authorizes the use of electronic search warrants, but the court computer system has not been programmed to allow electronic search warrants. **(7)**

Notable Findings:

Absent an autopsy, a drug test might not be performed for fatalities **(4a)**



NORTH CAROLINA: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In North Carolina, the implied consent law does extend to drugs and supports the collection of blood, urine, and other bodily fluid or substance. <i>N.C. Gen. Stat. Ann. § 20-4.01(3a)</i>; <i>N.C. Gen. Stat. Ann. § 20-16.2</i>; <i>N.C. Gen. Stat. Ann. § 20-138.1</i> In practice, oral fluid is not collected.</p> <p>Identify barriers to the collection of oral fluid:</p> <ul style="list-style-type: none">• Training and infrastructure to support such a program• Lack of laws to support admission into evidence of results of oral fluid test <p>Comments: New testing technique not accepted in NC courts</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The implied consent law in North Carolina authorizes the collection of a specimen or specimens for multiple tests when drug impairment is suspected. <i>N.C. Gen. Stat. Ann. § 20-16.2(c)</i> and <i>20-139.1(b5)</i></p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>Suspects cannot choose the type of test. <i>N.C. Gen. Stat. Ann. § 20-16.2(c)</i></p> <p>Comments: Only the LEO or chemical analyst designates the test. The defendant has no right to decide. Defendants are free to seek their own test after release.</p>
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).	<p>In North Carolina, LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause. <i>N.C. Gen. Stat. Ann. § 20-16.2</i>; <i>N.C. Gen. Stat. Ann. § 20-138.1</i></p> <p>Identify barriers in North Carolina to <u>increasing</u> the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none">• Expense and manpower. The policy of the labs is that if they get a 0.08 or more, no further testing is done without a specific request. Samples are not routinely tested for drugs other than alcohol.
3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.	<p>State law in North Carolina allows drug testing <i>surviving</i> drivers involved in a crash resulting in fatal and serious injury with probable cause. <i>N.C. Gen. Stat. Ann. § 20-16.2</i></p> <p>Breath or blood is required for all violations of 20-141.4, relating to all death and serious injury cases by vehicle where there is evidence of impairment and misdemeanor death regardless of signs of impairment at relevant time after driving. <i>N.C. Gen. Stat. Ann. § 20-139.1(b5)</i></p> <p>Reporting the test results is not required.</p> <p>Identify barriers to a law or policy to get drug test results reported to a central state database:</p> <ul style="list-style-type: none">• Identifying the need for such a report• Identify the agency which needs the report

	<p>Comments: Results are reported to the court when the driver is charged and the chemical analyst testifies. There is no database for the types of drugs or whether the driver was impaired by alcohol or another drug. NC law has a combined law which prohibits impaired driving and the state is not required to prove the type of impairing substance.</p>
<p>4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.</p>	<p>State law in North Carolina mandates drug testing on fatally injured drivers. <i>N.C. Gen. Stat. Ann. § 20-139.1(b5)</i></p> <p>Identify barriers to drug testing <i>all</i> fatally injured drivers:</p> <ul style="list-style-type: none"> • Absent an autopsy, a drug test may not be performed on a fatally injured driver • Cost of such test and who pays <p>Action Steps:</p> <ul style="list-style-type: none"> • Require a drug test for all fatally injured drivers even if the family objects.
<p>4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.</p>	<p>Reporting of drug test results for fatally injured drivers is not required.</p> <p>Comments: The lab that performed test maintains the results & police officer gets a copy. The court gets a copy if introduced as evidence. There is no central data base that maintains the results.</p>
<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data. <i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>The DUI/DUID statute in North Carolina does not distinguish between arrests for DUI-alcohol and DUID, <i>N.C. Gen. Stat. Ann. § 20-138.1</i>, and the types of impaired driving offenses are not distinguishable in databases.</p> <p>Comments: The State Crime laboratory has a data base on all drug tests it performs but the State Crime Lab does not perform all drug tests. NC law has a combined law which prohibits impaired driving and the state is not required to prove the type of impairing substance.</p>
<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p>	<p>In North Carolina, the administrative license penalty is the same for first DUID test refusers and first DUID offenders. Both receive a 12-month license suspension. <i>N.C. Gen. Stat. Ann. § 20-16.2 (Refusal)</i> <i>N.C. Gen. Stat. Ann. § 20-19 (Offense)</i></p>
<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>Electronic search warrants are authorized, but not in use due to technical issues.</p> <p>Identify barriers to increase the use of electronic search warrants to avoid delay in DUID cases:</p> <ul style="list-style-type: none"> • The court system does not have the capability to issue search electronic warrants <p>Action Steps:</p> <ul style="list-style-type: none"> • Update the computer system • Train officers, magistrates and judges about use of electronic search warrants

	<p>Comments: NC law authorizes electronic search warrants, but the court computer system has not been programmed to allow electronic search warrants.</p>
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NORTH DAKOTA: Laws and Policies to Improve Data on Drugged Driving

Alignment with recommendations:

- + The implied consent law does extend to drugs and supports the collection of blood and urine, but not oral fluid. **(1a)**
- + The implied consent law does not permit suspects to choose the type of test. **(1c)**
- + LEOs are authorized to collect and test specimens for DUI/DUID arrestees with probable cause. **(2)**
- + The administrative license suspension penalty is more severe for DUID test refusals. There is no currently no license suspension penalty for DUID offenders who are convicted. **(6)**

Partially aligned with recommendations:

- o State law allows for the testing of surviving drivers involved in a crash resulting in death or serious injury when there is probable cause to suspect impairment. The implied consent restriction on getting a specimen or specimens for multiple test could prevent getting a good drug test. **(3a)**
- o Electronic warrants are in use in some jurisdictions and with more support from judges, it is anticipated that they will be more widely available statewide. **(7)**

Not aligned with recommendations:

- The implied consent law does not authorize the collection of a specimen or specimens for multiple tests, however LEOs may *request* multiple specimens. **(1b)**
- There is no policy related to reporting test results from surviving drivers involved in a serious injury or fatal crash. Available results are kept by the State Crime Lab. **(3b)**
- State law does not mandate drug testing of fatally injured drivers. **(4a)**
- There are no laws or policies that require reporting drug test results for fatally injured drivers. **(4b)**
- Impaired driving offenses for alcohol and drugs are not coded separately in reporting systems. **(5)**

Notable findings:

A blood testing program for marijuana needs to be established before additional testing methods such as oral fluid can be implemented. **(5)**

North Dakota has identified some needs in order to be able to record alcohol and drug impaired driving offenses separately in databases: study different types of technology to see what program would best interface with current software programs; train prosecutors and court clerks on the importance of recording the offenses accurately and consistently in their database. **(5)**

Officers using the electronic warrants think it works okay once they try it a few times. There have been some growing pains with the judges but as everyone gets used to the process, acceptance grows. The system needs to be expanded beyond DUIs. **(7)**



NORTH DAKOTA: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In North Dakota, the implied consent law does extend to drugs and supports the collection of blood and urine, but not oral fluid. N.D.C.C. § 39-08-01</p> <p>Identify barriers to extending the implied consent law to the collection of oral fluid:</p> <ul style="list-style-type: none">• We don't have the necessary technology and staff at the State Crime Lab to test oral fluids.• Oral fluid testing is being considered for non-evidentiary testing. <p>Action Steps:</p> <ul style="list-style-type: none">• State statutes would need to be amended to provide for oral fluids. (Bill passed in 2019 legislature that will take affect August 1, 2019 that will allow saliva testing for non-evidentiary purposes).• The State Crime Lab would need funding for equipment and training on testing oral fluids.• The State Crime Law would likely need more personnel to help with additional testing. <p>Comments: We are not able to test blood for marijuana at this stage. That program needs to be implemented before we are able to add an additional method of testing.</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The implied consent law in North Dakota authorizes LEOs <i>to request</i> the operator to provide specimens for multiple tests when drug impairment is suspected.</p> <p>Identify barriers to the collection of a specimen or specimens for multiple tests when drug impairment is suspected:</p> <ul style="list-style-type: none">• The need to get multiple warrants.• The subjects are not required to give multiple specimens so if they refuse a second test it is not considered a refusal.• A second test could be requested but is not mandatory under the current law. <p>Action Steps:</p> <ul style="list-style-type: none">• State statute would need to be amended to require multiple specimens.• Funding as this could increase costs at the State Crime Lab. <p>Comments: Nothing in North Dakota law prohibits an officer from requesting a second test. However, if a subject has given a valid test sample, they can refuse a second request for testing without ramification. In other words, they are only required to give one valid sample. This does not seem to be a significant issue or concern in North Dakota. Maybe this will change as medical (and maybe recreational) marijuana becomes more prevalent.</p>

<p>1c. Implied consent laws should not permit suspects to choose the type of test(s).</p>	<p>In North Dakota, state law does not permit suspects to choose the type of test; the law allows LEOs to choose which test to request, whether it is blood, breath, or urine.</p>
<p>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).</p>	<p>In North Dakota, LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause. <i>N.D.C.C. § 39-08-01</i></p> <p>Identify barriers in North Dakota to <u>increasing</u> the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none"> • If a .08% BAC is established, we don't typically request drug tests. • Officers don't always identify the drug impaired driver. • The State Crime Lab still has not perfected the procedures to test for marijuana in blood. <p>Action Steps:</p> <ul style="list-style-type: none"> • Policy changes so that LEOs are trained to still request a blood/urine test if they suspect possible drug impairment, regardless of the BAC. • More funding for the State Crime Lab. They keep losing personnel which has interfered with getting protocols completed. • More funding for training and equipment. • Continue to work on and improve the electronic warrant system. • Establish an oral fluids program. <p>Comments: Using oral fluids would likely increase the number of drug tests requested but would require statewide training and implementation. We would need funding for equipment, as well.</p>
<p>3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.</p>	<p>State law in North Dakota requires drug testing <i>surviving</i> drivers involved in a crash resulting in death or serious injury with probable cause. <i>N.D.C.C. § 39-20-01.1 and 39-20-13</i> Reporting the test results is not required.</p> <p>Identify barriers to a law or policy to get drug test results reported to a central state database:</p> <ul style="list-style-type: none"> • Getting legislators to see the importance of such a law/policy. • Creating the technology that would make it easy for this data to be shared. • Integrating that technology with already existing programs. <p>Action Steps:</p> <ul style="list-style-type: none"> • Determining if a law is required or if policy would be sufficient. • Studying that different types of technology that exist to see what would interface with our current programs. • Securing funding.

	<p>Comments: N.D.C.C. § 39-20-13 requires the State Crime Lab to keep records of all fatalities/deaths that occur due to a traffic crash or unnatural death, so this is not specific to DUIs. Our current systems don't all work well with each other. Any new database needs to work with our existing programs or be part of a complete overhaul.</p>
<p>4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.</p>	<p>State law in North Dakota does not mandate drug testing on <i>fatally</i> injured drivers.</p> <p>Identify barriers to drug testing <i>all fatally injured drivers</i></p> <ul style="list-style-type: none"> • No law requiring it. <p>Action Steps:</p> <ul style="list-style-type: none"> • Need a law that requires it. <p>Comments: N.D.C.C. § 39-20-01.1 only requires testing of a driver who kills or seriously injures "another individual."</p>
<p>4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.</p>	<p>State law in North Dakota does not require the reporting of drug test results for all <i>fatally</i> injured drivers.</p> <p>Identify barriers to require the reporting of drug test results for fatally injured drivers.</p> <ul style="list-style-type: none"> • No law or policy requiring it. <p>Action Steps:</p> <ul style="list-style-type: none"> • Need a law or policy that requires it. <p>Comments: The NDDOT does request a report from the State Toxicology Lab regarding the test results or lack of sample for all drivers in crashes that result in serious injury or fatality. The Lab does provide the requested information.</p>
<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data.</p> <p><i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>The DUI/DUID statute in North Dakota does not distinguish between arrests for DUI-alcohol and DUID <i>N.D.C.C. § 39-08-01</i> and impaired driving offenses are not coded separately in reporting systems.</p> <p>Identify barriers to distinguishing the types of impaired driving offenses separately in reporting systems:</p> <ul style="list-style-type: none"> • The new electronic citation system would likely allow officers to identify whether the citation was for drugs, alcohol, or both. This would require making changes to that system. • Clerks of courts would need more training on how to code things in the Odyssey system and to make sure there is consistency across the state. Individual clerks of courts tend to do things their own ways. • There would need to be a way for this information to be easily communicated from the prosecutors to the clerks.

	<p>Action Steps:</p> <ul style="list-style-type: none"> • Determine if changes can be made to e-cites. • Check with what can be done on Odyssey. • Train clerks so there is consistency in reporting. • Train prosecutors so they know that this information needs to be clear and reported correctly. <p>Comments:</p> <ul style="list-style-type: none"> • Based on the law in North Dakota, if a case goes to trial, we cannot always know if a person is being convicted based on a BAC or both the BAC and drugs. Juries don't need to specify under which subsection they are basing their decision.
<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p>	<p>The administrative penalty for first DUID test refusers is a 180-day license suspension <i>N.D.C.C. § 39-20-04</i> which is more severe than the current no administrative license suspension for first DUID offenders. <i>N.D.C.C. § 39-20-04.1 (Conviction – 91-day license suspension applies to alcohol offenses only.)</i></p> <p>Comments: We need to change this. We need to develop a process for suspending licenses when someone has a positive drug test and it is believed the drug caused impairment.</p>
<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>There is no law related to electronic warrants, however several jurisdictions use electronic warrants for DUI and other cases. It is anticipated that at some point electronic warrants will be available statewide.</p> <p>Identify barriers to increase the use of electronic warrants to avoid delay:</p> <ul style="list-style-type: none"> • Getting judges to agree to use the system. • Making the form more flexible so officers can add additional information. Limited fields and space. <p>Action Steps:</p> <ul style="list-style-type: none"> • Get the Supreme Court to mandate their use instead of leaving it to the discretion of the judges. • More training and education about the program/process. • Better technology to make the form more user friendly. <p>Comments: Officers using the electronic warrants think it works okay once they try it a few times. There have been some growing pains with the judges but as everyone gets used to the process, acceptance grows. The system needs to be expanded beyond DUIs.</p>



OHIO: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law does extend to drugs and supports the collection of blood and urine, but not oral fluid. **(1a)**
- + The implied consent law authorizes the collection of a specimen or specimens for multiple tests. **(1b)**
- + LEOs determines the type of testing. **(1c)**
- + LEOs are authorized to collect and test specimens for drugs with probable cause to suspect impairment. **(2)**
- + State law allows for the testing of surviving drivers involved in a crash resulting in death or serious injury when there is probable cause to suspect impairment. **(3a)**
- + State law mandates drug testing on fatally injured drivers. **(4a)**
- + State law mandates the reporting of drug test results for all fatally injured drivers. **(4b)**
- + The administrative license suspension penalty is more severe for a first DUID refusal than for a first DUID offense. **(6)**

Partially aligned with recommendations:

- The ability to discriminate between alcohol- and drug-impaired driving offenses in state databases is limited. **(5)**
- State law allows the use of electronic warrants. They are in use in several counties. **(7)**

Not aligned with recommendations:

- There is no policy related to reporting the drug test results from surviving drivers involved in a serious injury or fatal crashes. **(3b)**

Notable Findings:

Ohio has listed many well-thought out specific Action Steps to advance their drugged driving data collection efforts.

Action Step for increasing the use of ewarrants: Secure funding via grant to design and implement an electronic warrant application so that officers can log onto secure portal to submit an electronic search warrant application to a judge when seeking a warrant for a blood test. **(7)**



OHIO: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In Ohio, the implied consent law does extend to drugs and supports the collection of blood and urine, but not oral fluid. <i>Ohio Rev. Code Ann. § 4511.191</i></p> <p>Identify barriers to extending the implied consent law to the collection of oral fluid:</p> <ul style="list-style-type: none">• Oral fluid testing is not recognized in the Ohio Revised Code (O.R.C.) as a valid test for Operating a Vehicle while Impaired (OVI) enforcement/prosecution or administrative proceedings.• Legislative process• Stakeholder buy-in• Supportive research <p>Action Steps:</p> <ul style="list-style-type: none">• Department of Health support and action• Laboratory confirmation research• Product design research <p>Comments: Oral fluid tests are not used at this time. The Ohio State Highway Patrol Lab testing equipment are set up to test oral fluid when it becomes available.</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The implied consent law in Ohio authorizes the collection of a specimen or specimens for multiple tests when drug impairment is suspected. <i>O.R.C. 4511.191(A)(3)</i></p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>State law authorizes the LEO to designate which tests are administered. <i>O.R.C. 4511.191(A)(3)</i></p>
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).	<p>In Ohio, LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause. <i>Ohio Rev. Code Ann. § 4511.191; Ohio Rev. Code Ann. § 4511.19</i></p> <p>Identify barriers in Ohio to <u>increasing</u> the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none">• Ability of crime labs to test all of the samples in a timely manner• The O.R.C. requires a physician, RN, emergency medical technician, chemist or phlebotomist to draw blood for blood test.• Time and resources on the scene/ officers' ability and willingness to obtain a search warrant

	<p>Action Steps:</p> <ul style="list-style-type: none"> • Law enforcement offices establish rules and policies that require officers to get warrant for blood tests when OVI includes serious/fatal crash • Find funding to employ additional crime lab employees and expand operations. • Have law enforcement agencies build partnerships with health care facilities to ensure cooperation for blood draws. • Increased training
<p>3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.</p>	<p>Any driver suspected of drug impairment can be tested with probable cause under Ohio's DUI/DUID and Implied Consent statutes, but there is no specific law related to testing surviving drivers.</p> <p>Reporting the drug test results is not required.</p> <p>Identify barriers to a law or policy to get drug test results on surviving drivers reported to a central state database:</p> <ul style="list-style-type: none"> • Legislative process • Implementing the database/ L.E. support <p>Action Steps:</p> <ul style="list-style-type: none"> • Have a central state database and make it user-friendly and easily accessible; if police department not complying with law/policy, take away grant funding. • Advocate efficiency of the database/ Ease of use • Create legislation that requires drug testing for all surviving drivers in fatal and serious injury crashes. • Require that officers get warrant for blood after <i>Birchfield</i>. • Find funding that could help facilitate drug testing in all these cases.
<p>4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.</p>	<p>State law in Ohio mandates drug testing on fatally injured drivers.</p> <p>O.R.C. § 313.13 Autopsy; blood test of decedent killed in motor vehicle accident (B) If the office of the coroner is notified that a person who was the operator of a motor vehicle that was involved in an accident or crash was killed in the accident or crash or died as a result of injuries suffered in it, the coroner, deputy coroner, or pathologist shall go to the dead body and take charge of it and administer a chemical test to the blood of the deceased person to determine the alcohol, drug, or alcohol and drug content of the blood. This division does not authorize the coroner, deputy coroner, or pathologist to perform an autopsy, and does not affect and shall not be construed as affecting the provisions of <u>section 313.131 of the Revised Code</u> that govern the determination of whether and when an autopsy is to be performed.</p>

	<p>O. R.C. § 4511.191 notes that a person who is dead shall be deemed to have consented to the chemical testing and the test or tests may be administered.</p> <p>Identify barriers to drug testing all fatally injured drivers</p> <ul style="list-style-type: none"> Many police departments may have limited means to drug test all fatally injured drivers. No way to ensure that every police department drug tests all fatally injured drivers. <p>Action Steps:</p> <ul style="list-style-type: none"> Create policy that requires police departments to drug test all fatally injured drivers; monitor funding. Create a universal procedure that all police departments can follow and a database where all departments can report the number of crashes and results of the drug tests.
<p>4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.</p>	<p>State law in Ohio mandates the reporting of drug test results for all fatally injured drivers. O.R.C. § 313.09 Records</p> <p>The coroner shall keep a complete record of and shall fill in the cause of death on the death certificate, in all cases coming under his jurisdiction. All records shall be kept in the office of the coroner, but, if no such office is maintained, then such records shall be kept in the office of the clerk of the court of common pleas. Such records shall be properly indexed, and shall state the name, if known, of every deceased person as described in section 313.12 of the Revised Code, the place where the body was found, date of death, cause of death, and all other available information. The report of the coroner and the detailed findings of the autopsy shall be attached to the report of each case. The coroner shall promptly deliver, to the prosecuting attorney of the county in which such death occurred, copies of all necessary records relating to every death in which, in the judgment of the coroner or prosecuting attorney, further investigation is advisable. The sheriff of the county, the police of the city, the constable of the township, or marshal of the village in which the death occurred may be requested to furnish more information or make further investigation when requested by the coroner or his deputy. The prosecuting attorney may obtain copies of records and such other information as is necessary from the office of the coroner. All records of the coroner are the property of the county.</p>
<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data. <i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>DUI/DUID are not separate offenses in Ohio, however they can sometimes be distinguished in the state's crash database. <i>Ohio Rev. Code Ann. § 4511.19</i></p> <p>Crash, driver and citation databases can capture whether OVI cases involve drugs, alcohol or both; however, the way in which cases are handled by courts and law enforcement often result in more generic data being submitted to those databases. Also, the primary state citation database is focused on the Ohio State Patrol with limited data on citations from other LEAs.</p> <p>Identify barriers to distinguish among impaired driving offenses in citation data:</p> <ul style="list-style-type: none"> The tendency for data regarding specific OVI substance to not be entered into databases.

	<ul style="list-style-type: none"> Getting local LEAs to report impaired driving offenses separately to the Ohio State Police. <p>Comments: The Ohio Department of Public Safety and the Ohio State Highway Patrol maintain separate databases for crash information and traffic citations. The Crash database contains all crash information for the state and includes information related to drug, alcohol or drug/alcohol if applicable. It is possible to identify whether alcohol or drugs were involved, assuming that information is included by LEOs in the crash report.</p> <p>The traffic citation database contains mainly information from the Ohio State Highway Patrol. We are in the process of gathering statewide statistics, but at this time, I would consider the database to be most complete when querying tickets written by the Patrol. With that said, distinguishing with accuracy between different types of impaired driving offenses is difficult at this time. This is primarily due to the way the information is entered into the citation at the time of the offense (e.g., a more generic violation is used).</p> <p>Finally, in relation to the driver's history databases maintained by the Ohio Bureau of Motor Vehicles, conviction information is held in a driver's history database. Certain other information is also contained if the offender is a habitual impaired driving offender. This data is considered more generic in nature and would not include test results.</p>
6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.	<p>In Ohio, the administrative penalty is more severe for first DUID test refusers who receive a 12-month license suspension. <i>Ohio Rev. Code Ann. § 4511.191</i> First DUID offenders receive a 3-month license suspension. <i>Ohio Rev. Code Ann. § 4511.19</i></p> <p>Comments: As a general policy, many prosecutors' offices would not charge an OVI- refusal if the suspect submitted to breath and either blood or urine. If drugs are suspected and the officer can articulate reasonable signs of categorized drugged impairment, a refusal charge would be considered if the suspect refused a blood or urine test.</p>
7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.	<p>State law allows the use of electronic warrants.</p> <p>O. R.C. 2935.24 Service of arrest warrant by electronic means; allows a judge to authorize the service of a warrant by telegraph, teletype, wire photo, etc.</p> <p>O.R.C. 41(C) A warrant shall issue on either an affidavit or affidavits sworn to before a judge of a court of record or an affidavit or affidavits communicated to the judge by reliable electronic means establishing the grounds for issuing the warrant.</p> <p>Identify barriers to increased use of electronic warrants to avoid delay:</p> <ul style="list-style-type: none"> Judicial buy-in Consistency/uniformity Funding for implementing electronic warrants; creating or being able to afford technology used for electronic warrants

	<ul style="list-style-type: none"> • Complying with warrant requirements and training officers to use system <p>Action Steps:</p> <ul style="list-style-type: none"> • Implement the systems already put into place in several Ohio counties. • Judicial technology education • Secure funding via grant to design and implement an electronic warrant application so that officers can log onto secure portal to submit an electronic search warrant application to a judge when seeking a warrant for a blood test. • Develop standard training curriculum and materials to ensure consistency. • Run pilot program for eWarrant system and promote system to get support from other jurisdictions or find jurisdiction that has effective and efficient eWarrant system and promote that application to other jurisdictions.
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OKLAHOMA: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law does extend to drugs and supports the collection of blood, urine, and oral fluid, but oral fluid is not currently collected in practice. **(1a)**
- + The implied consent law authorizes the collection of specimens for multiple tests. **(1b)**
- + LEO's choose the type of test. **(1c)**
- + LEOs are authorized to collect and test specimens for drugs with probable cause and a warrant. **(2)**
- + State law permits testing surviving drivers involved in crashes resulting in death or serious injury, with a warrant, when there is probable cause. **(3a)**
- + The DUI/DUID statute distinguishes between DUI and DUID. The new DPS database will allow discrimination between DUI and DUID cases. **(5)**
- + The administrative license suspension penalty for a first DUID refusal is the same as for a first DUID offense. **(6)**

Partially aligned with recommendations:

- o Policy allows the use of electronic warrants by some police agencies and their use is expected to expand. **(7)**

Not aligned with recommendations:

- There is no policy related to reporting the drug test results from surviving drivers involved in serious injury or fatal crashes, other than for prosecution. **(3b)**
- There is no law mandating testing a driver fatally injured in a crash. In practice, medical examiners are responsible for determining the manner and cause of death for deceased drivers but testing practices are not standardized. **(4a)**
- There is no law or policy mandating the reporting of drug test results for all fatally injured drivers. Current testing practices are not standardized. **(4b)**

Notable Findings:

Oklahoma is implementing processes and systems which can be expected to increase access to accurate drugged driving data. These include:

Increased use of oral fluid for screening and confirmation testing **(1a)**

Upgrading the DPS databases **(5)**

Plans for an electronic-warrant system and training in its use **(7)**



OKLAHOMA: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In Oklahoma, the implied consent law does extend to drugs <i>Okla. Stat. Ann. tit. 47, § 753</i> and supports the collection of blood, urine, and oral fluid, <i>Okla. Stat. Ann. tit. 47, § 11-902</i> but oral fluid is currently not collected in practice.</p> <p>Identify barriers to the regular collection of oral fluid when drugged driving is suspected:</p> <ul style="list-style-type: none">• Acceptance by the OK Board of Tests (BOT), state legislature, and Oklahoma State Bureau of Investigations (OSBI) for confirmation testing. <p>Action Steps:</p> <ul style="list-style-type: none">• Training for Peace Officers <p>Comments: Oklahoma through partners at the Oklahoma Highway Safety Office (OHSO), BOT and Oklahoma Highway Patrol (OHP) will be implementing a field process using oral fluid screening devices. In addition, the Oklahoma Highway Patrol (OHP) and OSBI are meeting to discuss using oral fluid for confirmation testing inside the state crime toxicology laboratory.</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The implied consent law in Oklahoma authorizes the collection of a specimen or specimens for multiple tests when drug impairment is suspected.</p> <p>Comments: The state of Oklahoma's blood kits provided by the OSBI have three vials, all blood samples are tested for alcohol and screened for a broad list of drug categories. If the case involves death or great bodily injury, further confirmation testing is conducted.</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>LEOs to choose type of test.</p>
2. Authorize and encourage LEOs to collect and test specimens for drugs on all DUI/DUID arrestees with probable cause (and with a warrant for a blood test)	<p>In Oklahoma, LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause. <i>Okla. Stat. Ann. tit. 47, § 753; Okla. Stat. Ann. tit. 47, § 11-902</i></p> <p>Identify barriers in Oklahoma to increasing the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none">• Funding to the OSBI Lab to conduct this testing <p>Comments: If the case involves drug impairment, the OSBI screens and then confirms those positives found during the screen but do not provide quantification.</p>

<p>3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.</p>	<p>Oklahoma law permits testing a surviving driver involved in a crash resulting in death or serious injury <i>Okla. Stat. Ann. tit. 47, § 751</i> but only with consent or a warrant. There is no law or policy concerning reporting for purposes other than prosecution.</p> <p>What are the barriers to increasing the number of drug tests on surviving drivers where drug impairment is suspected?</p> <ul style="list-style-type: none"> With the recent Oklahoma Court of Criminal Appeals ruling in the Stewart case (2019), we now must have consent or a warrant. Simply being a participant in a vehicle crash with injuries or death is not enough to obtain a blood sample. <p>Action Steps:</p> <ul style="list-style-type: none"> Training for law enforcement officers to simply ask for consent from all drivers regardless if impairment is indicated. <p>Identify barriers to a law or policy to get such drug test results reported to a central state database:</p> <ul style="list-style-type: none"> The OSBI tests living drivers. The Office of the Chief Medical Examiner (OCME) tests blood from deceased drivers, however their testing, screens and confirmations are not standardized. <p>Action Steps:</p> <ul style="list-style-type: none"> The central database is the DPS Crash Records System. We need an analyst who is specifically assigned to update the toxicology reports once they are received; requiring the investigating officers of the more than 500 law enforcement agencies to update a crash report for toxicology is not achievable.
<p>4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.</p>	<p>There is no law mandating testing a driver fatally injured in a crash, however the medical examiner's office is responsible for determining the manner and cause of death for deceased drivers.</p> <p>Comments: The OCME is responsible for determining the manner and cause for deceased drivers, however, their testing of those killed is not standardized. Legislation is needed to require standardized forensic toxicology testing for both living and deceased drivers to create a better data picture of what is in each driver's system.</p>
<p>4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.</p>	<p>There is no law or policy mandating the reporting of drug test results for all fatally injured drivers.</p> <p>Comments: The OCME is responsible for determining the manner and cause for deceased drivers, however, their testing of those killed is not standardized. Legislation is needed to require standardized forensic toxicology testing for both living and deceased drivers to create a better data picture of what is in each driver's system.</p>

<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data. <i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>The DUI/DUID statute in Oklahoma distinguishes between DUI and DUID. <i>Okla. Stat. Ann. tit. 47, § 11-902.</i> The impaired driving data that police officers collect also make this distinction.</p> <p>Comments: All law enforcement officers are required to submit the Officer's Affidavit and Notice of Revocation to the OKDPS upon arrest. The form distinguishes between DUI and DUI-D. The system is currently being upgraded. Pulling these data will be easier after upgrading from the older DPS Mainframe System to the Driver360 program.</p> <p>Oklahoma law requires all DUI's to be filed with a court of record. The Oklahoma statutes are specific to alcohol DUI, drug DUI and combined influence DUI cases, however Oklahoma City and Tulsa file their cases thru municipal court using municipal codes.</p>
<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p>	<p>In Oklahoma, the administrative penalty is the same for first DUID test refusers <i>Okla. Stat. Ann. tit. 47, § 753, Okla. Stat. Ann. tit. 47, § 754</i> and first DUID offenders <i>Okla. Stat. Ann. tit. 47, § 6-205.</i> Both receive a 6-month license suspension.</p>
<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>There is no state law regarding electronic warrants. Electronic warrants are used by some agencies. Extensive e-warrant training is planned.</p> <p>Identify barriers to increase the use of electronic warrants to collect specimens to avoid delay:</p> <ul style="list-style-type: none"> • The education and availability of judges in each of Oklahoma's 26 judicial districts. Despite years of training provided by OHP, BOT, OHSO and the Judicial Educator, many do not embrace technology. <p>Comments: OHP has designed an e-warrant class and will be holding that class across Oklahoma open to all law enforcement during FY2020 in addition to the peace officer training. The long-term goal of the state's Offender Data Information System is to create an e-warrant database where peace officers can post a warrant and Oklahoma's judiciary can log-into the system using their active directory credentials through the Administrative Office of the Courts.</p>



OREGON: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + LEOs are authorized to collect and test specimens for drugs with probable cause and a warrant for a blood draw. **(2)**
- + State law allows testing surviving drivers involved in crashes resulting in death or serious injury, when there is probable cause. **(3a)**
- + State law mandates drug testing drivers fatally injured in a crash. **(4a)**
- + State law mandates the reporting of drug test results of drivers fatally injured in a crash. **(4b)**

Partially aligned with recommendations:

- The implied consent law authorizes the collection of only one specimen, but multiple tests may be performed on the specimen. **(1b)**
- The implied consent law does not specifically prohibit suspects from choosing the type of test. In practice, suspects do not choose the type of test under the DUI/DUID statute. **(1c)**
- The law allows the use of e-warrants and they are sometimes used depending on the county or judge. **(7)**
- The administrative license suspension penalty for a first DUID refusal is the same for breath test or urine test refusal, but there is no administrative penalty for a blood test refusal. **(6)**

Not aligned with recommendations:

- The implied consent law does extend to drugs for breath and urine, but not for blood. **(1a)**
- There is no policy related to reporting the drug test results from surviving drivers involved in serious injury or fatal crashes. **(3b)**
- DUI-alcohol and DUI-drugs are not distinguished in a state database. **(5)**

Notable Findings:

Oregon's Implied Consent Law allows the collection of only one chemical sample. This limitation prevents the use of PBT's at the roadside, as a PBT *and* an evidentiary test would violate the one-test rule. **(1b)**

There is no administrative penalty for refusing to submit a blood sample, as there is for refusing a breath or urine test. **(6)**



OREGON: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In Oregon, the implied consent law extends to drugs and supports the collection of breath and urine, but not blood or oral fluid. <i>Or. Rev. Stat. Ann. § 813.095 and § 813.131</i></p> <p>Identify barriers to extending the implied consent law to the collection of blood and oral fluid:</p> <ul style="list-style-type: none">• State v. Banks is likely going to have far reaching and lasting adverse impacts on Oregon's Implied Consent law*• Oral fluid testing has not shown itself to be adequately robust for application to the implied consent law.• Oral fluid has not progressed to the point where impairment can be determined – only presence. As Oregon does not have a per se law for cannabis, oral fluid to determine presence is of little value without a demonstration of impairment through SFST's. <p>Action Steps:</p> <ul style="list-style-type: none">• Long term, promote and support the advancement of oral fluid testing.• As oral fluid testing technology advances, begin the legislative process for law changes.• Ask the legislature for money for a pilot project by providing data from existing pilot projects. <p>Comments: Officials within the Oregon DRE program are interested in implementing oral fluid testing, but how that might happen has yet to be determined.</p> <p>*State v. Banks: The Oregon Supreme Court concluded that Article 1, Section 9 of the Oregon Constitution prohibited the state from using defendant's refusal as evidence when it prosecuted him for that crime. This reversed the contrary decision of the Court of Appeals, and that of the Circuit Court.</p> <p>Oregon's Implied Consent laws do not support the collection of blood as evidence. There is no administrative penalty for refusing to submit a blood sample, as there is for refusing breath or urine. Blood collection as evidence may only happen with consent, warrant, or in the event of an injury crash.</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>Oregon law permits the collection of only one chemical sample. Blood obtained through a warrant under the DUI/DUID law, or urine through implied consent, may be tested multiple times but only one sample may be taken.</p> <p>Comments: The limitation of one chemical sample prevents the use of PBT's at the roadside, as a PBT and an evidentiary test would violate the one-test rule.</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>State law does not explicitly prohibit suspects from choosing the type of test. In practice, suspects do not choose the type of test.</p>

	<p>Comments: Specifically, with implied consent, the first step is to get a breath sample (assuming the person is not in the hospital after a motor vehicle crash). If the breath test is .08 or higher or the person refuses a breath test then the implied consent process is over. If the person blows under a .08 and the officer has reasonable suspicion to believe the person is under the influence of drugs, implied consent allows officers to get a urine sample. Blood may also be obtained with the consent of the suspect, with a warrant, or when the person is receiving medical treatment in a hospital after a motor vehicle crash. Additional testing falls outside of implied consent and is not prohibited by implied consent. <i>Or. Rev. Stat. Ann §813.100(5)</i></p>
<p>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).</p>	<p>In Oregon, LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause. <i>Or. Rev. Stat. Ann. § 813.095; Or. Rev. Stat. Ann. § 813.010 and § 813.131</i></p> <p>Identify barriers in Oregon to increasing the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none"> Although improvements have been made in the consistency in warrant processes from one venue to another, however a statewide uniform warrant process would be helpful. There would need to be an increase in crime lab capacity. Currently blood testing for drugs has to be sent out of state. This increases both processing time and expense. Another change that would assist in the collection process would be to have LEOs authorized by statute and trained to draw blood samples <p>Action Steps:</p> <ul style="list-style-type: none"> Increase OSP forensic labs capacity to test blood for drugs
<p>3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.</p>	<p>There is no State law in Oregon related specifically to drug testing surviving drivers involved in a crash resulting in death or serious injury. Any driver suspected of drug impairment can be tested with probable cause under Oregon's DUI/DUID and Implied Consent statutes. <i>Or. Rev. Stat. Ann. § 813.095, Or. Rev. Stat. Ann. § 813.100</i></p> <p>Identify barriers to a law or policy to conduct drug tests for surviving drivers involved in a crash resulting in death or serious injury (with probable cause and warrant as needed).</p> <ul style="list-style-type: none"> If the person is not deceased and no probable cause exists, this would be considered an unlawful search. <p>Comment: There is no mandatory testing of surviving drivers. Breath, blood, and/or urine samples from surviving drivers must be obtained via consent, a search warrant, or probable cause and exigent circumstances. We are encouraging DREs to get involved in fatal collision teams so they can evaluate surviving drivers and attempt to secure biological samples via one of the three routes mentioned.</p>

	<p>Reporting the test results is not required</p> <p>Identify barriers to a law or policy to get such drug test results reported to a central state database:</p> <ul style="list-style-type: none"> Funding in order for have the blood samples tested by a single source. <p>Action Steps:</p> <ul style="list-style-type: none"> Secure adequate funding. Develop policies and procedures for reporting results to a single source <p>Comments: Currently there are two separate labs in two different states being used for testing blood. The results of the testing are sent to the submitting agency with no central repository in Oregon.</p>
4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.	<p>State law mandates testing a driver fatally injured in a crash. <i>Or. Rev. Stat. Ann. § 146.003; Or. Rev. Stat. Ann. § 146.090; Or. Rev. Stat. Ann. § 146.113</i></p> <p>Comments: The State Medical Examiner advised (in 2017) that they would begin drug screening all fatally injured drivers.</p>
4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.	<p>State law mandates reporting results of drug tests of fatally injured drivers. <i>Or. Rev. Stat § 146.113</i></p>
<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data.</p> <p><i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>The DUI/DUID statute in Oregon <i>Or. Rev. Stat. Ann. § 813.010</i> does not distinguish between arrests for DUI-alcohol and DUID, but the types of impaired driving offense are coded separately but not accessible from a single source because the results are sent to the submitting arresting agency.</p>
6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.	<p>In Oregon, the administrative penalty is the same for first DUID test refusers and first DUID offenders for a breath or urine test refusal. Both receive a 1 year license suspension. <i>Or. Rev. Stat. Ann. § 813.130 – Refusal; Or. Rev. Stat. Ann. § 813.400; Or. Rev. Stat. Ann. § 809.428 – DUID conviction</i></p> <p>Comment: There is no administrative penalty for refusing a blood test.</p>
7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.	<p>Electronic warrants are available by statute and are sometimes used, depending on the county and judge. <i>Or. Rev. Stat. Ann. § 133.545(8)(b)</i></p>

	<p>Comments: Although improvements have been made in the consistency in warrant processes from one venue to another, a statewide uniform warrant process would be helpful.</p>
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PENNSYLVANIA: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law does extend to drugs and supports the collection of blood, but not oral fluid. **(1a)**
- + The implied consent law authorizes the collection of a specimen or specimens for multiple tests. **(1b)**
- + Suspects are not allowed to choose the type of test. **(1c)**
- + LEOs are authorized to collect and test specimens for drugs with probable and a warrant for a blood draw. **(2)**
- + State law allows testing surviving drivers involved in crashes resulting in death or serious injury, when there is probable cause to suspect impairment. **(3a)**
- + State law mandates drug testing drivers fatally injured in a crash. **(4a)**
- + State law mandates the reporting of drug test results of drivers fatally injured in a crash. **(4b)**
- + DUI-alcohol and DUI-drugs can be distinguished in a state database. **(5)**
- + The administrative license suspension penalty for a first DUID refusal is the same as for a first DUID offense. **(6)**

Partial alignment with recommendations:

- Electronic warrants are not authorized in general, but per a court policy they are in very limited use in some magisterial districts. **(7)**

Not aligned with recommendations:

- There is no policy related to reporting the drug test results from surviving drivers involved in a serious injury or fatal crash. **(3b)**

Notable Findings:

Proposed action step for more drug testing: Explore possibilities of statewide contract with a forensic laboratory for a PA DRE to request blood testing with the cost of the testing assigned to the DRE program – this would increase the DRE involvement in investigations – if the cost of the testing is no longer the responsibility of the requesting agency. **(2)**

Proposed action step to improve drug test reporting on fatalities: Require some type of follow-up with investigating officers such as an electronic message reminder for the results to be submitted in coordination with the Coroner' Office. **(4a)**



PENNSYLVANIA: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In Pennsylvania, the implied consent law does extend to drugs and supports the collection of blood, but not oral fluid. 75 Pa. Stat. and Cons. Stat. Ann. § 1547</p> <p>Identify barriers to extending the implied consent law to the collection of oral fluid:</p> <ul style="list-style-type: none">• A legislative change would be needed to 75 Pa. Stat. and Cons. Stat. Ann. § 1547 to allow for oral fluid testing.• A change would need to be made to PA Title 67, Chapter 77, which would need to be initiated by the Department of Transportation. <p>Action Steps:</p> <ul style="list-style-type: none">• Discuss the legislative change for legislative consideration of the addition to oral fluids to Title 75.• Upon Title 75 changes, Department of Transportation, Bureau of Highway Safety would need to begin the assignment of changes to Transportation Regulations, Title 67, Chapter 77. Historically, promulgation of rules and regulations is a lengthy process. <p>Comments: Oral fluid screening tests are not used at this time, but the state is investigating the use of oral fluid testing as a tool for law enforcement officers at the roadside.</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The implied consent law in Pennsylvania authorizes the collection of a specimen or specimens for multiple tests when drug impairment is suspected.</p> <p>Comments: The standard blood test kit has two vials. In the event that additional testing is needed, current PA case law requires additional information/evidence to request additional testing.</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>Suspects are not allowed to choose the type of test.</p> <p>Comments: The PA Supreme Court has determined that a driver has no statutory right to request an alternative test. (Nardone v. Department of Transportation, 130 A.3d 738 (2015))</p>
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).	<p>In Pennsylvania, LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause. 75 Pa. Stat. and Cons. Stat. Ann. § 3802; 75 Pa. Stat. and Cons. Stat. Ann. § 1547</p> <p>Identify barriers in Pennsylvania to <u>increasing</u> the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none">• Associated costs of testing• Limited availability of IACP certified Drug Recognition Experts (DREs)• Adequately trained law enforcement officers

	<p>Action Steps:</p> <ul style="list-style-type: none"> • Explore possibilities of statewide contract with a forensic laboratory for a PA DRE to request blood testing with the cost of the testing assigned to the DRE program – this would increase the DRE involvement in investigations – if the cost of the testing is no longer the responsibility of the requesting agency. • Increase the number officers trained as DREs • Increase the number of officers trained in Advanced Roadside Impaired Driving Enforcement (ARIDE) – as well as create new training programs associated with specific drugs for officers to become more educated. Drug trends change quite often. <p>Comments: Currently, Pennsylvania Law Enforcement officers are not trained in phlebotomy and cannot “collect” blood samples without the assistance of medical personnel. There are no current plans to initiate phlebotomy training for law enforcement officers.</p>
<p>3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.</p>	<p>There is no specific law requiring that surviving drivers in fatal and serious injury crashes be tested, however, any driver suspected of drug impairment can be tested with probable cause under Pennsylvania’s DUI/DUID and Implied Consent statutes. <i>75 Pa. Stat. and Cons. Stat. Ann. § 3802; 75 Pa. Stat. and Cons. Stat. Ann. § 1547</i></p> <p>Reporting the test results is not required.</p> <p>Identify barriers to a law or policy to get drug test results on surviving drivers involved in a crash resulting in death or serious injury reported to a central state database:</p> <ul style="list-style-type: none"> • PA Constitution requires Probable Cause to establish the surviving driver is believed to be under the influence/impaired in order to request chemical test. (Commonwealth v. Kohl, 615 A2d 308 1992) • Surviving drivers in serious crashes that result in death or serious injury many times sustained significant injuries. In many cases, establishing probable cause for testing can be challenging if those operators are transported and treated in medical facilities without witness or interview within an appropriate time after the crash. <p>Action Steps:</p> <ul style="list-style-type: none"> • Change how drug test results are captured for every driver within the PA Crash reporting system <p>Comments: Pennsylvania still lacks a law requiring every driver involved in a fatal crash be tested for impairment (drugs and/or alcohol).</p>
<p>4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.</p>	<p>State law in Pennsylvania mandates drug testing on fatally injured drivers. <i>75 Pa. Stat. and Cons. Stat. Ann. § 3749</i></p>

	<p>Identify barriers to drug testing all fatally injured drivers</p> <ul style="list-style-type: none"> Depending on the particular laboratory used, test results can take months to be received. Many times, the follow up on crashes which do not result in continued investigation, results may not be reported in a timely fashion, or at all. <p>Action Steps:</p> <ul style="list-style-type: none"> Improve officer training in crash investigations – to specifically educate them in the mandate for collection of drug testing on all fatally injured drivers. Require some type of follow-up with investigating officers. (Electronic message, reminders etc, for the results to be submitted in coordination with the Coroner' Office.) <p>Comments: The Vehicle Code requires that coroners or medical examiners shall take blood or urine samples or both from the bodies of all drivers and of all pedestrians over 15 years of age for chemical testing. This information becomes part of the crash report.</p>
<p>4b. Enact laws and/or implement policies mandating reporting of test results for all fatally injured drivers.</p>	<p>State law in Pennsylvania mandates the reporting of drug test results for all fatally injured drivers. <i>75 Pa. Stat. and Cons. Stat. Ann. § 3749</i></p> <p>Comments: Crash reports are the only mechanism to track and document all test results for fatally injured drivers.</p>
<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data.</p> <p><i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>The DUI/DUID statute in Pennsylvania does not distinguish between arrests for DUI-alcohol and DUID <i>75 Pa. Stat. and Cons. Stat. Ann. § 3802</i>, but they can be distinguished in the AOPC database.</p> <p>Comments: Currently, the best possible data collection site is the Administrative Office of Pennsylvania Courts (AOPC) for the accuracy of the arrest numbers. Data from AOPC includes all charging data stemming from the DUI arrest and does distinguish among impaired driving offenses.</p> <p>Although agencies report DUI Arrests into the PA State Police Uniform Crime Reporting, there are no distinguishing markers for DUI Alcohol and Drugs. Also, many subjects arrested for DUI in Pennsylvania are charged with multiple counts of the DUI Law. (General Impairment, Alcohol at 3 specific BAC plateaus, General drug impairment, Specific controlled substances and combinations of all.) In a perfect data collection state, the arresting officer would report each arrest to a specific data collection port. In the one report of the arrest, specifics, such as alcohol, drugs, combinations – and specifics could be captured, in order to have a complete accurate assessment of specific drug problems. DREs reporting have accurate measurable statistics, however DRE involvement is only in a small percentage of the arrests.</p>

<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p>	<p>The administrative penalty is the same for first DUID test refusers and first DUID offenders. Both receive a 12-month license suspension.</p> <p><i>75 Pa. Stat. and Cons. Stat. Ann. § 1547 (Refusal)</i> <i>75 Pa. Stat. and Cons. Stat. Ann. § 3804 (Offense)</i></p> <p>Comments: Some first DUID offenders are eligible for an ARD (Accelerated Rehabilitative Disposition) 60-day license suspension.</p>
<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>Electronic warrants are in general not authorized. They are in very limited use in some magisterial districts, allowed by the <i>PA Rule of Criminal Procedure (Rule 203)</i>.</p> <p>Identify barriers to increase the use of electronic warrants to avoid delay:</p> <ul style="list-style-type: none"> • There is a movement towards authorizing electronic warrants, but it is a function of judicial rule and requires a change mandated by our Supreme Court. <p>Comments: PA Rule of Criminal Procedure – Rule 203 allows for the use of advanced communication technology to obtain warrants without physically reporting to a Magisterial District Justice Office, but this is limited to the magisterial districts with the technical capabilities.</p>



RHODE ISLAND: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law authorizes the collection of a specimen or specimens for multiple tests. **(1b)**
- + LEOs determines the type of testing. **(1c)**
- + State law authorizes testing surviving drivers involved in crashes resulting in death or serious injury, when there is probable cause. **(3a)**
- + State law requires drug testing a driver fatally injured in a crash. **(4a)**
- + Courts statewide have recently implemented a statewide electronic filing system which distinguishes impaired driving offenses. **(5)**
- + The administrative license suspension penalty for a first DUID refusal is more severe than for a first DUID offense. **(6)**

Partially aligned with recommendations:

- o The implied consent law does extend to drugs and supports the collection of blood and urine, however, the law prohibits a warrant for blood in misdemeanor cases. **(1a)**
- o LEOs are authorized to collect and test specimens for drugs, however the law prohibits a warrant for blood in misdemeanor DUI/DUID cases. **(2)**

Not aligned with recommendations:

- There is no policy related to reporting the drug test results from surviving drivers involved in serious injury or fatal crashes. **(3b)**
- There is no state law or policy regarding the reporting of drug test results for fatally injured drivers. In practice, drug test results from fatalities are made available and used to report to the FARS). **(4b)**
- There is no law or policy related to the use of electronic warrants and they are not in use. **(7)**

Notable Findings:

The ability to obtain a warrant to collect blood sample for DUI/DUID arrestees does not extend to cases of misdemeanor DUI/DUID. This results in a high number of test refusals. **(2)**

The Rhode Island DRE program has only been started recently. **(3a-b)**

The ability to obtain accurate DUID data from the new statewide court database will still depend on accurate data entry by LEOs who enter the data. **(5)**



RHODE ISLAND: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In Rhode Island, the implied consent law does extend to drugs and supports the collection of blood and urine, but not oral fluid. 31 R.I. Gen. Laws Ann. § 31-27-2.1</p> <p>Identify barriers to extending the implied consent law to the collection of oral fluid:</p> <ul style="list-style-type: none">• Oral fluid is not legally admissible or reliable.• The cost would be prohibitive.
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The implied consent law in Rhode Island authorizes the collection of a specimen or specimens for multiple tests when drug impairment is suspected.</p> <p>Comments: Two vials of blood are usually collected when drug impairment is suspected.</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>The law allows LEOs to request and select up to two tests (breath and blood).</p>
2. Authorize and encourage LEOs to collect and test specimens for drugs on all DUI/DUID arrestees with probable cause (and with a warrant for a blood test).	<p>In Rhode Island, LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause, however the law prohibits a warrant for blood in misdemeanor DUI/DUID cases. 31 R.I. Gen. Laws Ann. § 31-27-2; 31 R.I. Gen. Laws Ann. § 31-27-2.1</p> <p>Identify barriers in Rhode Island to <u>increasing</u> the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none">• Due to the part of the law that prohibits a search warrant in misdemeanor cases, suspects can't be compelled to provide a blood sample. Most refuse the test.<p>Action Steps:</p><ul style="list-style-type: none">• Legislation to allow search warrants for a blood draw in misdemeanor cases.<p>Comments: In the case of serious bodily injury or death, If a DUI/DUID suspect is injured and taken to the hospital and blood has been drawn, law enforcement can get a warrant to secure the sample.</p>
3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.	<p>Rhode Island law does allow for a warrant and testing <i>surviving</i> drivers involved in a crash resulting in death or serious injury when drug impairment is suspected. 31 R.I. Gen. Laws Ann. § 31-27-2; 31 R.I. Gen. Laws Ann. § 31-27-2.1; 31 R.I. Gen. Laws Ann. § 13-27-2.9; 12 R.I. Gen. Laws Ann. § 12-5-2 Reporting the test results is not required.</p> <p>Identify barriers to a law or policy to get drug test results on surviving drivers reported to a central state database:</p> <ul style="list-style-type: none">• Getting the toxicology lab to provide better data.

	<p>Comments: Rhode Island is just getting our DRE program up and running. The high rate of opioid deaths and possible implications for traffic safety is a concern.</p>
<p>4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.</p>	<p>The medical examiner's office is required by policy to drug test all fatally injured drivers. R.I. Gen. Laws Ann. § 23-4-3.1</p>
<p>4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.</p>	<p>State law or policy in Rhode Island does not mandate the reporting of drug test results for fatally injured drivers, however in practice, the drug test results from fatalities from the state medical examiner's office are made available and used to report to the FARS. Sometimes the drug test results are recorded and available in the state crash database.</p>
<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data. <i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>The DUI/DUID statute does not distinguish between arrests for DUI-alcohol and DUID (31 R.I. Gen. Laws Ann. § 31-27-2) however, the courts in Rhode Island (statewide) have recently implemented an electronic filing system which distinguishes impaired driving offenses.</p> <p>Comments: The accuracy of the new e-filing court system database will depend on police officers to input the updated charging codes.</p>
<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p>	<p>In Rhode Island, the administrative penalty is more severe for first DUID test refusers who receive a 6-month license suspension. First DUID offenders receive a 3-month license suspension. 31 R.I. Gen. Laws Ann. § 31-27-2.1 (Refusal) 31 R.I. Gen. Laws Ann. § 31-27-2 (Offense)</p> <p>Comments: Offenders who have drugs present, but are not apparently related to impairment, receive a one-month license suspension.</p>
<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>There is no law or policy related to the use of electronic warrants.</p> <p>Identify barriers to the use of electronic warrants to avoid delay:</p> <ul style="list-style-type: none"> • Change to the law <p>Comments: Recently discussed the issue with the Chief Justices.</p>



TENNESSEE: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law does extend to drugs and supports the collection of blood and breath, but not oral fluid. **(1a)**
- + The implied consent law authorizes the collection of a specimen or specimens for multiple tests. **(1b)**
- + LEOs determines the type of testing. **(1c)**
- + LEOs are authorized to collect and test specimens for drugs with probable cause and a warrant. **(2)**
- + State law mandates testing surviving drivers involved in crashes resulting in death or serious injury, when there is probable cause to suspect impairment. **(3a)**
- + State law requires drug testing a driver fatally injured in a crash. **(4a)**
- + State law requires reporting the drug test results for a driver fatally injured in a crash. **(4b)**
- + DUI-alcohol and DUI-drugs are recorded separately in the state's crash database. **(5)**
- + The administrative license suspension penalty for a first DUID refusal is the same as for a first DUID offense. **(6)**

Partial alignment with recommendations:

- Policy allows the use of electronic warrants to reduce delay in collecting specimens, although they are not used in all jurisdictions. **(7)**

Not aligned with recommendations:

- There is no policy related to reporting drug test results from surviving drivers involved in a serious injury or fatal crash. **(3b)**

Notable Findings:

As of 7/1/19, testing is mandatory for all crashes involving death or injury, where there is probable cause. If the driver refuses, the LEO will seek a search warrant or provide exigent circumstances. **(3a)**

The need for test results to be added to the crash database via an addendum to the original crash report creates a barrier to entry of test results. **(4b)**



TENNESSEE: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In Tennessee, the implied consent law does extend to drugs and supports the collection of blood and breath, but not oral fluid. <i>Tenn. Code Ann. § 55-10-406 through 408</i></p> <p>Identify barriers to the use of oral fluid collection when drug impairment is suspected:</p> <ul style="list-style-type: none">• Legal. Our laws do not recognize oral fluid testing.• Technology, costs and resources. Our state does not have any testing devices or training.• Attitudes. Our courts have not experienced or recognized oral fluid testing. <p>Action Steps:</p> <ul style="list-style-type: none">• Pass legislation that recognizes oral fluid testing.• Find a jurisdiction that will attempt oral fluid testing as part of a temporary trial project.• Find funding to purchase the testing equipment and to provide training.
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The implied consent law in Tennessee authorizes the collection of a specimen or specimens for multiple tests when drug impairment is suspected. (As of July 1, 2019)</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>The implied consent law provides that the officer chooses the type of test. (As of July 1, 2019)</p> <p>Comments: Sometimes, resources only provide for one type of test, depending upon the jurisdiction.</p>
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).	<p>In Tennessee, LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause and a warrant. <i>Tenn. Code Ann. § 55-10-401; Tenn. Code Ann. § 55-10-406 through 408</i></p> <p>Identify barriers in Tennessee to increasing the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none">• Resources and costs. Drug testing is expensive and if the BAC is over .08, the drug testing will often not be done. Some jurisdictions only get breath samples if BAC is obvious.• Attitudes. Some jurisdictions have problems obtaining search warrants. <p>Action Steps:</p> <ul style="list-style-type: none">• Funding for our crime labs to provide for more drug testing. More equipment and staff are needed.• Training for LEOs. (ARIDE and DRE) Training for Judges and Magistrates regarding the need for search warrants in DUI/DUID cases
3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal	<p>State law mandates drug testing a surviving driver involved in a crash resulting in death or injuries when there is probable cause. (As of July 1, 2019) <i>Tenn. Code Ann. § 55-10-406</i></p>

<p>and serious injury crashes (and report results) when there is probable cause that impairment was a factor.</p>	<p>Identify barriers to authorize or encourage more drug tests for surviving drivers with probable cause and a warrant if needed.</p> <ul style="list-style-type: none"> • Training. LEOs could use more training to identify drug impairment. (ARIDE and DRE) • Costs. Drug testing is expensive, and more funds are needed to meet demands. • Attitudes. More education regarding the problem of drugged driving. <p>Action Steps:</p> <ul style="list-style-type: none"> • Train more LEOs regarding how to identify drug impairment. • Find more funding for our crime labs. • Provide education and training to the Judges. <p>Comments: As of 7/1/19, TCA 55-10-406 requires mandatory testing for all crashes involving death or injury, and there is probable cause of impairment. If the driver refuses, the LEO will seek a search warrant or provide exigent circumstances.</p> <p>Identify barriers to a law or policy to require that drug test results for surviving drivers are reported to a central state database:</p> <ul style="list-style-type: none"> • Resources and costs • An amendment requirement to the Tennessee Code Annotated so that amending the crash report to include toxicology reports is in the current law. <p>Comments: Reporting the drug test results on surviving drivers involved in a crash resulting in death or serious injury is not required. The TITAN crash database allows for both alcohol and drug test results to be reported on the crash reports, if such tests are conducted. It is incumbent on the investigating officers to submit amended crash reports to the TITAN system with alcohol and/or drug test results, once test results become available to them.</p>
<p>4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.</p>	<p>State law requires drug testing a driver fatally injured in a crash. <i>Tenn. Code Ann. § 55-10-406</i></p>
<p>4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.</p>	<p>Tennessee law does require reporting the drug test results for a driver fatally injured in a crash to the TITAN (Tennessee Integrated Traffic Analysis Network) crash database. <i>Tenn. Code Ann. § 55-10-406</i></p>

<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data. <i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>DUI-alcohol and DUI-drugs are not separate offenses, Tenn. Code Ann. § 55-10-401 but DUI-alcohol and DUID cases are recorded separately in the TITAN system which identifies drug only, alcohol only distinctions in fatalities.</p> <p>Identify barriers to distinguishing impaired driving offenses separately in a central state database:</p> <ul style="list-style-type: none"> • Costs and resources <p>Comments: TITAN is Tennessee’s statewide reporting crash data base; however, the delineation between drugs and alcohol is usually based on the officer’s initial investigation. Requiring all crashes to be amended whenever the toxicology report is complete, would create data that is more accurate.</p>
<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p>	<p>In Tennessee, the administrative penalty is the same for first DUID test refusers Tenn. Code Ann. § 55-10-407 and first DUID offenders Tenn. Code Ann. § 55-10-404. Both receive a 12-month license suspension.</p>
<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>Policy allows the use of electronic warrants to reduce delay in collecting specimens. Rule 41 of the Tennessee Rules of Criminal Procedure</p> <p>Identify barriers to the increased use of electronic warrants to collect specimens reduce delay:</p> <ul style="list-style-type: none"> • Costs and resources. Some jurisdictions do not have the resources to provide electronic warrants. • Attitudes. Training for Judges and Court staff as to the importance and need for electronic warrants. • Possible new legislation may be required. <p>Action Steps:</p> <ul style="list-style-type: none"> • Find funding and provide training for the jurisdictions that do not provide electronic warrants. • Propose legislative changes.



TEXAS: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law does extend to drugs and supports the collection of blood and breath, but not oral fluid. **(1a)**
- + The implied consent law authorizes the collection of a specimen or specimens for multiple tests. **(1b)**
- + LEOs choose the type of test based on jurisdictional preference (what their prosecuting attorney and/or judges prefer). **(1c)**
- + LEOs are authorized to collect and test specimens for drugs with probable cause and a warrant for a blood draw. **(2)**
- + State law permits testing surviving drivers involved in crashes resulting in death or serious injury, when there is probable cause to suspect impairment. **(3a)**
- + The administrative license suspension penalty for a first DUID refusal is more severe than for a first DUID offense. **(6)**

Partial alignment with recommendations:

- o State law authorizes the use of e-warrants, but their application varies by jurisdiction. Some counties have designed their own e-warrant system. **(7)**

Not aligned with recommendations:

- There is no policy regarding reporting drug test results from surviving drivers involved in a serious injury or fatal crash. **(3b)**
- State law does not mandate drug testing drivers fatally injured in a crash. **(4a)**
- There is no law or policy to require the reporting of drug test results of drivers fatally injured in a crash. **(4b)**
- DUI-alcohol and DUI-drugs are not distinguished in state databases. **(5)**

Notable Findings:

Comment: Oral fluid testing results in a tremendous number of false negatives. This produces a very negative effect on enforcement and prosecution. Negative results are likely admissible in court, while positive results are not. The Impaired Driving Prosecutor Task Force in 2016 and 2017, both universally opposed efforts to sell this bunk technology (oral fluid testing) that does far greater harm than good. **(1a)**

Comment: Additional research is needed to confirm the validity of this testing method. This method has limitations in detecting all drug categories accurately at roadside. There has also been widespread misinformation about the technology that will need to be countered. **(1a)**

Comment: For every alcohol only or drug only impaired driving case there are an equal number of poly- use cases. To implement such a policy would make every DWI case much harder to prosecute, would not help in anyway in actually tracking, and would create all new defenses to actual impaired drivers. **(5)**



TEXAS: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In Texas, the implied consent law does extend to drugs and supports the collection of blood and breath, but not oral fluid.</p> <p>Identify barriers to extending the implied consent law to the collection of oral fluid:</p> <ul style="list-style-type: none">• There is not enough research supporting the use of oral fluid to identify certain substances accurately.• Texas does not explicitly permit the use of oral fluid devices roadside. Without this explicit language, the use of the devices is unlikely to be widespread. <p>Action Steps:</p> <ul style="list-style-type: none">• Additional education efforts will be needed for law enforcement (LEOs) and prosecutors on the use and application of oral fluid technology.• Legislative or jurisdictional support for the technology will be needed for it to be implemented on more than a pilot basis. <p>Comments: (2017) Oral fluid testing results in a tremendous number of false negatives. This produces a very negative effect on enforcement and prosecution. Negative results are likely admissible in court, while positive results are not. The Impaired Driving Prosecutor Task Force in 2016 and 2017, both universally opposed efforts to sell this bunk technology that does far greater harm than good. Great for manufacturer profits, but it will cripple law enforcement and prosecution.</p> <p>Comments: (2019) Additional research is needed to confirm the validity of this testing method. This method has limitations in detecting all drug categories accurately at roadside. There has also been widespread misinformation about the technology that will need to be countered. The use of oral fluid testing continues to be tested/piloted in various states.</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The implied consent law in Texas authorizes the collection of a specimen or specimens for multiple tests when drug impairment is suspected.</p> <p>Comments: While multiple tests may be performed on specimens, testing of specimens for the presence of drugs is often dependent on the recommendation of the LEO or DRE who evaluated the subject. In addition, testing for drugs is also dependent on the presence of alcohol in the specimen. Many labs will not complete additional testing if the specimen contains a BAC of .10 or greater.</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>LEO's choose the type of test based on jurisdictional preference (i.e. what their prosecuting attorneys and/or judges prefer).</p>

	<p>Comments: Many jurisdictions are moving to blood only collection as there is less room for defense attorneys to argue the science behind the testing.</p>
<p>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).</p>	<p>In Texas, LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause. <i>Tex. Transp. Code Ann. § 724.011; Tex. Penal Code Ann. § 49.04</i></p> <p>Identify barriers in Texas to increasing the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none"> • Drug testing all DUI/DUID arrestees is cost prohibitive and often done only if drug impairment is suspected. • Blood tests for DUI/DUID offenders are screened for alcohol prior to being screened for drugs, unless there is a specific mandate and funding, blood samples with a BAC of .10 or higher are not screened further as there is no legal benefit to further screening. • Adequate labs (equipment and personnel) are needed for the testing. <p>Action Steps:</p> <ul style="list-style-type: none"> • Specific funded legislative mandate to screen all blood samples for a specific drug panel would be needed.
<p>3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.</p>	<p>State law permits testing a surviving driver involved in a crash resulting in death or serious injury. <i>Tex. Transp. Code Ann. § 724.012</i></p> <p>Reporting the drug test results from surviving drivers is not required.</p> <p>Identify barriers to a law or policy to increase drug tests for surviving drivers involved in a crash resulting in death or serious injury (with probable cause and warrant as needed).</p> <ul style="list-style-type: none"> • Typically, surviving drivers will be tested for drugs and alcohol in a fatal and serious injury crash as Texas law permits this and likely criminal charges stemming from this type of crash will be forthcoming. • If charges will not be forthcoming, testing of surviving drivers may be forgone due to the costs of testing. This may especially be the case for small jurisdictions. <p>Action Steps:</p> <ul style="list-style-type: none"> • Funded mandate requiring the testing of blood specimens for surviving drivers of a crash resulting in death or injury. <p>Identify barriers to a law or policy to get drug test results from surviving drivers reported to a central state database:</p> <ul style="list-style-type: none"> • Texas currently does not have a centralized database which tracks all DWI cases and crashes, thus there is no place to report drug test results.

	<p>Action Steps:</p> <ul style="list-style-type: none"> • Creation of a centralized database to house drug test results as well as crash and court records. This system should have mechanisms in place which flag missing results and trigger reminders to agencies responsible for reporting this information to the database. • Enact agency or state policy which requires the reporting of drug test results. <p>Comments: Based on a previous feasibility study, it will be difficult to create a statewide DWI tracking database to record drug test results as well as crash and court case information.</p>
<p>4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.</p>	<p>In Texas, there is no law or policy that requires drug testing a driver fatally injured in a crash.</p> <p>Identify barriers to enacting laws and/or implementing policies mandating drug testing for all fatally injured drivers:</p> <ul style="list-style-type: none"> • Current Texas law does not mandate testing of fatally injured drivers. Drug testing is left to the discretion of the death investigator (either the Medical Examiner or Justice of the Peace acting as the death investigator.) • For drivers with no surviving victims or who may die in single vehicle crashes, drug testing may be forgone due to the cost of testing. This is especially true in small jurisdictions with limited budgets which do not experience fatal crashes often. <p>Action Steps:</p> <ul style="list-style-type: none"> • A legislative mandate to test all drivers. • Provide an option to submit blood specimens for toxicology testing at no cost or a low cost to the jurisdiction and/or death investigator.
<p>4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.</p>	<p>There is no law or policy that requires reporting the drug test results for a driver fatally injured in a crash.</p> <p>Identify barriers to a law or policy to get drug test results from fatally injured drivers reported to a central state database:</p> <ul style="list-style-type: none"> • Texas currently does not have a centralized database which tracks all DWI cases and crashes, thus there is no place to report drug test results. <p>Action Steps:</p> <ul style="list-style-type: none"> • Creation of a centralized database to house drug test results as well as crash and court records. This system should have mechanisms in place which flag missing results and trigger reminders to agencies responsible for reporting this information to the database. • Enact agency or state policy which requires the reporting of drug test results <p>Comments: Based on a previous feasibility study, it will be difficult to create a statewide DWI tracking database to record drug test results as well as crash and court case information.</p>

<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data. <i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>DUI-alcohol and DUI-drugs are not separate offenses <i>Tex. Penal Code Ann. § 49.04</i> and offense types are not coded separately in state databases.</p> <p>Identify barriers to distinguishing offense types in state databases:</p> <ul style="list-style-type: none"> • Key stakeholders are unlikely to support change in legislation to the Penal Code which would allow for the classification of DWI offenses based on impairing substance (i.e. alcohol or drug). • If the law were to be changed, polysubstance use by offenders would make it difficult to determine which the impairing substance is and how to classify the offense. • Specific language would need to be mandated. • Execution of this would be costly. <p>Action Steps:</p> <ul style="list-style-type: none"> • Crash record and offense reports would need to be changed to be able to identify the offenses separately. • Legislative action would be needed to change the Penal Code. <p>Comments: For every alcohol only or drug only impaired driving case there are an equal number of poly-use cases. To implement such a policy would make every DWI case much harder to prosecute, would not help in anyway in actually tracking, and would create all new defenses to actual impaired drivers.</p>
<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p>	<p>In Texas, the administrative penalty is more severe for first DUID test refusers who receive a 180-day license suspension. First DUID offenders who provide a sample receive no administrative penalty. <i>Tex. Transp. Code Ann. § 724.015</i></p> <p>Comments: There is no administrative penalty for an offender who provides a sample that is positive for drugs only. There is an administrative penalty for offenders who provide a sample that is above a .08 BAC. This is an interesting loop hole in the current law.</p>
<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>State law authorizes the use of electronic warrants, but their application varies by jurisdiction. <i>Tex. Crim. Proc. Code Ann. § 18.01</i></p> <p>Comments: Continued education of Texas Judiciary on this topic.</p> <p>Several jurisdictions in the state have worked to implement their own eWarrants. Two counties – Montgomery County and Lubbock County – have implemented eWarrants as a tool to enable the state’s No Refusal program.</p>



UTAH: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law does extend to drugs and supports the collection of blood, urine, and oral fluid, but in practice oral fluid is not collected. **(1a)**
- + The implied consent law authorizes the collection of a specimen or specimens for multiple tests. **(1b)**
- + The implied consent law prohibits suspects from choosing the type of test. **(1c)**
- + LEOs are authorized to collect and test specimens for drugs with probable cause and a warrant for a blood draw. **(2)**
- + State law allows testing surviving drivers involved in crashes resulting in death or serious injury, when there is probable cause to suspect impairment. **(3a)**
- + The administrative license suspension penalty for a first DUID refusal is more severe than for a first DUID offense. **(6)**
- + Policy allows the use of e-warrants and they are widely used across the state. They have a model e-warrant system. **(7)**

Not aligned with recommendations:

- There is no policy related to reporting the drug test results from surviving drivers involved in a serious injury or fatal crash. **(3b)**
- State law permits but does not mandate drug testing drivers fatally injured in a crash. **(4a)**
- There is no law or policy to require the reporting of drug test results of drivers fatally injured in a crash. **(4b)**
- DUI-alcohol and DUI-drugs are not distinguished in state databases. **(5)**

Notable Findings:

The Department of Public Safety is currently working with the state toxicology lab to get all DUI related test results sent and uploaded to the Driver License Division system. **(3b, 4b, 5)**

Utah has a model e-warrant system that all police agencies are able to use. **(7)**



UTAH: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In Utah, the implied consent law does extend to drugs and supports the collection of blood, urine, and oral fluid. <i>Utah Code Ann. § 41-6a-520</i> In practice, oral fluid is not collected.</p> <p>Identify barriers to the regular use of oral fluid collection when drug impairment is suspected.</p> <ul style="list-style-type: none">• Our state lab does not analyze oral fluid samples, so any oral fluid sample collection would need to be sent to out of state labs, becoming very expensive to utilize the collected sample in a prosecution.• Very few departments have access to oral fluid collection methods or testing devices.• Testing devices have not been found to be as accurate as we would like, and they can be expensive to purchase, maintain, and use. <p>Action Steps:</p> <ul style="list-style-type: none">• It would take a significant increase in funding for law enforcement agencies and the state lab. Our state lab is already understaffed and overworked without adding a new sample analysis to the mix. And our LE agencies would need increased budgets to obtain and maintain collection/analysis devices.
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The implied consent law in Utah authorizes the collection of a specimen or specimens for multiple tests when drug impairment is suspected.</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>The implied consent law does prohibit suspects from choosing the type of test. <i>Utah Code 41-6a520(1)(c) and 41-6a520(1)(d)</i></p>
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).	<p>In Utah, LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause. <i>Utah Code Ann. § 41-6a-502; Utah Code Ann. § 41-6a-520</i></p> <p>Identify barriers in Utah to <u>increasing</u> the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none">• The tests are generally collected, but not analyzed at the lab when they are over a .08 on alcohol. This would be another budgetary and manpower issue with the state lab to overcome. <p>Action Steps:</p> <ul style="list-style-type: none">• Identify additional funding sources to help support the lab so that more testing can be conducted.
3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report	<p>State law in Utah permits testing of surviving drivers involved in a crash resulting in death or serious injury with probable cause for drug impairment. <i>Utah Code Ann. § 41-6a-522; Utah Code Ann. § 77-23-213</i></p>

<p>results) when there is probable cause that impairment was a factor.</p>	<p>There is no law or policy regarding reporting the drug test results to a central database.</p> <p>Action Steps:</p> <ul style="list-style-type: none"> • UHSO is working with the toxicology lab for better data results for FARS reporting. • UHSO working with the toxicology lab to provide funding to help support additional testing and reporting. • UHSO currently working with LEOs to educate on the importance of updating DI-9 with accurate BAC/Tox results. • Department of Public Safety is currently working with the state toxicology lab to get all DUI related test results sent and uploaded to the DLD system.
<p>4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.</p>	<p>State law in Utah permits drug testing on fatally injured drivers. <i>Utah Code Ann. § 41-6a-522; Utah Code Ann. § 26-4-7</i></p>
<p>4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.</p>	<p>Reporting the results is not required, however the Driver Licensing Division (DLD) is looking at recording drug results in their database in the future. At this time, only BAC is being reported.</p> <p>Identify barriers to getting the drug test results on fatally injured drivers reported to a central database:</p> <ul style="list-style-type: none"> • Getting officers to update the BAC/tox results on the DI-9. • Work with stakeholders to determine gaps in the DUI citation work flow.
<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data. <i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>The DUI/DUID statute in Utah does not distinguish between arrests for DUI-alcohol and DUID. <i>Utah Code Ann. § 41-6a-502</i> and they currently are not coded separately in reporting systems.</p> <p>Identify the barriers to distinguishing among the types of offenses in reporting systems</p> <ul style="list-style-type: none"> • These violations are not separated when submitted to the DLD. Drivers are arrested by impairment which doesn't necessarily differentiate between alcohol and/or drugs. • If a driver requests an administrative hearing, the hearing officer may be able to distinguish different types of arrests based on testimony and test results. The hearing officer will convey this information to the main office which administers sanctions; drug only sanctions are different. If no administrative hearing is requested and identified as drug only, the sanction is automatically considered to involve alcohol. <p>Action Steps:</p> <ul style="list-style-type: none"> • Currently the toxicology lab will test alcohol levels first. If the level exceeds .08 BAC, all other testing is stopped due to staffing and costs. It would be ideal to have the lab continue all testing initially requested to be able to have a more accurate picture of all substances in the driver at the time of arrest. • Currently working with the toxicology lab to have all DUI related test results sent and uploaded to the DLD system.

<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p>	<p>In Utah, the administrative license penalty is more severe for first DUID test refusers who receive an 18-month license suspension. <i>Utah Code Ann. § 41-6a-521</i> First DUID offenders receive a 4-month license suspension. <i>Utah Code Ann. § 41-6a-509</i></p>
<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>There is no state law regarding electronic warrants, however <i>Utah Courts Rule 40</i> allows electronic warrants for all types of arrests. E-warrants are widely used across the state.</p> <p>Comments: E-Warrants are widely used across the state. We have a leading e-warrant system in the country and all agencies are able to utilize it.</p>



VERMONT: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law extends to drugs and authorizes the collection of blood, but not oral fluid. **(1a)**
- + The implied consent law does not preclude the collection of a specimen or specimens for multiple tests. **(1b)**
- + The implied consent law does not permit suspects to choose the type of test(s). **(1c)**
- + LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause to suspect drug impairment. **(2)**
- + State law allows testing surviving drivers involved in crashes resulting in death or serious injury, when there is probable cause to suspect impairment. **(3a)**
- + The drug test results from surviving drivers involved in a serious injury or fatal crash are reported to the Office of Highway Safety. **(3b)**
- + State policy requires drug testing fatally injured drivers, although some circumstances prevent testing all fatalities. **(4a)**
- + DUI-alcohol and DUI-drug are separate offenses and they can be distinguished in arrest and crash reporting systems. The combination of DUI-alcohol and DUI drug can be distinguished as well. **(5)**
- + The administrative license suspension penalty for first DUID refusal is more severe than for first DUID offenders. **(6)**

Partially aligned with recommendations:

- o Electronic warrants are allowed by law, but their use is somewhat judge dependent. **(7)**

Not aligned with recommendations:

- There is no law or policy that mandates the reporting of drug test results for fatally-injured drivers, but in practice the results are collected and reported by the VT Agency of Transportation's Office of Highway Safety to the FARS. **(4b)**

Notable Findings:

The action steps for increasing drug testing on DUI/DUID suspects include educating the judiciary on DUI drug and search warrant for DUI drugs. **(2)**



VERMONT: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In Vermont, the implied consent law does extend to drugs and supports the collection of blood, but not oral fluid. <i>Vt. Stat. Ann. tit. 23, § 1202</i></p> <p>Identify barriers to extending the implied consent law to the collection of oral fluid:</p> <ul style="list-style-type: none">In the past two legislative sessions, bills seeking to amend 23 VSA sec. 1202 allowing for the collection of oral fluid have been unsuccessful. <p>Action Steps:</p> <ul style="list-style-type: none">Continuing to provide legislature with information, facts, etc. on the oral fluid testing. <p>Comments: Oral fluid screening test devices are not used. A pilot program using two oral fluid devices with 58 subjects was completed in 2015. A link to the pilot report is provided below: https://legislature.vermont.gov/Documents/2018/WorkGroups/House%20Judiciary/Bills/H.237/H.237~Trish%20Conti~VT%20Oral%20Fluid%20Drug%20Testing%20Study%202015~2-23-2018.pdf</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The implied consent law in Vermont does not preclude the collection of a specimen or specimens for multiple tests when drug impairment is suspected.</p> <p>Comments: The evidentiary kit has three specimen tubes. Two can be used by the State and one is saved for at least 45 days for testing by Defendant if he or she so choose.</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>Suspects are not allowed to choose the type of test.</p> <p>Comments: If LEOs suspect DUI alcohol and are requesting an evidentiary test, they must request a breath test unless breath testing equipment is not reasonably available. Defendant does not get to choose between breath and blood test.</p>
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.)	<p>In Vermont, LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees when they have reason to believe that arrestee is under influence of drug other than alcohol. <i>Vt. Stat. Ann. tit. 23, § 1202; Vt. Stat. Ann. tit. 23, § 1201</i></p> <p>Identify barriers in Vermont to increasing the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none">Generally, if arrestee (roadside) is .08 or higher LEO proceeds with DUI alcohol only.Availability of DRE (or ARIDE certified LEO) and ability to perform DRE evaluationConfusion with judiciary regarding search warrants for DUID

	<p>Action Steps:</p> <ul style="list-style-type: none"> • Continue to work on ARIDE certification for all patrol officers • Continue work on communication between arresting officer and DRE. Ideally, a DRE should go to all incidents where there is suspicion of DUI drug even when evaluation is refused. This however would require many more DREs. • Judicial education regarding DUI drug and search warrant for DUI drug
3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.	<p>State law allows testing a surviving driver involved in a crash resulting in death or serious injury when LEO has reason to believe the driver has any amount of alcohol or drug in his or her system. <i>Vt. Stat. Ann. tit. 23, § 1202</i></p> <p>Reporting the test results is not required but they are reported to the Office of Highway Safety.</p>
4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.	<p>In Vermont, state law does not mandate testing, but the policy is to test drivers fatally injured in crashes. <i>Title 18 VSA 5205 Deaths, Burials and Autopsies</i></p> <p>Comments: Motor vehicle fatalities would fall under statute 18 VSA 5205. There is no law that mandates we test, but it is our policy. The exception would be for prolonged survivals when samples from the incident are not available.</p> <p>In practice, all fatalities go to the Medical Examiner's Office and toxicology tests are completed. There is an exception that if an autopsy is not performed in some isolated incidences; if the decedent goes to a NH hospital NH doctors may not want to do an autopsy as NH Law does not require it. Situations may also arise where the victim is in the hospital for an extended period of time and the toxicology is not performed right away and therefore the opportunity to do the tests is lost.</p>
4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.	<p>In practice, the drug test results on fatally injured drivers are collected and reported by the VT Agency of Transportation's, Office of Highway Safety. Results are reported to FARS.</p>
5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data. <i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i>	<p>DUI-alcohol and DUI-drugs are separate sub statutes <i>DUI—alcohol 23 V.S.A § 1201 (a)(1) or (2), DUI-drug or both 23 V.S.A. § 1201 (a)(3)</i>. There is not a central state database for arrests and crashes, but DUI-alcohol and DUI-drug offenses or both can be distinguished in arrest and crash reporting systems.</p>
6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing	<p>In Vermont, the administrative penalty is more severe for first DUID test refusers who receive a 6-month license suspension. <i>Vt. Stat. Ann. tit. 23, § 1202</i> First DUID offenders receive a 3-month license suspension. <i>Vt. Stat. Ann. tit. 23, § 1206</i></p>

should be at least as severe as for a first DUID offense.	
7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.	<p>The use of electronic warrants is allowed by law, but their use is somewhat judge dependent . <i>V.R.Cr.P 41(d)(4)</i></p> <p>Comments: The use of electronic warrants are requested frequently after hours; however, the granting/allowance is currently somewhat judge dependent.</p>



VIRGINIA: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law does extend to drugs and supports the collection of blood, but not oral fluid. **(1a)**
- + The implied consent law authorizes the collection of a specimen or specimens for multiple tests. **(1b)**
- + The implied consent law prohibits suspects from choosing the type of test. **(1c)**
- + LEOs are authorized to collect and test specimens for drugs with probable cause and a warrant for a blood draw. **(2)**
- + State law allows testing surviving drivers involved in crashes resulting in death or serious injury, when there is probable cause to suspect impairment. **(3a)**
- + DUI-alcohol and DUI-drugs are distinguished in State Incident-Based Reporting System. **(5)**
- + The administrative license suspension penalty for a first DUID refusal is the same as for a first DUID offense. **(6)**

Not aligned with recommendations:

- There is no policy related to reporting the drug test results from surviving drivers involved in a serious injury or fatal crash. **(3b)**
- State law does not require drug testing drivers fatally injured in a crash, however testing is requested by LEOs when alcohol and drug impairment are suspected. **(4a)**
- There is no law or policy to require the reporting of drug test results of drivers fatally injured in a crash. **(4b)**
- Electronic warrants are not authorized for use. **(7)**



VIRGINIA: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In Virginia, the implied consent law does extend to drugs and supports the collection of blood, but not oral fluid. <i>Va. Code Ann. § 18.2-268.2</i></p> <p>Identify barriers to extending the implied consent law to the collection of oral fluid:</p> <ul style="list-style-type: none">• A law would have to be implemented to do so• Training• Currently need warrant for oral swab for DNA purposes• Extended time to obtain a search warrant geographical location of magistrate <p>Action Steps:</p> <ul style="list-style-type: none">• Changes in the law• Training <p>Comments: Oral fluid collection in theory is a good idea but issues will arise from a legal stand point.</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The implied consent law in Virginia authorizes the collection of a specimen or specimens for multiple tests when drug impairment is suspected.</p> <p>Comments: Normally with a blood draw from the Department of Forensic Science (DFS) specimen collection kit, two vials of blood are taken.</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>Police officers/troopers choose the type test.</p> <p>Comments: Virginia does not authorize suspects the ability to choose which test they do. They are required to give breath and if they are unable to give breath, blood may be taken. An officer/trooper is required to offer the breath test and if the suspect can't submit a breath sample, they can choose to take blood. If the suspect is suspected to be under the influence of alcohol and drugs, both tests can be administered.</p>
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).	<p>In Virginia, LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause. <i>Va. Code Ann. § 18.2-266; Va. Code Ann. § 18.2-268.2</i></p> <p>Identify barriers in Virginia to increasing the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none">• DFS parameters• Training• Evidence handling• Define levels of intoxication on certain drugs

	<p>Action Steps:</p> <ul style="list-style-type: none"> • Personnel/Funding/Instrumentation • Training • Access / availability to kits for testing
<p>3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.</p>	<p>State law allows for drug testing a surviving driver involved in a crash resulting in death or serious injury. <u><i>Goodman v. Commonwealth</i>, 37 Va.App. 374 (2002)</u></p> <p>Identify barriers to a law or policy to increase drug testing for surviving drivers involved in a crash resulting in death or serious injury:</p> <ul style="list-style-type: none"> • DFS Resources (toxicology) <p>Action Steps:</p> <ul style="list-style-type: none"> • Training LE on things to look for during their investigation that would result in them requesting testing on the driver. <p>Reporting the drug test results on surviving drivers is not required.</p> <p>Identify barriers to a law or policy to get drug test results for surviving drivers reported to a central state database:</p> <ul style="list-style-type: none"> • Law/Policy Change • DFS Resources • Training <p>Action Steps:</p> <ul style="list-style-type: none"> • Change in law • Provide appropriate resources to DFS • Training
<p>4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.</p>	<p>Virginia State law does not require drug testing a driver fatally injured in a crash, however alcohol and drug testing are requested by law enforcement in suspected DUI or drug cases.</p> <p>Identify barriers to enacting laws and/or implementing policies requiring drug testing for all fatally injured drivers:</p> <ul style="list-style-type: none"> • Law/Policy Change • DFS Resources • Training

	<p>Action Steps:</p> <ul style="list-style-type: none"> • Policy/Law Change • Provide appropriate resources to DFS • Training
<p>4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.</p>	<p>Virginia does not require reporting the drug test results for a driver fatally injured in a crash.</p> <p>Identify barriers to a law or policy to get drug test results from fatally injured drivers reported to a central state database:</p> <ul style="list-style-type: none"> • Changes in law/policies • DFS Resources • Training <p>Action Steps:</p> <ul style="list-style-type: none"> • Change in law • Provide appropriate resources to DFS
<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data.</p> <p><i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>DUI-alcohol and DUI-drugs are not separate offenses <i>Va. Code Ann. § 18.2-266</i>, but impaired driving offenses are coded separately in the Virginia State Incident Based Reporting (IBR) system.</p>
<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p>	<p>In Virginia, the administrative penalty is the same for first DUID test refusers <i>Va. Code Ann. § 18.2-268.3</i> and first DUID offenders <i>Va. Code Ann. § 18.2-271</i>. Both receive a 12-month license suspension.</p>
<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>Electronic warrants are not used in Virginia. <i>Va Code 18.2- 268.3C</i> requires that the officer execute the warrant form under oath before a Magistrate.</p> <p>Identify barriers to allowing the use of electronic warrants to collect specimens to avoid delay:</p> <ul style="list-style-type: none"> • Evidence trail • Training • Stakeholder buy-in <p>Action Steps:</p> <ul style="list-style-type: none"> • Training • Resources/Logistics



WASHINGTON: Laws and Policies to Improve Data on Drugged Driving

Alignment with recommendations:

- + LEOs are authorized to collect and test specimens for drugs with probable cause and a warrant for a blood draw. **(2)**
- + Drug testing is conducted on surviving drivers involved in serious injury or fatal crash, with probable cause to suspect impairment and a warrant for blood testing. **(3a)**
- + Testing all fatally injured drivers is required (where death occurred within 4 hours after the crash). A blood sample is taken to determine the concentration of alcohol, and where feasible, the presence of drugs or other toxic substances. When death occurs later, blood sampling is common. **(4a)**

Partially aligned with recommendations:

- o The implied consent law in Washington allows for the collection of breath only, but the DUI/DUID statute allows for the collection of blood with probable cause and a warrant. **(1b)**
- o Although the implied consent law is silent on whether or not suspects may choose the type of test, in practice LEOs make the choice of breath or blood under the DUI/DUID law. **(1c)**
- o There is no policy that requires the reporting of drug test results from surviving drivers in a serious injury or fatal crash, although sometimes the results get reported to the crash database. **(3b)**
- o Electronic warrants are used in some jurisdictions to reduce delay. **(7)**

Not aligned with recommendations:

- The implied consent law allows for collection of breath only, although the DUI/DUID statute allows testing for drugs with probable cause and a warrant for blood. **(1a)**
- There is no law that mandates the reporting of drug test results, however in practice drug test results are reported by the lab directly to the FARS analyst. **(4b)**
- Data systems are not currently distinguishing the specific substances causing impairment, but extensive data integration efforts are underway to address the issue. **(5)**
- There are no license sanctions for a blood test refusal. The implied consent law applies to breath test refusal only. **(6)**

Notable Findings:

There is nothing in the state law that either authorizes or prevents LEAs from collecting oral fluid, however, the state DRE coordinator is not aware of any oral fluid collection taking place in the state. **(1a)**

The WTSC is working with WSDOT to explore ways to add test results to the statewide crash database directly from the lab, rather than relying on LEO's supplemental reports. WA is also planning for incorporating toxicology results from the lab into the electronic DUI packet

which is being developed. This is the ideal pathway because then the toxicology results will be a part of the complete DUI arrest information – this applies to both crash-involved DUI and roadside DUI. (3b) (5)



WASHINGTON: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>The implied consent law in Washington references impairment by drugs, but it allows for collection of breath only. RCW § 46.20.311 With probable cause, a warrant may be obtained to collect blood for suspected impairment by drugs.</p> <p>Identify barriers to the collection of oral fluid:</p> <ul style="list-style-type: none">• Would need to be handled on an agency-by-agency basis. <p>Action Steps:</p> <ul style="list-style-type: none">• Work with agencies to implement collection of oral fluid procedures. <p>Comments: There is nothing in the state law that either authorizes or prevents LEAs from collecting oral fluid. The extent to which oral fluid is collected in practice would require polling 200+ LEAs. The state DRE Coordinator is not aware of any oral fluid testing in Washington.</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The implied consent law in Washington allows for the collection of breath only but the DUI/DUID statute RCW § 46.20.308 allows for the collection of blood with probable cause and a warrant.</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>The law is silent on suspects' ability to choose the type of test. In practice, those suspected of alcohol will be breath tested and those suspected of drugs will be blood tested under the DUI/DUID law.</p> <p>Identify barriers to preventing suspects from choosing tests:</p> <ul style="list-style-type: none">• Lack of a law is not affecting the types of tests being administered. This renders the recommendation moot.
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).	<p>In Washington, LEOs are authorized to collect and test specimens for DUI/DUID with probable cause and a warrant for a blood test. RCW § 46.20.308</p>
3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.	<p>Any driver suspected of drug impairment can be tested with probable cause and a warrant for blood testing under Washington's DUI/DUID statute. RCW § 46.20.308</p> <p>There is no legal requirement for drug test results to be recorded in crash reports, though it happens in some cases. It is noted that test results are available from other sources and that linking test results to crash data will be facilitated in the future by ongoing data integration efforts.</p> <p>Identify barriers to reporting the results in crash records:</p> <ul style="list-style-type: none">• Currently there is no legal requirement.

	<ul style="list-style-type: none"> Alternative solutions reduce the perception of a need to do so. <p>Action Steps:</p> <ul style="list-style-type: none"> Create the legal requirement to record all drug test results in state crash records. <p>Comments: Sometimes we don't get test results because the surviving driver is severely injured, therefore WA will explore the use of alternative data sources, such as the Trauma Registry or other hospital data systems, for obtaining drug results on surviving drivers.</p>
4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.	<p>Washington law requires testing of all fatally injured drivers (where death occurred within 4 hours after the crash). A blood sample is taken to determine the concentration of alcohol, and where feasible, the presence of drugs or other toxic substances. When death occurs later, blood sampling is common. <i>RCW § 46.52.065</i></p>
4b. Enact laws and/or implement policies mandating <u>reporting</u> of drug test results for all fatally injured drivers.	<p>Reporting the drug test results of fatally injured drivers in state crash records is not required by law, but in practice they are reported to state crash analysts who in turn, report them to the FARS program.</p> <p>Identify barriers to reporting drug test result for all fatally injured drivers:</p> <ul style="list-style-type: none"> Currently there is no legal requirement, but in practice the results are reported. Alternative solutions reduce the perception of a need to do so. <p>Action Steps:</p> <ul style="list-style-type: none"> Create a legal requirement to do so. <p>Comments: Drug results are reported, but it is not mandated in law. Reporting the results on the crash record is only one solution. While this practice (reporting toxicology results on a crash report supplement) is not standardized, crash analysts for FARS receive the toxicology report directly from the lab. The WTSC is working with WSDOT to explore ways to add the information to the statewide crash database without relying on officer supplements (would prefer the use of the report direct from the lab anyway to prevent officers from trying to interpret or re-report results). WA is also planning for incorporating toxicology results from the lab into the electronic DUI packet which is being developed. This is the ideal pathway because then the toxicology results will be a part of the complete DUI arrest information – this applies to both crash-involved DUI and roadside DUI. This would probably not apply to death investigations, but those reports are already being linked to fatal crashes through the FARS program.</p>

5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data.

The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.

Data systems do not currently distinguish among impaired driving offenses by the specific substances causing impairment. *RCW § 46.61.502 – DUI; RCW § 46.61.503 – DUI under 21; RCW § 46.61.504 – Physical Control; RCW § 46.61.507 – DUI Child Endangerment*

Identify barriers to distinguishing between the types of offenses in reporting systems:

- Data coding is based on the code number of the impaired driving offense (RCW 46.61.502). Subsections of that code distinguish between intoxicant type, but data are coded at code level, not subsection level. This makes it impossible to specify the intoxicant in the data as currently configured.
- Not all data provided by LEAs and prosecutors contains information on specific substances involved.

Action Steps:

- The state would need to modify state code to create separate offense codes for different intoxicants or modify databases to contain additional field(s) to record data on specific intoxicants.
- State laws and/or policies need to be modified to require and enable LEAs and prosecutors to pass information regarding specific substances to databases.

Comments: Subsections of RCW 46.61.502 distinguish between alcohol *per se* (a) or marijuana *per se* (b), or influence of alcohol, marijuana, or other drug (c), or influence of any combination of drugs (d) – however state citation/adjudication systems report offenses by RCW and subsection filing is not required nor standardized. Therefore, DUI is reported as “any violation filed under 46.61.502, 503, 504, 507” indiscriminate of specific subsections. To track this well, there should be a separate RCW for each intoxicating substance that should be tracked.

<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p>	<p>The implied consent law mentions both alcohol and drugs when setting a one-year revocation for breath test refusal. However, breath tests do not apply to suspected drug impairment. There are no official sanctions for blood test refusal, therefore it cannot be determined the extent to which sanctions are similar in practice. RCW § 46.20.311 and RCW § 46.61.5055</p> <p>Identify barriers to making the license suspension penalty for test refusal, at least as severe as for a first DUID offense:</p> <ul style="list-style-type: none"> Because the implied consent law does not apply to the blood tests necessary in the case of DUID, there is effectively no “refusal” offense for DUID and therefore no way to compare sanctions for DUID test refusals. Should an offender refuse a blood test in a case in which there is probable cause and a warrant is obtained, it may or may not be possible to force a test, depending on the willingness of medical personnel to take a forced test. There are no official records regarding this, so there is no way to know how often a blood test is successfully refused in this way. <p>Action Steps:</p> <ul style="list-style-type: none"> Legislate administrative license suspension penalty for blood test refusals for DUID. <p>Comments: License revocation for test refusal for alcohol is tied to 46.20.311 (implied consent) – since blood draws are not subject to implied consent, I don’t know that WA will be able to implement the action item. I also don’t know that it really matters since officers <i>must</i> get a warrant for blood draw.</p>
<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>Electronic warrants are being used by some judges in some courts. The use of electronic warrants requires acceptance by judges. There has been no effort to implement electronic warrants statewide.</p> <p>Identify barriers to the increased use of electronic warrants to reduce delay:</p> <ul style="list-style-type: none"> Overcome jurisdictional/judicial objections to (or lack of interest in) electronic warrants. <p>Action Steps:</p> <ul style="list-style-type: none"> Use of task forces and other means to increase judicial support for electronic warrants. Explore the feasibility of implementing a statewide electronic warrant system.



WEST VIRGINIA: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law does extend to drugs and supports the collection of blood and breath, but not oral fluid. **(1a)**
- + The implied consent law authorizes the collection of a specimen or specimens for multiple tests. **(1b)**
- + LEO's choose the type of test, however there is no administrative penalty for refusing a blood test. **(1c)**
- + LEOs are authorized to collect and test specimens for DUI/DUID arrestees with probable cause and warrant for blood. **(2)**
- + State law allows for the testing of surviving drivers involved in a crash resulting in death or serious injury when there is probable cause to suspect impairment and a warrant for blood. **(3a)**
- + State policy requires the reporting of the drug test results for fatally injured drivers. **(4b)**
- + Impaired driving offenses are distinguishable in a database maintained by the GHSO Program Director. **(5)**

Not aligned with recommendations:

- There is no policy related to reporting the drug test results from surviving drivers involved in a serious injury or fatal crash. **(3b)**
- State policy allows but does not mandate drug testing for all fatally injured drivers **(4a)**
- There is no administrative license suspension penalty for refusing a blood test. First DUID offenders receive a six-month license "revocation." **(6)**
- There is no state law or policy allowing the use of electronic warrants. **(7)**

Notable Findings:

There is an administrative penalty for one's refusal to submit to a breath test; however, there is no administrative penalty for someone refusing to submit to a blood test. **(6)**



WEST VIRGINIA: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In West Virginia, the implied consent law does extend to drugs and supports the collection of blood and breath, but not oral fluid. <i>W. Va. Code § 17C-5-4</i></p> <p>Identify barriers to the use of oral fluid collection when drug impairment is suspected:</p> <ul style="list-style-type: none">• No statutory language permits the use of oral fluid testing• Reliability of the oral fluid testing varies and can be questionable• While implied consent does speak to blood testing, there is no penalty for refusal of a blood draw request.• Cost <p>Action Steps:</p> <ul style="list-style-type: none">• The overall reliability of the oral fluid testing methods/brands/instruments• Beta testing of the different oral fluid testing methods/brands/instruments in the state needs to be authorized by the legislature• Secure funding to equip the agencies within the state with the oral fluid testing method/brand/instrument to roll out after successful beta testing <p>Comments: Members of the legislature were approached during the 2018 legislative session by a specific manufacturer to do beta testing of their equipment. There was no movement within the legislature on that proposal at that time but there is an interest.</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The implied consent law in West Virginia authorizes the collection of a specimen or specimens for multiple tests when drug impairment is suspected.</p> <p>Comments: Implied Consent law authorizes the collection of breath and blood. There is an administrative penalty for one's refusal to submit to a breath test; however, there is no administrative penalty for someone refusing to submit to a blood test.</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>Law enforcement chooses the type of test, however there is no license suspension penalty for refusing a blood test. A blood test refusal can be used as evidence of guilt criminally at the discretion of the court.</p> <p>Comments: Law enforcement officer requests the type of secondary chemical test to be requested. WV State Code §17C-5-4(c) provides that "[a] secondary test of blood or breath is incidental to a lawful arrest and is to be administered at the direction of the arresting law enforcement officer having probable cause to believe the person has committed an offense prohibited by [§17C-5-1 et seq.]"</p>

	<p>Per case law, a suspect can request a blood test, and, if such request is timely made, the officer must take the suspect for a blood draw. This does not negate any request of the officer. If the officer has made a request for breath, and that is refused with a request for blood, the suspect is still administratively penalized for refusing the test requested by the law enforcement officer.</p>
<p>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).</p>	<p>In West Virginia, LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause and a warrant. <i>W. Va. Code § 17C-5-4; W. Va. Code § 17C-5-2</i></p> <p>Identify barriers in West Virginia to increasing the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none"> • Backlog at the toxicology lab • Access to medical facilities or medical professionals to draw the blood <p>Action Steps:</p> <ul style="list-style-type: none"> • Lab has taken new steps to increase efficiency • Clear law permitting a law enforcement phlebotomy program <p>Comments: Toxicology lab turnaround is now 3 – 6 months.</p>
<p>3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.</p>	<p>Surviving drivers suspected of drug impairment involved in a crash resulting in death or serious injury are tested with probable cause and a search warrant for blood (unless the driver consents). <i>W. Va. Code § 17C-5-4; W. Va. Code § 17C-5-2</i></p> <p>Identify barriers to increase drug testing for surviving drivers involved in a crash resulting in death or serious injury (with probable cause and warrant if needed).</p> <ul style="list-style-type: none"> • The aversion of some officers, agencies and prosecutors to investigate crashes further and consider impairment as a factor if it is not immediately obvious <p>Action Steps:</p> <ul style="list-style-type: none"> • Statutory direction making such requirement would be required <p>Comments: This is usually not an issue when impairment is suspected because the officer will most times secure a search warrant for the at-fault driver.</p> <p>Reporting the drug test results on surviving drivers is not required.</p> <p>Identify barriers to a law or policy to require that drug test results for surviving drivers are reported to a central state database:</p> <ul style="list-style-type: none"> • Agency cooperation and communication – the toxicology lab only reports blood results to the arresting officer and, when specifically requested, the county prosecutor's office

	<ul style="list-style-type: none"> The aversion of some officers, agencies and prosecutors to investigate crashes further and consider impairment as a factor if not immediately obvious <p>Action Steps:</p> <ul style="list-style-type: none"> Continued training for officers and prosecutors in the realms of impaired driving and crash reconstruction Statutory or policy mandate for the reporting of the surviving drivers of fatal crashes
4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.	<p>State policy allows drug testing a driver fatally injured in a crash.</p> <p>Identify barriers to increase drug testing or mandate drug testing for fatally injured drivers:</p> <ul style="list-style-type: none"> A person involved in a crash in WV may be transported to a hospital out of state, as the crash may have occurred near a bordering state. In this case, WV could not mandate drug testing. <p>Action Steps:</p> <ul style="list-style-type: none"> A statutory mandate to drug test fatally injured drivers would be more favorable. <p>Comments: This policy is in place and appears to be followed.</p>
4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.	<p>West Virginia policy does require reporting the drug test results for a driver fatally injured in a crash to the WV Department of Highway Crash Database and the WV FARS Analyst.</p> <p>Comments: 17C-5B-2 - Each County Medical Examiner shall immediately report the results to the Chief Medical Examiner of the office of medical examinations and to the Department of Public Safety (WV State Police).</p>
5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data. <i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i>	<p>DUI-alcohol and DUI-drugs are not separate offenses <i>W. Va. Code § 17C-5-2</i>, but DUI-alcohol and DUID cases are recorded separately.</p> <p>Comments: The Governor's Highway Safety Program Director maintains a comprehensive list of all DUI arrests charged within the state. He collects as much information as possible, although not all data is captured. However, DUI and DUID are distinguished within the list.</p>
6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.	<p>In West Virginia, there is no license revocation penalty for first DUID test refusers when they refuse a blood test, thus the penalty is not at least as severe as the penalty for first DUID offenders who receive a 6-month license revocation. <i>W. Va. Code § 17C-5A-2</i></p>

	<p>Comments: In practice, there is a 1-year driver's license registration imposed on any driver who refuses to submit to a secondary chemical test of the <u>breath</u>. There is no administrative penalty for a refusal to submit to a blood test.</p> <p>In WV, the license is revoked for DUI. It is referred to as a suspension for all miscellaneous offenses (unpaid violations, insurance, unpaid court costs, etc.).</p>
<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>There is no state law or policy allowing the use of electronic warrants to avoid delay for specimen collection.</p> <p>Identify barriers to the use or increased use of electronic warrants to collect specimens to avoid delay:</p> <ul style="list-style-type: none"> • No state law or policy in place allowing for the use of electronic warrants • Lack of interest by the courts • Equipment and funding to implement across the court system and the law enforcement agencies <p>Action Steps:</p> <ul style="list-style-type: none"> • Statutory change permitting and/or requiring the implementation of e-warrants • Education on how other states have implemented and the overall impact on the court system and the administration of justice within those jurisdictions • Beta testing in jurisdictions within WV would help all parties to better understand and accept a change in process



Aligned with recommendations:

- + The implied consent law does extend to drugs and supports the collection of blood and urine, but not oral fluid. **(1a)**
- + The implied consent law authorizes the collection of a specimen or specimens for multiple tests. **(1b)**
- + LEAs determine policy and designate which tests are to be administered, given impaired driving arrest conditions. **(1c)**
- + LEOs are authorized to collect and test specimens for drugs with probable cause and a warrant for a blood draw. **(2)**
- + State law allows testing surviving drivers involved in crashes resulting in death or serious injury, when there is probable cause to suspect impairment. **(3a)**
- + State law mandates drug testing drivers fatally injured in a crash. **(4a)**
- + The drug test results for a driver fatally injured in a crash are required to be reported to the state crash records database. **(4b)**
- + The administrative license suspension penalty for a first DUID refusal is more severe than for a first DUID offense. **(6)**

Partially aligned with recommendations:

- o Electronic warrants are allowed. Not every county uses them; those that do have developed their own e-warrant procedures. **(7)**

Not aligned with recommendations:

- There is no policy related to reporting the drug test results from surviving drivers involved in a serious injury or fatal crash. One of two state toxicology labs is able to test and report the results, while the other does not have the resources. **(3b)**
- Most drivers are charged with the umbrella OWI charge that covers impairment by alcohol and drug and thus distinguishing between DUI-alcohol and DUI-drugs in records systems is not possible. **(5)**

Notable Findings:

There is a current effort to link Wisconsin State Laboratory of Hygiene test results directly to the crash records database to ensure that drug test result data is completed and updated without additional effort from enforcement officers. **(4b)**

A state-wide survey is recommended in order to determine which counties are not currently utilizing an electronic warrant process, and why. Then those counties who are open to e-warrants but don't use them for financial reasons could perhaps receive grants to help them implement e-warrants. A discussion could be had with counties that are not open to implementing e-warrants, to determine why that is. Other steps could perhaps be taken, on a case by case basis, to assist them in streamlining their warrant process. **(7)**



WISCONSIN: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS	BARRIERS and ACTION STEPS FOR IMPROVEMENT
1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;	<p>In Wisconsin, the implied consent law does extend to drugs and supports the collection of blood, and urine, but not oral fluid. <i>Wis. Stat. § 343.305(3)</i></p> <p>Identify barriers to extending the implied consent law to the collection of oral fluid:</p> <ul style="list-style-type: none">• Statutory change to 343.305 to reflect blood, breath, urine, or oral fluid for evidential purposes• Statutory change to 343.303 to include oral fluid for preliminary purposes <p>Action Steps:</p> <ul style="list-style-type: none">• Statutory change to 343.305 to reflect blood, breath, urine, or oral fluid for evidential purposes• Statutory change to 343.303 to include oral fluid for preliminary purposes <p>Comments: Oral fluid collection for evidential purposes and portable screening devices are currently being piloted for use when drug impaired driving is suspected to have occurred.</p> <p>A previous pilot test was conducted in Dane County. An article on the results, <i>Drugged Driving in Wisconsin: Oral Fluid Versus Blood</i> was published in the Journal of Analytical Toxicology, July 2017. https://www.ncbi.nlm.nih.gov/pubmed/28830121</p>
1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;	<p>The implied consent law in Wisconsin authorizes the collection of a specimen or specimens for multiple tests when drug impairment is suspected.</p>
1c. Implied consent laws should not permit suspects to choose the type of test(s).	<p>State law authorizes the law enforcement agency to set policy and designate which tests are to be administered, given impaired driving arrest conditions. <i>Wisc Stat. § 343.305 (2)</i></p> <p>Comments: The law specifically authorizes a law enforcement agency to set policies on which test to administer given impaired driving arrest conditions. 343.305 (2) states "... the law enforcement agency by which the officer is employed shall be prepared to administer, either at its agency or any other agency or facility, 2 of the 3 tests under sub. (3) (a), (am), or (ar), and may designate which of the tests shall be administered first."</p>
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).	<p>In Wisconsin, LEOs are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause. <i>Wis. Stat. § 343.305(3); W.S.A. § 346.63</i></p> <p>Identify barriers in Wisconsin to increasing the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none">• Lack of instrumentation, training, consumables, and personnel to perform the testing at the labs.

	<ul style="list-style-type: none"> The Wisconsin State Crime Laboratory (WSCL) Milwaukee also lacks space even if additional resources were available. <p>Action Steps:</p> <ul style="list-style-type: none"> Increase personnel and instrumentation at the labs. Source funding for the additional resources that would be needed – personnel, equipment, training, consumables, etc. Expand WSCL Milwaukee facilities to accommodate more equipment and personnel.
<p>3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.</p>	<p>State law allows for drug testing a surviving driver involved in a crash resulting in death or serious injury. <i>Wis. Stat. § 343.305(3)(ar)2</i></p> <p>Identify barriers to a law or policy to increase drug testing for surviving drivers involved in a crash resulting in death or serious injury (with probable cause and warrant as needed).</p> <ul style="list-style-type: none"> There are two laboratories in Wisconsin which perform toxicology testing in driving cases. One lab, the Wisconsin State Laboratory of Hygiene (WSLH), will test all drivers (living and deceased) in a fatal crash and perform alcohol and all drug testing. Upon request, the WSLH will also test all occupants in the vehicle. The Wisconsin State Crime Laboratory (WSCL) lacks resources including personnel, equipment, training and consumables necessary to perform all above mentioned testing. WSCL also lacks space at the existing Milwaukee Lab. <p>Action Steps:</p> <ul style="list-style-type: none"> Ensure all laboratories in the state have the same testing workflow and policies when it comes to fatal crashes. Source funding for the additional resources that would be needed – personnel, equipment, training, consumables, etc. Expand laboratory facilities for WSCL Milwaukee to accommodate more equipment and personnel. <p>Reporting the drug test results on surviving drivers is not required.</p> <p>Identify barriers to a law or policy to get drug test results for surviving drivers reported to a central state database:</p> <ul style="list-style-type: none"> Any driver involved in a crash (living or deceased) is tested for drugs and alcohol at the WSLH. The report of this information is provided to the law enforcement agency that submitted the sample. If it is a deceased driver, the toxicology results are provided to the Medical Examiner and FARS analyst – again this is only the practice of the WSLH. WCSL is not currently reporting results to any central data repository. Instead, results are reported to the submitting agency. If a centralized database existed, WSCL could potentially participate in reporting de-identified results.

	<p>Action Steps:</p> <ul style="list-style-type: none"> • A place to house the data and a person to monitor the data. • Ensure labs are performing the same testing scheme to make sure the data is valid.
4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.	<p>Wisconsin State law does mandate drug testing a driver fatally injured in a crash. W.S.A. § 346.71</p>
4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.	<p>Wisconsin does require reporting the drug test results for a driver fatally injured in a crash. Wis. Stat. § 346.71 The results are recorded in the Crash Records database.</p> <p>Comments: When a traffic crash occurs, law enforcement officers complete a form including impairment information that is transmitted to the Crash Records Database which then feeds into FARS. These forms are supposed to be updated with drug test data when results are made available. Currently, there is an effort to link WSLH test results directly to the Crash Records Database to ensure drug test result data is complete and updated without additional effort from law enforcement officers.</p>
<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data.</p> <p><i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>DUI-alcohol and DUI-drugs are not separate offenses W.S.A. § 346.63, and impaired driving offenses are not coded separately in databases.</p> <p>Identify the barriers to coding impaired driving offenses separately in databases:</p> <ul style="list-style-type: none"> • Our laws don't differentiate between OWIs that occur because the person is impaired by alcohol or is impaired by drugs. In fact, our laws do not allow for such differentiation. The only drug specific OWI <u>charge</u> Wisconsin has is the Restricted Controlled Substance (RCS) charge, however only a limited number of substances actually fall under that RCS category. As a result, in most cases drivers are charged with the umbrella OWI charge. <p>Action Steps:</p> <ul style="list-style-type: none"> • Wisconsin would either have to completely change the way the OWI laws are structured or have someone research each individual case in order to make that determination. There would be some cases (refusal cases without a test, for example) in which such determination would be impossible.
6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.	<p>In Wisconsin, the administrative penalty is more severe for first DUID test refusers who receive a 12-month license suspension. Wis. Stat. § 343.305 First DUID offenders receive a 6-month license suspension. http://wisconsin.gov/Documents/safety/education/drunken-driv/ow-penchart.pdf</p>
7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.	<p>Electronic warrants are allowed in Wisconsin. Not every county uses e-warrants, but those that do have their own procedures.</p> <p>Identify barriers to increasing the use of electronic warrants to collect specimens to avoid delay:</p> <ul style="list-style-type: none"> • When Wisconsin changed in 2013 to requiring warrants for blood draws, it was left up to each individual county to determine how best to make that happen. The counties had to allocate any

necessary funds and to design and implement strategies that worked for their individual circumstances; therefore, it was their decision how to proceed.

- As of today, every county has a system that works for them. There is no body that oversees this process; it is done on a county-by-county basis. Some counties require that a prosecutor review each warrant before it is presented to a judge. Some counties are able to record telephone calls, so they complete the entire warrant process by telephone. Others can't, so they must complete the process in person, like any other warrant. Some counties require the officer to present the warrant to the judge in person, while others allow e-signing. These variances are based in the limitations of the county (be it budgeting or technology or human resources), the individual preferences/requirements of the DAs and judges, and perhaps other factors as well.

Action Steps:

- In order to increase the use of e-warrants, a state-wide survey should be taken in order to determine which counties are not currently utilizing an electronic warrant process, and why. Then those counties who are open to e-warrants but don't use them for financial reasons could perhaps receive grants to help them implement e-warrants. A discussion could be had with counties that are not open to implementing e-warrants, to determine why that is. Other steps could perhaps be taken, on a case by case basis, to assist them in streamlining their warrant process.

Comments: It is up to each agency to decide how they wish to utilize the law. *Missouri v. McNeely*, 569 U.S. ____ (2013), was a case decided by United States Supreme Court, on appeal from the Supreme Court of Missouri, regarding exceptions to the Fourth Amendment to the United States Constitution under exigent circumstances.[1] The United States Supreme Court ruled that police must generally obtain a warrant before subjecting a drunken-driving suspect to a blood test, and that the natural metabolism of blood alcohol does not establish a per se exigency that would justify a blood draw without consent. WI ss 968.13. Search warrant; property subject to seizure.



WYOMING: Laws and Policies to Improve Data on Drugged Driving

Aligned with recommendations:

- + The implied consent law authorizes the collection of a specimen or specimens for multiple tests. **(1b)**
- + LEOs choose the type of test if drug impairment is suspected. **(1c)**
- + LEOs are authorized to collect and test specimens for drugs with probable cause and a warrant for a blood draw. **(2)**
- + State law allows testing surviving drivers involved in crashes resulting in death or serious injury, when there is probable cause to suspect impairment. **(3a)**
- + Electronic warrants are authorized for DUI cases only and they are widely used across the state for test refusals. **(7)**

Partially aligned with recommendations:

- o The implied consent law does extend to drugs and supports the collection of blood, breath or urine but only upon conviction. The collection of saliva (oral fluid) or other bodily fluids is allowed under the DUI statute definition of a chemical test. In practice, oral fluid is not collected for DUI investigations. **(1a)**
- o DUI-alcohol and DUI-drugs and combined alcohol and drug offenses are distinguished in a state database, however the impairing substances used in the “incapable of safely driving” offense cannot be distinguished. **(5)**

Not aligned with recommendations:

- There is no policy related to reporting the drug test results from surviving drivers involved in a serious injury or fatal crash. **(3b)**
- There is no state law or policy that requires drug testing drivers fatally injured in a crash. **(4a)**
- There is no law or policy to require the reporting of drug test results of drivers fatally injured in a crash. **(4b)**
- There is no administrative penalty for DUID test refusal. First DUID offenders receive a 6-month license suspension. **(6)**

Notable Findings:

Wyoming statute used to have an administrative penalty for refusing to submit to a chemical test. The legislature, however, repealed that portion of the statute when they added the provision to allow officers to obtain search warrants in impaired driving cases. Unfortunately, there are some jurisdictions that will not force a blood draw if an offender continues to refuse even with a search warrant.

Since the consequence or lack of consequence for continued refusal of a blood test is minimal compared to the impaired driving offense, offenders are more inclined to refuse the blood draw. These continued refusal cases without a chemical test often get pled out resulting in no administrative sanctions to the offender's driver's license.



WYOMING: Laws and Policies to Improve Data on Drugged Driving

RECOMMENDED STATE/POLICIES LAWS

1a. Implied consent laws should extend to drugs and support the collection of blood and/or oral fluid;

BARRIERS and ACTION STEPS FOR IMPROVEMENT

In Wyoming, the implied consent law does extend to drugs (only upon conviction) and supports the collection of blood, breath or urine. *Wyo. Stat. Ann. § 31-6-102 – Implied Consent*
Oral fluid is not included in the implied consent statute; however, it is included as a statutory definition of “chemical test” in the DUI violation by reference to saliva or other bodily fluids (not specifically listed as oral fluid). *Wyo. Stat. Ann. § 31-5-233(a)(vii)*

Identify barriers to the use of oral fluid testing when drug impairment is suspected:

- Oral fluid testing is not included in the listed chemical tests allowed by implied consent law. Since the Wyoming Supreme Court ruled implied consent is the exclusive means by which to obtain a chemical test for purposes of determining chemical concentrations for a DUI, oral fluid must be included as a testing method in the implied consent law to be utilized for court purposes.
- After legislative change occurs to include oral fluid in the implied consent statute, the Department of Health must approve the method of administering the oral fluid
- There also must be a scientific, accurate, and reliable basis for utilizing oral fluid as an evidentiary test for the courts to allow this type of evidence – our courts will want this to be established clearly before admitting oral fluid into evidence at trial.

Action Steps:

- Legislative change to the implied consent laws for both motor vehicles and Commercial Motor Vehicles (Wyo. Stat. Ann. § 31-6-102(a)(i) and Wyo. Stat. Ann. § 31-7-307(a))
- Legislative change to add oral fluid to the method of performing chemical analysis (Wyo. Stat. Ann. § 31-6-105(a)) and method approval from the Wyoming Department of Health
- Court approval as an evidentiary test

Comments: Currently there are some detention centers around the state (in southeast WY, near Colorado) that have oral testing devices for suspected DUIs, however, these are utilized on a voluntary basis only (i.e. the offender must volunteer/agree to take the test). The results are currently being used for data collection on the prominence of drug use, however, the results cannot be used against the offender in court proceedings.

The Wyoming Implied Consent penalties for drug impaired driving only apply when an offender is convicted of the drug impaired driving offense. Unlike alcohol, where a prescribed BAC triggers driver's license sanctions and penalties through an administrative process before a conviction of the offense occurs, a drug impaired driver must be convicted of the offense before these administrative sanctions and penalties on the offender's driver's license are assessed. If a dismissal or amendment of the drug impaired DUI charge occurs, the offender will not have any license ramifications.

<p>1b. Implied consent laws should include the collection of a specimen or specimens for multiple tests;</p>	<p>Wyoming implied consent law authorizes administration of a chemical test or tests of the person's blood, breath or urine. <i>Wyo. Stat. Ann. § 31-6-102</i></p> <p>Comments: Even through the language of the statute allows for multiple tests, there has been at least one court in the State that has determined only one test is allowed because of a singular reference in the statute to "test." The issue was not appealed so it is only controlling in that court. While most courts would not rule in the same fashion it is important to note.</p>
<p>1c. Implied consent laws should not permit suspects to choose the type of test(s).</p>	<p>Wyoming implied consent allows an officer to require a breath test for an alcohol only DUI. If, however, a breath test is not requested or available to the law enforcement officer and the law enforcement officer only suspects alcohol, then the offender can choose between blood or urine. If, however, a law enforcement officer suspects drugs, then the officer can require the offender to submit to a blood or urine test; no choice is given to the offender. <i>Wyo. Stat. Ann. § 31-6-102(a)(i)(C)</i></p> <p>Comments: It is important to note that the Commercial Motor Vehicle (CMV) implied consent is similar, however, instead of allowing a law enforcement officer the choice between blood or urine testing for suspected drug impairment it states a urine test can be required with no allowance for blood to be required by the law enforcement officer. This statute also incorrectly states that controlled substances are not subject to testing by blood. <i>Wyo. Stat. Ann. § 31-7-307(b)</i> A statutory change to make the CMV implied consent consistent (and accurate) with the motor vehicle implied consent is needed and necessary.</p>
<p>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).</p>	<p>In Wyoming, law enforcement officers are authorized to collect and test specimens for drugs on DUI/DUID arrestees with probable cause. <i>Wyo. Stat. Ann. § 31-6-102(a); Wyo. Stat. Ann. § 31-5-233</i> If a chemical test is refused by the offender, a law enforcement officer can apply for a search warrant, including remotely communicated search warrants. <i>Wyo. Stat. Ann. § 31-6-102(d)</i></p> <p>Identify barriers in Wyoming to increasing the number of drug tests on DUI/DUID arrestees suspected of drug use (even if combined with alcohol - BAC .08 or higher):</p> <ul style="list-style-type: none"> • There are some jurisdictions (including one of Wyoming's largest jurisdictions) that won't force a blood draw on a refusal. Naturally, these jurisdictions have a higher refusal rate because there are no ramifications for continuing to refuse a chemical test even in the face of a search warrant. Unfortunately, when the Wyoming legislature added language to the implied consent law to allow search warrants, it repealed all penalties for refusal of a chemical test. As such there are no administrative sanctions for an individual's driver's license when they refuse to submit to a chemical test. Furthermore, these jurisdictions also have a higher dismissal and amendment rate on DUI charges given the lack of a chemical test.

	<p>Action Steps:</p> <ul style="list-style-type: none"> • Work with jurisdictions that don't currently allow forced blood draws to allow for forced blood draws. • Legislative change to reinstate administrative license sanctions for refusal of a chemical test
<p>3a-b. Authorize and encourage drug testing for all <i>surviving</i> drivers in fatal and serious injury crashes (and report results) when there is probable cause that impairment was a factor.</p>	<p>State law allows for drug testing of a surviving driver involved in a crash resulting in death or serious injury, if there is probable cause to believe the driver is violation of the DUI law. This does not apply to surviving drivers that do not demonstrate the probable cause requisite for violation of DUI. <i>Wyo. Stat. Ann. § 31-6-102</i></p> <p>Reporting the drug test results on surviving drivers is not required.</p> <p>Identify barriers to a law or policy to get drug test results for surviving drivers reported to a central state database:</p> <ul style="list-style-type: none"> • There is no statute that requires reporting to a central database <p>Action Steps:</p> <ul style="list-style-type: none"> • Legislative action to place the requirement into state statute
<p>4a. Enact laws and/or implement policies mandating drug <u>testing</u> for all fatally injured drivers.</p>	<p>There is no state law or policy that requires drug testing for all fatally injured drivers; some coroners do drug testing as a standard procedure, but they are not required to do so.</p> <p>Identify barriers to a law or policy that requires or increases drug testing on fatally injured drivers.</p> <ul style="list-style-type: none"> • No legal requirement to drug test fatally injured drivers <p>Action Steps:</p> <ul style="list-style-type: none"> • Legislative action to enact statute to require drug testing on fatally injured drivers • Work with coroners and the Wyoming Coroners Association to develop standard practice and policies to drug test fatally injured drivers
<p>4b. Enact laws and/or implement policies mandating <u>reporting</u> of test results for all fatally injured drivers.</p>	<p>Wyoming does not require reporting the drug test results for a driver fatally injured in a crash.</p> <p>Identify barriers to require reporting the drug test results for fatally injured drivers to a central state database:</p> <ul style="list-style-type: none"> • No legal requirement to drug test fatally injured drivers to begin with and those that do drug test fatally injured drivers, there is no legal mandate to report those results. <p>Action Steps:</p> <ul style="list-style-type: none"> • Legislative action to enact statute to require drug testing on fatally injured drivers and subsequent legislative action to mandate reporting of those test results • Work with coroners and the Wyoming Coroners Association to develop standard practice and policies to drug test fatally injured drivers.

<p>5. Update data collection and reporting systems to distinguish among impaired-driving offenses (DUI-alcohol, DUID, or DUI alcohol and drugs) in all relevant data, particularly citation data. <i>The expert panel report notes the need for updates to the state citation, adjudication, driver records, and crash record data systems.</i></p>	<p>Wyoming statute provides for a general DUI offense with separate subsections to cover per se, per se within 2 hours of driving, and incapable of safely driving. <i>Wyo. Stat. Ann. § 31-5-233</i> Impaired driving offenses are coded separately in the Revenue Information System (RIS)</p> <p>Comments: Wyoming uses the ACD Codes to identify offenses. A20 is unknown if the offense is drugs or alcohol or both, A21 is alcohol only, A22 is drugs only and A23 is combined</p> <p>The incapable of safely driving subsection of the statute allows for impairment by alcohol, drugs, or a combination and doesn't delineate between the substances. Therefore, the citations and recording of these offenses are only as good as the information the officer provides. If there is a refusal and no blood is taken, impairment by alcohol and/or drugs is arguably unknown. Also, if a DUI has a BAC above the .08 per se, an officer may not note drugs or obtain drug testing, even if drugs are suspected. There are instances too, where the officer asks for drug testing on blood evidence, however, if the BAC is above the .08 per se, the testing for drugs doesn't occur.</p>
<p>6. At a minimum, the administrative penalty (license suspension) for refusing to provide a specimen for drug testing should be at least as severe as for a first DUID offense.</p>	<p>In Wyoming, there is only an administrative penalty upon conviction of the DUID offense. There are no administrative sanctions for refusal of a chemical test in impaired driving cases. Offenders who refuse a chemical test (on both alcohol and drug DUIs) will not receive a license suspension, while first DUID offenders receive a 6-month license suspension. <i>Wyo. Stat. Ann. § 31-6-102 and Wyo. Stat. Ann. § 31-7-128</i></p> <p>Identify barriers to a license suspension penalty that is at least as severe for DUID test refusers as it is for first DUID offenders:</p> <ul style="list-style-type: none"> Wyoming Statutes do not allow administrative sanctions for those who refuse a chemical test on impaired driving cases. <p>Action Steps:</p> <ul style="list-style-type: none"> Legislative change to the implied consent statute to include sanctions for refusing a chemical test Legislative change to the mandatory suspension statute to reflect any added penalties to the implied consent statute <p>Comments: Wyoming statute used to have an administrative penalty for refusing to submit to a chemical test. The legislature, however, repealed that portion of the statute when they added the provision to allow officers to obtain search warrants in impaired driving cases. Unfortunately, there are some jurisdictions that will not force a blood draw if an offender continues to refuse even with a search warrant. These continued refusal cases without a chemical test often get pled out resulting in no administrative sanctions to the offender's driver's license.</p>
<p>7. Electronic warrants should be used to reduce delays in collecting specimens when a warrant is necessary.</p>	<p>Electronic warrants are authorized for DUI cases only and are widely used statewide when suspects refuse a chemical test. <i>Wyo. Stat. Ann. § 31-6-102(d)</i> A case was challenged and the Wyoming Supreme Court determined that e-Warrants are constitutionally allowed.</p>

	<p>Comments: Unfortunately, even though law enforcement officers have the ability to obtain a search warrant in impaired driving cases in Wyoming, there are a few jurisdictions throughout the State that will not force a blood draw. Even though forced blood draws are a legally acceptable method to execute a search warrant for blood when performed in a reasonable manner, these jurisdictions will simply not force a blood draw if the offender continues to refuse, thereby not obtaining a chemical test. As a result, these jurisdictions have a higher refusal rate. Since the consequence or lack of consequence for continued refusal of a blood test is minimal compared to the impaired driving offense, offenders are more inclined to refuse the blood draw. Thereby, law enforcement officers can't obtain evidence that will go against them. Without chemical test results in these jurisdictions, prosecutors are more inclined to amend or dismiss the impaired driving charge.</p>
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