



**Testimony of Benjamin Nordstrom, M.D., Ph.D.**  
**Executive Director**  
**Responsibility.org**

**Subcommittee on Consumer Protection and Commerce**  
**Hearing on**  
**"Legislation to Make Cars in America Safer"**  
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Good morning Chairwoman Schakowsky, Ranking Member Rodgers and distinguished members of this subcommittee. Thank you for the opportunity to testify before you today. My name is Dr. Benjamin Nordstrom. I am the Executive Director of Responsibility.org, an independent, national not-for-profit organization. We have been funded by distilled spirits companies since 1991 to eliminate impaired driving and underage drinking through [policies](#), programs and research. For more information, please visit [www.responsibility.org](http://www.responsibility.org).

This week two pieces of legislation are being introduced to address impaired driving. The first bill will direct the National Highway Traffic Safety Administration (NHTSA) to conduct a study on ways to improve motor vehicle safety to address impaired driving, including alcohol, marijuana, and opioid-impaired driving. The second bill will authorize the United States Department of Transportation to provide funding for grants, pilot programs, demonstration projects, and innovative solutions to improve motor vehicle safety to address impaired driving, including alcohol, opioid, and marijuana-impaired driving. Responsibility.org supports these efforts.

I have been asked to speak to the issue of impaired driving – specifically alcohol, marijuana and opioid-impaired driving. This is an issue of tremendous national and global importance and I want to thank this subcommittee for its longstanding bipartisan leadership on this issue and many other efforts such as the other important issues being discussed here today that will improve safety on our roadways. Your past support of funding for alcohol detection technology, drug-impaired driving research and training and numerous other traffic safety efforts is critical to our nation's efforts.

Prior to joining Responsibility.org in April of this year, I was President and CEO of Phoenix House, a leading nonprofit treatment provider for individuals, families, and communities challenged by substance use disorders and related mental health conditions. I am a Board-Certified addiction psychiatrist and a criminologist. I studied at the Geisel School of Medicine at Dartmouth, the University of Pennsylvania, Columbia University Medical Center and the New York State Psychiatric Institute.

I have served on the American Society of Addiction Medicine's expert consensus panel on the use of medications in the treatment of opioid use disorders. I consulted for the State of Vermont on ways to

improve medication-assisted treatment. I also served on the steering committees for drug courts and mental health courts and was the past President of the Board of Directors for the New Hampshire Professionals Health Program. I am extremely proud to serve in the United States Army Reserve as a psychiatrist.

I have seen the tragic and deadly consequences of substance abuse, addiction and impaired driving firsthand and I truly hope that my experience and the resources of Responsibility.org and our many partners can assist you in the fight to eliminate impaired driving.

### **Alcohol-Impaired Driving**

According to NHTSA, alcohol-impaired driving deaths account for 29 percent of the total number of traffic fatalities and while that percentage is down significantly from 50 percent in 1980 when Candace Lightner founded Mothers Against Drunk Driving (MADD), it still translated into 10,874 lives lost in 2017 and thousands of injuries. Further, nearly half of the children killed in drunk driving crashes each year were riding with the impaired driver according to NHTSA and MADD.

Responsibility.org has been proud to support the Driver Alcohol Detection System for Safety (DADSS) since 2006 and we thank this subcommittee for its support of the DADSS project. This alcohol detection technology has the potential to save more than 6,000 lives every year which would make it the most effective DUI countermeasure in history, and it would take the world a giant step forward in preventing drunk driving.

We strongly support reauthorization of the program to finish out the research and, simultaneously, efforts to deploy fleet testing. We understand the project is on track for large scale fleet testing in late 2020 with a .02 BAC directed breath testing prototype and on track to deliver the .08 BAC passive consumer versions in 2023-2025. Ultimately, there is the possibility that this technology could be expanded to detect THC as well.

We also strongly support the mandatory use of ignition interlocks for all DUI offenders, a concept that originated in New Mexico and is now law in 33 states. Kentucky became the most recent state to expand an existing program to include first offenders and legislation was introduced but has yet to pass in several states including California, Massachusetts, and Michigan. New Jersey's bill is pending the Governor's signature.

We also strongly support screening and assessment for all DUI offenders. Research shows that many DUI offenders have substance use disorders as well as undiagnosed and untreated mental health disorders that contribute to their DUI offending. For the benefits of interlock technology to be maximized, the use of the device should be coupled with screening and assessment (and if indicated, treatment) to facilitate behavior change. Ignition interlocks ensure that drinking and driving are separated but these devices are an incapacitation tool; to address an underlying substance use disorder interlock program participation should be paired with and run concurrently with treatment involvement.

DUI offenders are a unique population of justice-involved individuals. They lack criminogenic factors and the absence of an extensive criminal record (prior DUIs and other traffic infractions are common but impaired drivers often lack a history of other offenses). As a result, they tend to be identified as low risk however, these offenders are at a heightened risk to cause death or serious injury. They often have unique needs and

are resistant to change because of limited insight into their behavior. Screening and assessment with the use of a tool validated for a DUI population (currently there are only three such instruments available) is critical to accurately identify both risk level and treatment needs. It is also vital to address these issues when an offender enters the criminal justice system for a first DUI offense as this is the only way to prevent repeat DUI offenses and avoidable tragedies.

### **Drug-Impaired driving**

Drug-impaired driving is not a new problem but in recent years it has been one of growing and significant concern. The Governors Highway Safety Association's (GHSA) 2018 report *Drug-Impaired Driving: Marijuana and Opioids Raise Critical Issues for States* presented new research to examine the impact of marijuana and opioids on driving ability and provided recommendations. The report found that in 2016, 44 percent of fatally injured drivers with known results tested positive for drugs, up from 28 percent just 10 years prior.

Results from NHTSA's National Roadside Survey (NRS) are also instructive in measuring the extent of drug-impaired driving in this country. In 2013-2014, NRS findings revealed that 22.4 percent of weekday day and 22.5 percent of weekend night-time drivers tested positive for illegal, prescription, or over-the-counter medications. (Berning et al., 2015).

The drug that has shown the largest increase in weekend night-time prevalence is marijuana. In the 2007 NRS, 8.6 percent of weekend night-time drivers tested positive for the main psychoactive ingredient in marijuana, Delta-9 tetrahydrocannabinol (THC). This number increased to 12.6 percent in the 2013-2014 NRS. That is a 48 percent increase in less than seven years. Fewer drivers were found to have opioids in their system with 5.5 percent of weekday day and 4.7 percent of weekend night-time drivers testing positive.

States that are considering legalizing the use of cannabis, or have already done so, should proactively address the potential impact that increased access could have on traffic safety. When California passed Proposition 64, considerable funding was allocated to the California Highway Patrol to train more officers over a period of several years. Other important considerations include changes to implied consent statutes to permit the use of new/emerging testing methodologies such as onsite oral fluid screening, electronic warrants, specialized law enforcement training, pre/post legalization data collection and analysis, and public education campaigns.

### **Opioid-Impaired Driving**

Opioids are present about half as frequently as marijuana in fatal crashes and opioid presence has increased in the past decade. (GHSA 2018).

As cited in the 2018 GHSA report, in 2016, 1,064 drivers, or 19.7 percent of the drug-positive drivers, were positive for some opioid, slightly less than half as many as were positive for marijuana. The most frequent opioids were oxycodone (OxyContin, Percodan, Percocet) at 20 percent of all opioids, hydrocodone (Vicodin, Lortab, Lorcet) at 19 percent, morphine at 14 percent, fentanyl at 11 percent, and methadone at 8 percent. In 2006, 679 drivers, or 17 percent of drug-positive drivers, were opioid-positive.

Many studies document that opioids can cause drowsiness and can impair cognitive function, both of which can have obvious effects on driving (Dhingra et al., 2015; Strand et al., 2016).

Estimating the effect on crash risk is even more difficult for opioids than for marijuana but research has shown that opioids can increase crash risk by a factor of no more than about 2. Of course, these statistics do not factor in an overdose while behind the wheel.



## Boy, 4, Found in SUV With Adults Who Allegedly Passed Out on Heroin; Ohio Police Post Pics

This photo was published a few years ago at the height of the opioid epidemic.

An issue with opioid-impaired driving is the lack of education around the dangers of driving after consuming prescription drugs. There is a huge opportunity for collaboration with health care practitioners and pharmacists on this issue. In a 2017 National Safety Council survey of drivers age 21 and above, 17 percent reported taking a prescription opioid in the past month. Of those who did, 64 percent said that they felt it was safe to drive.

The FDA falls short here in its prescribing advice for OxyContin which says “Warn patients not to drive or operate dangerous machinery unless they are tolerant to the effects of OxyContin and know how they will react to the medication” and the package insert says “Do not drive, operate heavy machinery, or participate in any other possibly dangerous activities until you know how you react to this medicine. OxyContin can make you sleepy.” (FDA, 2018a; 2018b).

In February of this year, The AAA Foundation for Traffic Safety and the GHSA held a summit on prescription drug-impaired driving and invited stakeholders from traffic safety and health care to collaborate on the issue. Additionally, the AAA Foundation for Traffic Safety launched its Roadwise Rx website: <http://www.roadwisex.com/> to help people understand how prescription drugs can affect their driving abilities.

The Texas Department of Transportation (TxDOT) and GDC Marketing and Ideation conducted quantitative and qualitative research on this topic and presented it at the 2018 Lifesavers Conference in San Antonio, Texas. The presentation entitled, *Attitudes and Awareness Surrounding Driving Under the*

*Influence of Impaired Prescription Drugs*, further shows the need for public education and enhanced partnerships as evidenced by the following findings:

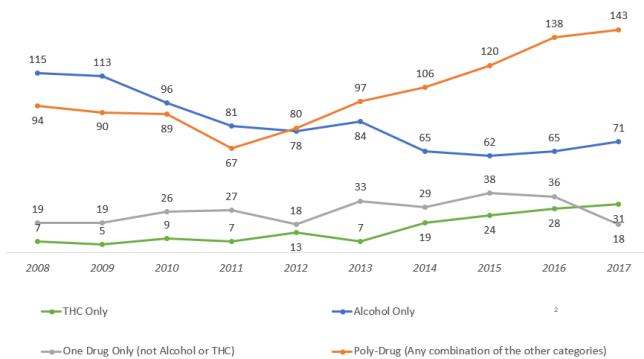
- Driving after using prescription drugs was viewed as less dangerous than other driving behaviors.
- 55 percent of Texans surveyed believed driving under the influence of impaired prescription drugs had a lesser penalty (or no penalty at all) than the penalty for drunk driving.
- Those surveyed believe that if drugs are prescribed by a doctor, the same DUI rules do not apply.
- Doctors and pharmacists aren't always warning patients.
- Warnings on pill bottles are not clear.

### **Polysubstance-Impaired Driving**

In a recent presentation to state legislative leaders, Sergeant Alan Ma from the Denver Police Department shared that in Colorado there has been a 300 percent spike in polysubstance-impaired driving cases between 2013-2016 with alcohol and THC being the most common combination.

Polysubstance-impaired driving (driving after consuming a combination of drugs or alcohol and a drug/drugs) is a major concern. Washington State recently analyzed drug and alcohol use among drivers involved in fatal crashes in its 2016 Fatality Analysis Reporting System (FARS) data (*Grondel et al., 2016*). The data also showed that in 2012, polysubstance-impaired drivers became the most prevalent type of impaired drivers involved in fatal crashes and since that time the number has increased an average of 15 percent each year. By 2016, there were more than twice as many poly-drug drivers than alcohol-only drivers and five times more than THC-only drivers.

### **Poly-Drug Driving Rising in fatal crashes**



Source: 2016 Washington Fatality Analysis Reporting System (FARS) data

I am joined here today by Colleen Sheehey-Church, our Public Policy Liaison. She testified before this subcommittee last year in her previous role as MADD's National President. Her son Dustin was killed in an impaired driving crash involving a young driver who had consumed alcohol, cannabis and PCP. She has submitted a statement for the record today and I am grateful for her advocacy and expertise.

Polysubstance-impaired driving is especially dangerous as the combination of substances has a multiplicative effect on driver impairment. However, it is becoming increasingly commonplace.

You may recall that Jennifer Harmon, a forensic toxicologist from Orange County, California also testified at last year's hearing. She stated that of the non-alcohol involved traffic related cases that were drug positive in Orange County, 40 percent had three or more drugs in their system.

What's more, she shared that 45 percent of apprehended DUI drivers tested positive for at least one drug other than alcohol; 29 percent of drivers with BACs of .08 or above tested positive for at least one additional drug; and 56 percent of fatally-injured drivers tested positive for at least one drug (nearly half of those include alcohol and/or THC).

In speaking with law enforcement officers, prosecutors and judges from across the country, we hear a common thread: Most impaired drivers arrested these days have more than one substance in their system. That has led Responsibility.org to add polysubstance-impaired driving to what we call the category of highest-risk impaired drivers along with repeat DUI offenders and high BAC drivers at .15 and above because they pose the greatest crash risk on our roadways and account for a disproportionate number of impaired driving deaths.

Last year our Vice President of Criminal Justice Programs and Policy, Erin Holmes, testified before this Subcommittee on the reasons why drugged driving and polysubstance-impaired driving are underreported. Her testimony remains available online for a deeper dive into this issue and we can certainly address those issues today if desired, but I'd like to detail activities Federal and state governments are undertaking to tackle this issue as well as actions the United States Congress can take to save lives and ultimately eliminate impaired driving

Here's a very important point: Impairment is impairment. The substance(s) involved is not known at the time of the traffic stop. The law enforcement officer makes the stop based on dangerous driving behavior. As NHTSA's new public education campaign says – *If you feel different, you drive different*. The nation's impaired driving program focus need not shift to marijuana and opioids but instead must expand its critical focus on alcohol to include all impairing substances. As stated in the GHSA report, some new tactics are required to detect impaired drivers. They join with and build on the familiar methods to address alcohol-impaired driving.

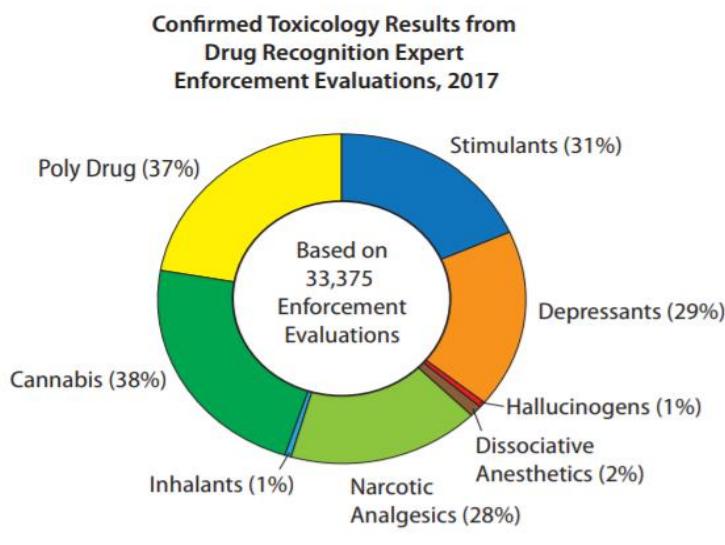
### **Making Progress But There Is Room For Improvement**

#### **Specialized Law Enforcement Training**

Responsibility.org has been proud to partner with the GHSA in issuing two reports on drug-impaired driving as well as teaming up with state highway safety offices, Shaquille O'Neal and the National Sheriffs Association to increase specialized training for law enforcement to detect drug-impaired drivers. To date, we have awarded law enforcement grants to 15 states (Florida, Idaho, Illinois twice, Massachusetts, Michigan, Minnesota, Montana, Nevada twice, New York, Rhode Island, South Dakota, Texas, Vermont, Washington, and Wisconsin) to train officers in Advanced Roadside Impaired Driving Enforcement (ARIDE) and Drug Recognition Expert (DRE) training. We have also sponsored the National Sheriff's Association's annual ARIDE training for three years in a row.

Last year, NHTSA amplified these training efforts with \$100,000 in grants administered through the GHSA to Delaware, Guam, Kentucky, Massachusetts, Oklahoma, and West Virginia. Just this month NHTSA and the International Association of Chiefs of Police (IACP) announced a new \$2.3 million grant program to fund ARIDE and DRE training to law enforcement, judges and prosecutors. The training grants are necessary because there is no BAC for THC or other drugs. Drug-impaired driving enforcement relies on law enforcement identification and detection of drug impairment.

The DRE Program was first established in the 1970s when the Los Angeles Police Department collaborated with medical professionals to develop a standardized procedure that could assist officers in identifying drug impairment. These efforts led to the development of a 12-step protocol and Drug Recognition Experts (DREs). To be certified, DRE candidates undergo more than 100 hours of intensive classroom instruction and formal training, including field certification. Also, DREs must continue their training and be re-certified every two years. Currently there are more than 9,000 credentialed DRE officers across the country. NHTSA is currently examining how many DRE officers are needed and hopes to create an allocation model to share with the states as a guide.



### Electronic Warrants

For both alcohol and drug-impaired drivers, it is often necessary to obtain a blood sample. Many drunk drivers refuse a BAC test which leaves the officer no choice but to pursue a blood test. Drug tests require blood draws in most cases which can take several hours. Dr. Darrin Grondel, Chairman of the GHSA and Director of the Washington Traffic Safety Commission says the average time to obtain a blood sample in his state is 237 minutes. During this time, critical impaired driving evidence is dissipating.

A search warrant from a judge is required for a non-voluntary blood draw except in rare circumstances. Electronic warrants (e-warrants) can speed up this step considerably, allowing officers to request and receive warrants in their patrol cars on tablets, smartphones, or computers. Currently, 45 states include language either in legislation or in court rules allowing e-warrants (Borakove and Banks, 2018). Legislation

isn't necessary but it can create consistency. Many law enforcement agencies are currently considering transitioning to an electronic warrant system to improve efficiency.

There is another important reason for law enforcement agencies to consider implementing electronic warrants. In recent years, the United States Supreme Court has repeatedly addressed interplay of the Fourth Amendment and implied consent laws. In *Missouri v. McNeely* (2013) and *Birchfield v. North Dakota* (2016) the court ruled that blood testing requires a warrant if the DUI suspect refuses to provide a sample on a voluntary basis. In *Mitchell v. Wisconsin* (2019) the court examined Fourth Amendment and implied consent issues again. In each of these cases, the Court noted that advancements in technology make it possible to obtain warrants quickly and the natural dissipation of alcohol did not create a *per se* exception to the Fourth Amendment's warrant requirement based on exigent circumstances.

In 2018, Responsibility.org and the Justice Management Institute produced a [guide to help jurisdictions set up these electronic warrant systems](#) and featured case studies from Arizona, Delaware, Minnesota, Texas and Utah where the practice is in place and working well.

Dr. Grondel is working with a team of experts in Washington to design an electronic DUI packet to increase efficiencies in the system. The packet would include an electronic warrant, the DRE evaluation, the information from the barcoded license and registration. The electronic information will speed up the arrest process, improve data collection, and will allow more efficiencies in the adjudication process.

### **Law Enforcement Phlebotomy**

In an effort to further increase efficiency and reduce the time it takes to obtain blood draws from impaired driving suspects, Washington's Traffic Safety Commission is providing grant funds that allow for the training of law enforcement officers as medical phlebotomists with the help of the Washington Department of Health through a 50-hour course. The officers, once trained, are no different than a lab technician at a primary care office or a hospital and in fact they could work off hours in those settings.

Currently there are 10 agencies (a total of 40 officers) that have been trained in phlebotomy and the Washington State Patrol is developing a pilot program. The training is especially timely and important because Washington's hospitals have a new policy that requires DUI suspects to be admitted to the hospital and triaged before having their blood drawn. Unfortunately, this protocol adds hours to the process and results in thousands of dollars being charged to law enforcement while DUI evidence dissipates.

The training of law enforcement officers in phlebotomy is not a new idea. In fact, it began in Arizona in 1995 when the Highway Patrol Division of the Arizona Department of Public Safety (DPS) had two sergeants trained as phlebotomists to draw blood from impaired driving suspects. Both sergeants were certified paramedics prior to becoming certified phlebotomists. This effort was so successful that it led to a statewide law enforcement phlebotomy program. In 2009, Idaho developed a statewide law enforcement phlebotomy program based on the successful Arizona model.

### **Oral Fluid Testing**

Oral fluid tests can identify the presence of drugs at roadside or in a police station and provide objective data to help establish probable cause. They are not currently used in the United States in an evidential capacity. Like preliminary breath tests, oral fluid tests are part of a broader impaired driving investigation and should be used as an onsite screener. These devices are quick and easy to use, minimally invasive, and indicate recent drug use. Multiple studies have found these devices to be reliable and valid. Australia and the United Kingdom have been using this roadside drug testing technology for years and many law enforcement agencies in Canada have opted to use the devices since the passage of a recreational cannabis law in the fall of 2018.

Jurisdictions across the United States (including Alabama, California, Colorado, Florida, Kansas, Michigan, Oklahoma, Vermont) have piloted various devices to assess their viability. These pilots have concluded that oral fluid devices provide good information to law enforcement regarding the presence of active drugs in drivers' systems. The largest pilot program underway in the United States is in Michigan. Legislation passed in 2016 authorized a small five county pilot program. The results were promising enough to recommend the pilot be extended and expanded across the state.

In a study conducted in Miami-Dade County, 39 percent of drivers who were found to have a BAC above .08 also tested positive for the presence of drugs. In another pilot in Dane County, WI, nearly 40 percent of the subjects with BACs exceeding .10 screened positive for one or more drug categories in both oral fluid and blood. In a real-world setting, most of these individuals would be identified as only alcohol-impaired drivers because usually testing stops if a driver has an illegal BAC level. The problem with this practice is that many drug-impaired drivers go undetected, the magnitude of the drugged driving problem is not accurately captured and failure to identify drug use misses an opportunity to identify and address an underlying cause of impaired driving behavior and could result in recidivism.

### **Toxicology Labs**

A DRE officer needs to provide comprehensive documentation on impaired driving cases, but it is just as important to have high quality forensic toxicology results for prosecution of impaired driving cases. Toxicology results provide the link between the observations of the subject's driving and behavior and their drug use. However, some states do not have the capacity to process all the blood tests produced by impaired driving arrests and backlogs can result in long delays or case dismissals.

Consider the situation in Washington State where one centralized toxicology lab is used for all impaired driving blood tests. Currently it can take 6-7 months before the lab begins to process the blood sample and 10 months before the result is sent to court. A request has been presented to the legislature for additional funding to hire more personnel and reduce the backlog to avoid dismissing cases. In Colorado, legislation was passed this year to increase funding for processing blood samples.



	Time to begin processing	Turnaround time (median)	Backlog
Prior to 2017	Within 1 day of receipt	19 days	None
Current	~ 4-6 months	~7-9 months	3,000+ cases

States should be able to allocate additional highway safety funds to improve the quality of state labs. States should be afforded the flexibility to hire additional lab staff and purchase lab instrumentation to accommodate an increased number of impaired driving arrests.

Another important issue to address is the need for standardized drug testing. There is a lack of consistency in testing from one jurisdiction to another. Data is limited because some states test a very small percentage of fatally injured drivers for the presence of drugs. Additionally, labs use different test panels with varying cutoff levels. Inconsistent testing and the lack of minimum standards makes it difficult for NHTSA data to be used to compare states, identify trends or generalize findings.

### Dealing with High-Risk Impaired Drivers

All DUI offenders pose a high risk on the roads, yet some are at a higher risk than others for re-offending and/or for causing a crash due to greater levels of impairment. These offenders often need more intensive and individualized interventions. The bottom line is that cookie-cutter approaches do not work with this population and failure to take a comprehensive approach can result in future recidivism.

Repeat DUI offenders cause about one-third of impaired driving deaths each year, a number that has remained relatively unchanged over the years. Most, if not all, of these offenders have a substance use disorder and are at high risk of re-offending. According to research from the Cambridge Health Alliance at Harvard Medical School, nearly half of repeat DUI offenders have a co-occurring mental health disorder in addition to a substance use disorder. It is common for the mental health issues to be missed and go untreated. Due to numerous loopholes that exist in the criminal justice system, these offenders often go unmonitored and fail to comply with their sentences and supervision conditions. In many instances, they are not held accountable nor do they face consequences for their non-compliance. This creates a dangerous cycle that must be broken.

Some of these repeat offenders are at high risk of recidivism and have high treatment needs. For them, a [DWI court](#) is likely the best option for changing their behavior. Studies have consistently shown that DWI court participants have better outcomes compared to offenders who are subject to traditional probation. In fact, courts that strongly adhere to the DWI court model have been found to reduce recidivism by as much as 60%. The research on the cost benefits of DWI courts is also compelling. A multisite evaluation of Minnesota DWI courts determined that the program produced a 200 percent return on investment (NPC Research, 2014). The combined savings of seven DWI courts exceeded \$1.4 million over a two-year period. Unlike the drug court model, offenders who participate in DWI courts do not have their convictions expunged upon successful completion of the program.

For other repeat DUI offenders with a high risk of recidivism but low treatment needs, they may only require intensive monitoring and regular check-ins with the court. Judge Richard Vlavianos of Stockton, California has had impressive results in reducing recidivism among repeat offenders by screening and assessing them to determine if they need monitoring or monitoring and treatment. He calls it “accountability court” and most of his offenders (70 percent) only need monitoring and to be held accountable for complying with their sentences. The other 30 percent fall into the traditional DWI court model. This dual track approach has made it possible for Judge Vlavianos to serve many more offenders than a more traditional DWI court and to dramatically reduce repeat DUI offenses and alcohol-impaired crashes in San Joaquin County.

In a 2018 [Los Angeles Times article](#) that profiles the reductions in crime that have occurred in San Joaquin County, Judge Vlavianos said, “The job of the court is to screen, assess and refer. Because we’re never going to get a behavior change if we don’t address what’s bringing them in.” Judge Vlavianos is a longtime member of our Judicial Advisory Board and was just named a NHTSA Regional Judicial Outreach Liaison. Though his court deals primarily with repeat offenders, he will take high-BAC drivers and polysubstance-impaired drivers who are referred from other courts.

Other impaired driving offenders at very high risk also include high BAC offenders (.15 and above) who are involved in more than 60 percent of the alcohol-impaired driving deaths each year and polysubstance-impaired driving offenders whose crash risk is significantly increased. For these offenders, practitioners must collaborate across disciplines, work together to identify the root cause of the offending and determine what type of criminal sanctions are most likely to prevent future impaired driving offenses.

### **Training for Prosecutors and Judges**

Prosecutors and judges have the same educational needs as other practitioners when it comes to impaired driving. An officer’s description of a drug-impaired driver’s roadside behavior will be different than that of a drunk driver. NHTSA has been working to enhance the ability of the criminal justice system to manage drug-impaired driving, with improved coordination among prosecutors, toxicologists, judges, and programs that leverage Law Enforcement Liaisons (LELs), Traffic Safety Resource Prosecutors (TSRPs), and Judicial Outreach Liaisons (JOLs).

NHTSA funds prosecutor training through the National Traffic Law Center (NTLC) and the National Center for DWI Courts (NCDC). Information is available from the National District Attorneys Association (NDAA) and

NCDC. Most states have at least one TSRP who can help provide education and training to prosecutors. Additionally, NHTSA's regional Judicial Outreach Liaisons provide support to judges across the country; some highway safety offices also fund a state specific JOL. This education is critically important, and we encourage its continuation and expansion. In 2019, Responsibility.org launched an [online DUI prosecutor course](#) with NDAA and the National Center for State Courts. The free course qualifies for continuing legal education (CLE) credits in every state where they are required and is designed to assist prosecutors with DUI cases. We hope to update it soon to include drug-impaired and polysubstance-impaired driving prosecutor education.

### **Researching the Effects of Cannabis on Driver Impairment**

This July, California enacted Assembly Bill 127 that will allow research on the effects of cannabis impairment on driving performance. Due to cannabis' designation as a Schedule I controlled substance, agencies like the California Highway Patrol (CHP) have been limited in the research that they could conduct. The new law gives CHP greater authority to do experimental research that involves dosing subjects and then allowing them to operate a motor vehicle under direct supervision in a controlled environment to gain a better understanding of the effects that cannabis has on driving. Other academic institutions are also actively engaged in impaired driving research that includes studies that are designed to identify potential behavioral or cognitive tests to identify cannabis impairment.

Responsibility.org is funding grants in Nevada and Massachusetts in 2019 to conduct similar research and training for law enforcement and prosecutors.

### **Public Education**

In 2018, NHTSA declared drug-impaired driving a national priority and held a series of regional meetings across the country to elevate the dialogue on the issue, identify best practices and transfer knowledge. Later in the year, NHTSA launched its *If You Feel Different, You Drive Different* campaign to educate Americans about the dangers of driving while impaired by drugs and to promote safer choices. A key message in the campaign is that any time you consume a substance that makes you feel different; you aren't safe to drive, and impaired driving isn't a mistake; it's a crime.

The national campaign joins several successful state public awareness campaigns. Colorado has had success with their *Drive High, Get A DUI* campaign and *The Cannabis Conversation*. The Colorado Department of Transportation (CDOT) has been a leader in drug-impaired driving education and their experience is instructive for other highway safety offices and Federal agencies.



## Recommendations for Congress

There are numerous ways for Congress to support states in the fight against impaired driving:

- **Require screening and assessment of ALL DUI offenders:** If you don't diagnose an illness, you can't treat it and cure it. The same is true for DUI offenders. All impaired drivers should be screened and assessed for substance use disorders and mental health disorders to prevent repeat DUI. Root causes of offending must be identified and dealt with. Assessment instruments should also be validated among the impaired driver population. Currently there are only two such instruments that are available free of cost – [The Computerized Assessment and Referral System \(CARS\)](#) created by Harvard Medical School and funded by Responsibility.org and the National Institute on Alcohol Abuse and Alcoholism (NIAAA) and the Impaired Driver Assessment (IDA) created by the American Probation & Parole Association (APPA) and funded by NHTSA. The CARS tool has been translated into Spanish this year thanks to Judge Robert Anchondo and his staff at his DWI Court in El Paso, Texas.
- **Reauthorize DADSS to ensure development of the technology is achieved as originally intended:** Fast, accurate, reliable, affordable and seamlessly installed into new vehicles to detect drunk drivers and prevent the car from moving but without affecting normal driving behavior. (This is on track for 2023/2024 breath-based and 2025 touch-based). Currently only the breath-based technology is deployable at a .02 BAC level and is not a passive system yet – suitable for fleet testing only.
- **Resources for criminal justice practitioners:** It is critical to fund all aspects of the system to prevent system overload and ensure arrests can result in speedy trials.

- **Provide appropriations for ongoing, specialized law enforcement training** including programs that teach officers how to identify the signs and symptoms of drug impairment. This includes Advanced Roadside Impaired Driving Enforcement (ARIDE) and the Drug Evaluation and Classification (DEC) Program and law enforcement phlebotomy programs.
  - **Provide appropriations to law enforcement agencies to implement electronic warrant systems** to make the warrant acquisition process more efficient, secure evidence in a timely manner, limit test refusals, reduce errors, and maximize law enforcement resources.
  - **Promote the allocation of funds for DUI-only law enforcement initiatives** like dedicated DUI officers or DUI teams that go beyond the usual high visibility enforcement efforts (e.g., sobriety checkpoints and saturation patrols).
  - **Provide appropriations for law enforcement, prosecutor, and judicial training** to better educate them on impaired driving issues. Cross-training opportunities are preferred.
- **Improve offender compliance** – DUI offenders re-offend because they can. They know the risk of getting caught is low. **Only about 25% of offenders ordered to install an ignition interlock device do.** The higher risk offenders need to be monitored – and if needed – treated.
  - **Incentivize the use of accountability courts** (e.g., San Joaquin County Court Model) and intensive supervision efforts.
  - **Increase the use of ignition interlocks, 24/7 programs, and other offender monitoring programs.**
  - **Provide appropriations for DWI Courts, intensive supervision programs, and treatment programs** that are proven to be effective in supervising and treating high-risk impaired drivers.
  - **Provide appropriations for the creation of multi-jurisdictional impaired driving task forces** to increase collaboration among various facets of the DUI system and implement innovative solutions and a comprehensive, systems-based approach that considers all aspects of the issue.
  - When dealing with a high-risk, high-needs drug-impaired driving offender, require participation in a DWI court not a drug court.
- **Improve data and technology:**
  - **Continue appropriations to NHTSA to administer the National Roadside Survey** to provide critical data on the prevalence of drug-impaired driving.

- **Support NHTSA's work on oral fluid research** and prioritize the creation of minimum guidelines for these devices (like what has been done for breath testing instruments and ignition interlocks). NHTSA is currently researching the feasibility of incorporating on-site oral fluid devices in criminal justice processes.
  - **Support the ongoing development and testing of new drug detection technologies** (e.g., marijuana breathalyzers, transdermal devices).
  - **Support the creation of national minimum standards for toxicological investigations** in motor vehicle crashes and drug-impaired driving cases.
  - **Provide appropriations to improve the quality of state labs** including funds to hire additional lab staff and purchase lab instrumentation (such as liquid chromatography-tandem mass spectrometry (LC-MS/MS) to perform more advanced drug analysis).
  - **Encourage ongoing data collection** using current data available (including crash, arrest, toxicology, convictions, public perceptions/attitudes on driving, healthy youth surveys, etc.). Collect data on a regular basis to track trends and prevalence data. Jurisdictions that have yet to legalize should also begin collecting baseline data as this will allow them to make pre and post comparisons following the implementation of new laws to measure what impact they have on traffic safety.
- **Continue to fund public education campaigns** to dispel misperceptions, change attitudes, reset societal norms and change behavior. Congress can provide appropriations to expand state and Federal public outreach efforts if deemed effective.
- **Incentivize new laws:**
  - **Support the establishment of zero tolerance laws for drivers under the age of 21 who drive with illicit or impairing drugs in their systems**, creating parity with existing zero tolerance alcohol laws.
  - **Improve existing incentive grants for ignition interlock laws.** Many states have mandatory laws for all DUI offenders, but very few qualify for incentive grant funds.

In conclusion, a comprehensive approach must be employed in order to eliminate impaired driving. The problem is multi-faceted and, as previously noted, is frequently not limited to the use of a single impairing substance. We must be willing to knock down silos at the state and Federal levels and involve non-traditional partners as we seek innovative solutions reduce recidivism and save lives.

#### **About Responsibility.org**

Responsibility.org is a national not-for-profit that aims to eliminate [drunk driving](#) and work with others to end all impaired driving, eliminate [underage drinking](#), and empowers adults to make a lifetime of responsible alcohol choices as part of a balanced lifestyle. Responsibility.org is funded by the following distillers: Bacardi U.S.A., Inc.; Beam Suntory Inc.; Brown-Forman; Constellation Brands, Inc.; DIAGEO;

Edrington, Mast-Jägermeister US, Inc.; Moet Hennessy USA; and Pernod Ricard USA. For over 27 years, Responsibility.org has transformed countless lives through programs that bring individuals, families and communities together to inspire a lifetime of responsible alcohol choices. To learn more, please visit [Responsibility.org](http://Responsibility.org).

#### **Supporting materials:**

- American Association of Motor Vehicle Administrators (2018). [Ignition Interlock Program Best Practices Guide](#).
- AAA Foundation for Traffic Safety (2018), [Countermeasures Against Prescription and Over-The-Counter Drug-Impaired Driving](#).
- EAZE and Lyft. 2019. "[Perceptions on Impairment: Cannabis Consumers in Focus](#)."
- Harmon, J. (2018). [Witness testimony](#) from House Energy and Commerce Subcommittee on Digital Commerce and Consumer Protection Hearing "Examining Drug-Impaired Driving."
- Hedlund, J. (2018). [Drug-Impaired Driving: Marijuana and Opioids Raise Critical Issues for States](#). Washington, DC: Governors Highway Safety Association.
- Holmes, E. (2018). [Witness testimony](#) from House Energy and Commerce Subcommittee on Digital Commerce and Consumer Protection Hearing "Examining Drug-Impaired Driving."
- Los Angeles Times (2018). "[Crime once plagued San Joaquin County, but now its jail has empty beds. Here's what it did right](#)."
- MADD (2018). [Child Endangerment Report](#).
- Michigan State Police (2019). [Oral Fluid Roadside Analysis](#) Pilot Program.
- NHTSA (2019). [Presence of Drugs in Drivers and Drug-Impaired Driving Fast Facts](#).
- NHTSA and National Safety Council. (2004). *Priorities and Strategies for Improving the Investigation, Use of Toxicology Results, and Prosecution of Drug-Impaired Driving Cases: Findings and Recommendations*.
- Olson, J. (2019). [Law Enforcement Phlebotomy presentation](#). Phlebotomy Programs that Work Lifesavers Conference Workshop.
- Responsibility.org (2017). *Driving Under the Influence of Drugs: A Checklist for Policymakers*.
- Ritter, R. (2019). [NHTSA Drug-Impaired Driving Initiative presentation](#). Addressing the Changing Landscape of Drug-Impaired Driving Lifesavers Conference workshop.
- Flannigan, J., Talpins, S., & Moore, C. (2017). [Oral fluid testing for impaired driving enforcement](#). *Police Chief Magazine*, January issue, 58-63.

#### **Suggested additional reading:**

- Hedlund, J. (2017). *Drug-Impaired Driving: A Guide for States*. Washington, DC: Governors Highway Safety Association. [https://www.ghsa.org/sites/default/files/2017-07/GHSA\\_DruggedDriving2017\\_FINAL\\_revised.pdf](https://www.ghsa.org/sites/default/files/2017-07/GHSA_DruggedDriving2017_FINAL_revised.pdf)