Increase Drug Testing in Impaired Driving Cases

As more drivers are tested for drugs, it has become apparent that many alcohol-impaired drivers are actually multi-substance impaired drivers who avoid detection (see WA and CO data in Grondel, 2018 and Bui & Reed, 2019). **Driving under the influence (DUI) is the only crime where the investigation stops after minimal evidence is obtained due to standard operating procedure**. If a law enforcement officer observes impairment and detects a blood alcohol concentration (BAC) above the legal limit, the investigation typically ends, saving time and money. Many laboratory policies prohibit drug testing if a BAC is above .08 or .10 unless a request for additional testing is made, allowing drivers impaired by multiple substances to avoid accountability. If drug use is not identified, it cannot be monitored or treated and multi-substance impaired driving, which poses a much higher crash risk, remains significantly underreported. **Every impaired driving investigation – whether it involves alcohol, drugs, or both – is a race against the clock.**

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

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

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

Phlebotomy programs. When suspects refuse BAC tests or when drug use is suspected, a certified medical professional must perform a blood draw. However, emergency department delays are common, and some medical facilities have policies limiting cooperation with law enforcement which can make it difficult to obtain the sample in a timely fashion. To address these issues and others (e.g., chain of custody, testimony, etc.), law enforcement agencies establish phlebotomy programs and certify officers to perform blood draws. Advantages of these programs are highlighted in a [NHTSA toolkit](#) and include: decreased time from traffic stop to blood sample collection; reduced costs ($40-100/draw); fewer case dismissals; reduced officer overtime pay; improved law enforcement testimony; potential for blood collection at the scene of vehicular homicide/ vehicular assault cases prior to being transported to the hospital; and shorter processing times. Law enforcement phlebotomy began in 1995 when the Arizona Department of Public Safety (DPS) established this program to address concerns about high-BAC refusal rates. After the phlebotomy program was active, statewide refusal rates fell from 20% in 1995 to 6% in 2009. Today, more than 10 states have such phlebotomy programs in place.

Oral fluid drug screening. Similar to preliminary breath tests (PBTs) for alcohol, oral fluid tests can be used to screen for drugs and establish probable cause in combination with other evidence. These tests are fast, easy to use, reliable, and can detect the presence of drugs most commonly found in the systems of impaired drivers (e.g., THC (cannabis), cocaine, methamphetamine, amphetamine, opioids, and benzodiazepines). Oral fluid testing is authorized in 18 states and is used internationally to screen for recent drug use (within 24 hours) at roadside. More information about oral fluid screening is available in our position.

Building laboratory capacity. Proof of a defendant's positive alcohol and/or drug test is important for establishing guilt, but DUI blood samples may take months to process which can result in dismissed cases. Many states struggle with backlog in forensic laboratories that can be in upwards of nine months. Another common concern is a lack of toxicologists available to provide court testimony in complicated DUID cases. Labs need adequate staffing to address these issues. Also, new and advanced testing instrumentation is costly and requires new protocols, procedures, and training. States that wish to allocate highway safety or other grant funding to address any of these issues should be highly encouraged and allowed to do so.

National minimum guidelines in impaired driving cases. Accurate testing will advance understanding of the drug-impaired driving (DUID) problem. Labs should establish/adopt minimum guidelines for toxicological investigations in traffic crashes and drug-impaired driving cases (i.e., drug panels, cut-off levels, and testing procedures) such as those put forth by the National Safety Council (NSC). Lab uniformity is not required but a survey revealed 52% of labs questioned were in partial compliance and motivated to achieve full compliance with NSC recommendations (Logan et al., 2017). State agencies that increase consistency in testing practices will be better positioned to adopt national guidelines if/when these are established.

Best practice: Orange County's Crime Lab (OCCL) in California tests every blood sample in DUI cases for alcohol, inhalants, and seven different classifications of drugs. This lab is one of the few pursuing this level of testing and can inform scientific literature about the prevalence of drugs among fatally injured drivers and impaired driving suspects. In [Congressional testimony,](#) Jennifer Harmon noted the OCCL found approximately **29% of drivers with a BAC above .08 tested positive for at least one drug and among DUI suspects who tested negative for alcohol, approximately 40% had three or more drugs in their systems.**

Responsibility.org Position:

Responsibility.org supports increased rates of drug testing in impaired driving cases, including measures to improve and enhance roadside identification of impaired drivers through standardized field sobriety test (SFST) training, Advanced Roadside Impaired Driving Enforcement (ARIDE), the Drug Evaluation and Classification (DEC) program, and oral fluid drug screening; improve the efficiency of the investigative process and reduce the amount of time it takes to obtain blood draws through electronic warrant systems and law enforcement phlebotomy programs; expanded forensic laboratory capacity to reduce backlog; and increased standardization in forensic testing for motor vehicle crashes and impaired driving investigations to produce better data to inform policy decisions.

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