Drive High, Get A DUI: Addressing the Growing Threat of Drug-Impaired Driving

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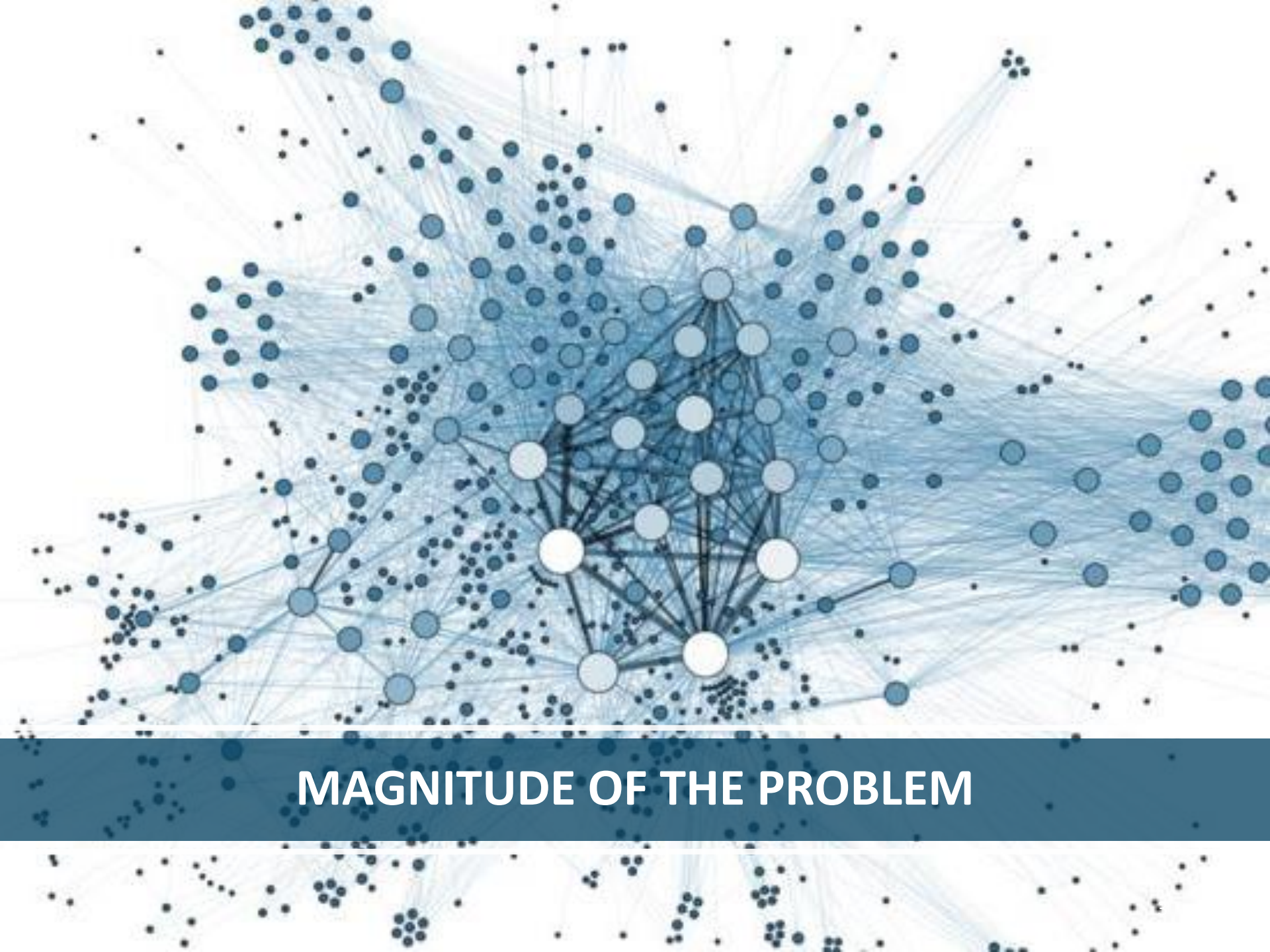
Foundation for Advancing Alcohol Responsibility
CADCA 28th Annual National Leadership Forum
Washington, DC; February 6, 2018

CADCA®


Drugged driving isn't a serious problem.
I'm fine to drive.
I drive better when I'm high.
Law enforcement can't tell if I'm high.
There are no laws; driving high isn't illegal.
It's better than driving drunk.

Overview

- Magnitude of the DUID problem
- Complexities and challenges of the issue
- DUID policy
- Enforcement and prosecution
- Challenging perceptions
- Solutions and recommendations

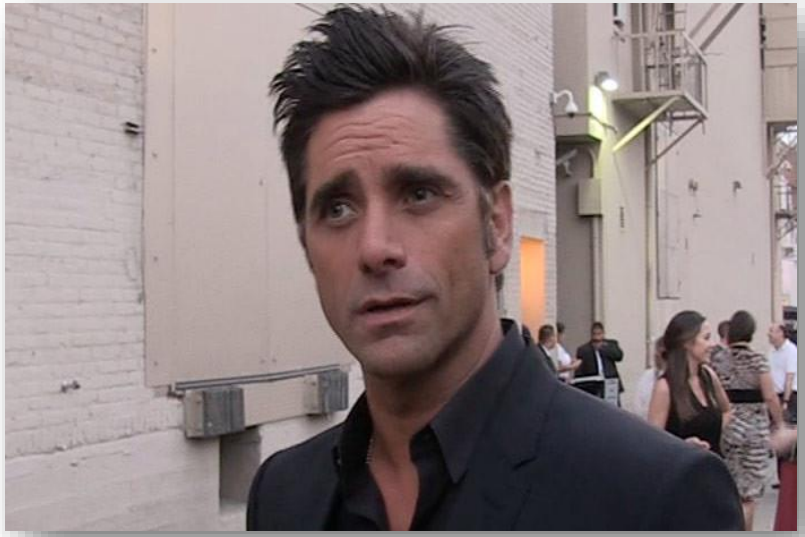


MAGNITUDE OF THE PROBLEM


Southern Counties News
NEWS
ALERT
DRUGGED DRIVING
@MorningsMaria
FOX
BUSINESS
NETWORK
foxbusiness.com/channelfinder

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

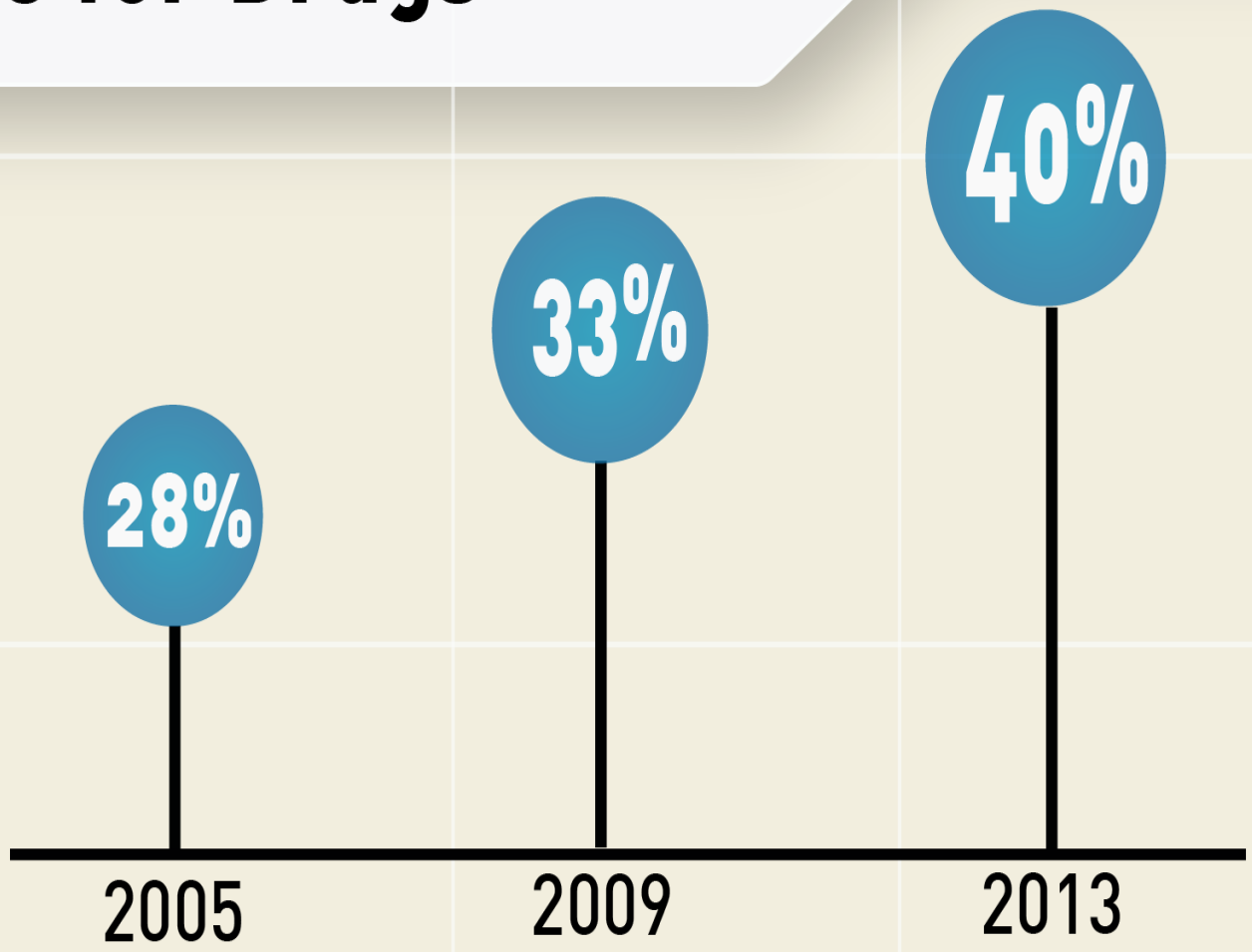
PARTNERING FOR **PREVENTION**



Limitations in crash data

- **States vary considerably in how they collect DUID data:**
  - How many drivers are tested?
  - What tests are used?
  - How are test results reported?
- **The rate at which states test drivers involved in fatal crashes ranges from less than 10% to over 90%.**
- **FARS data merely reflects drug presence; it does not identify drug concentrations.**

Percent of *Fatally-Injured* Drivers that Tested Positive for Drugs



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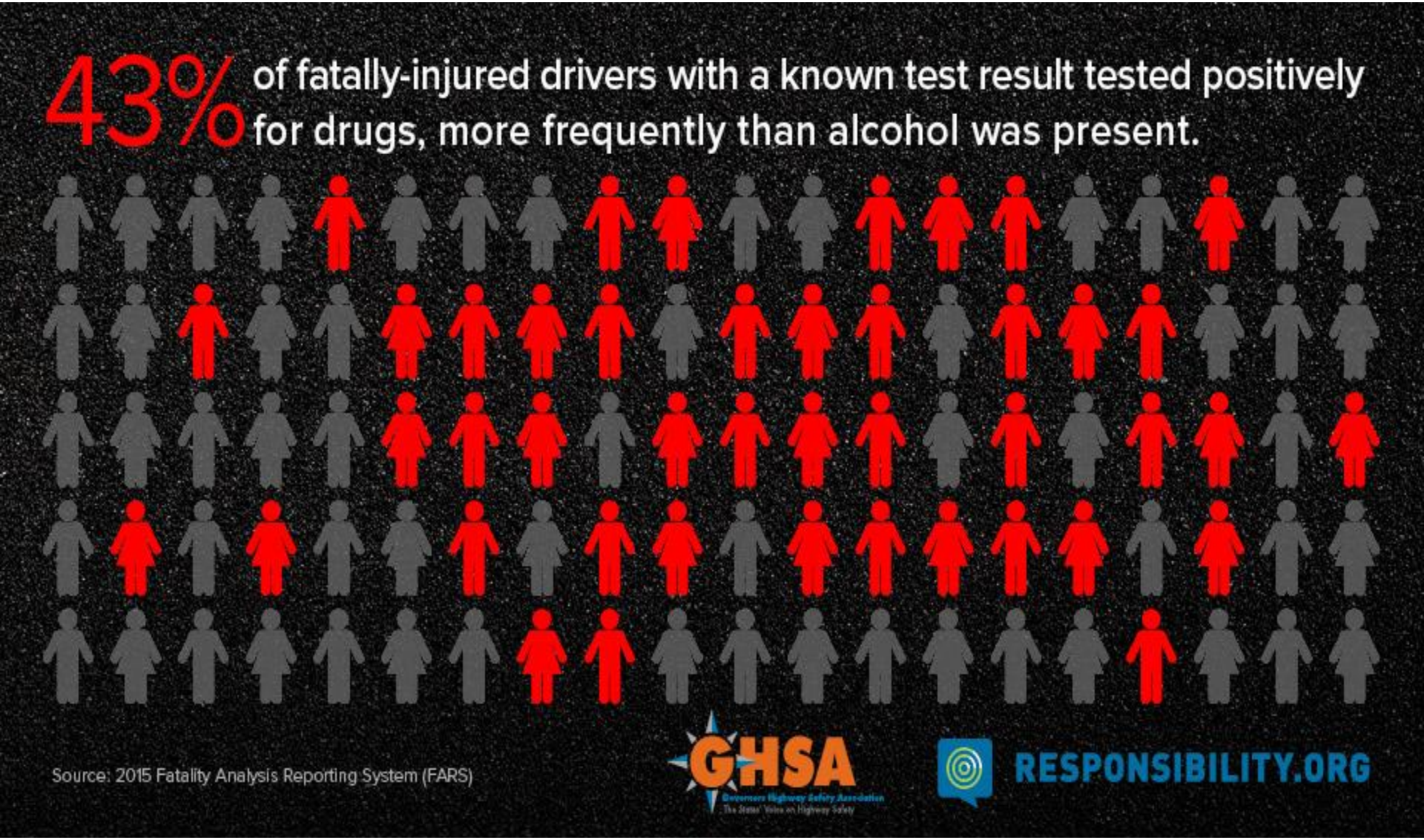
Source: NHTSA / FARS, 2015


43% of fatally-injured drivers with a known test result tested positively for drugs, more frequently than alcohol was present.
Source: 2015 Fatality Analysis Reporting System (FARS)
GHSA
RESPONSIBILITY.ORG

In 2015 nationwide, **57.0%** of fatally-injured drivers were tested for drugs.

Of those tested:

34.3%
A drug in the FARS list was found

35.6%
Marijuana

9.3%
Amphetamine

55.1%
Other

7.4%
Drug not in the FARS list

55.4%
No drugs detected

2.9%
Unknown

Source: 2015 Fatality Analysis Reporting System (FARS)

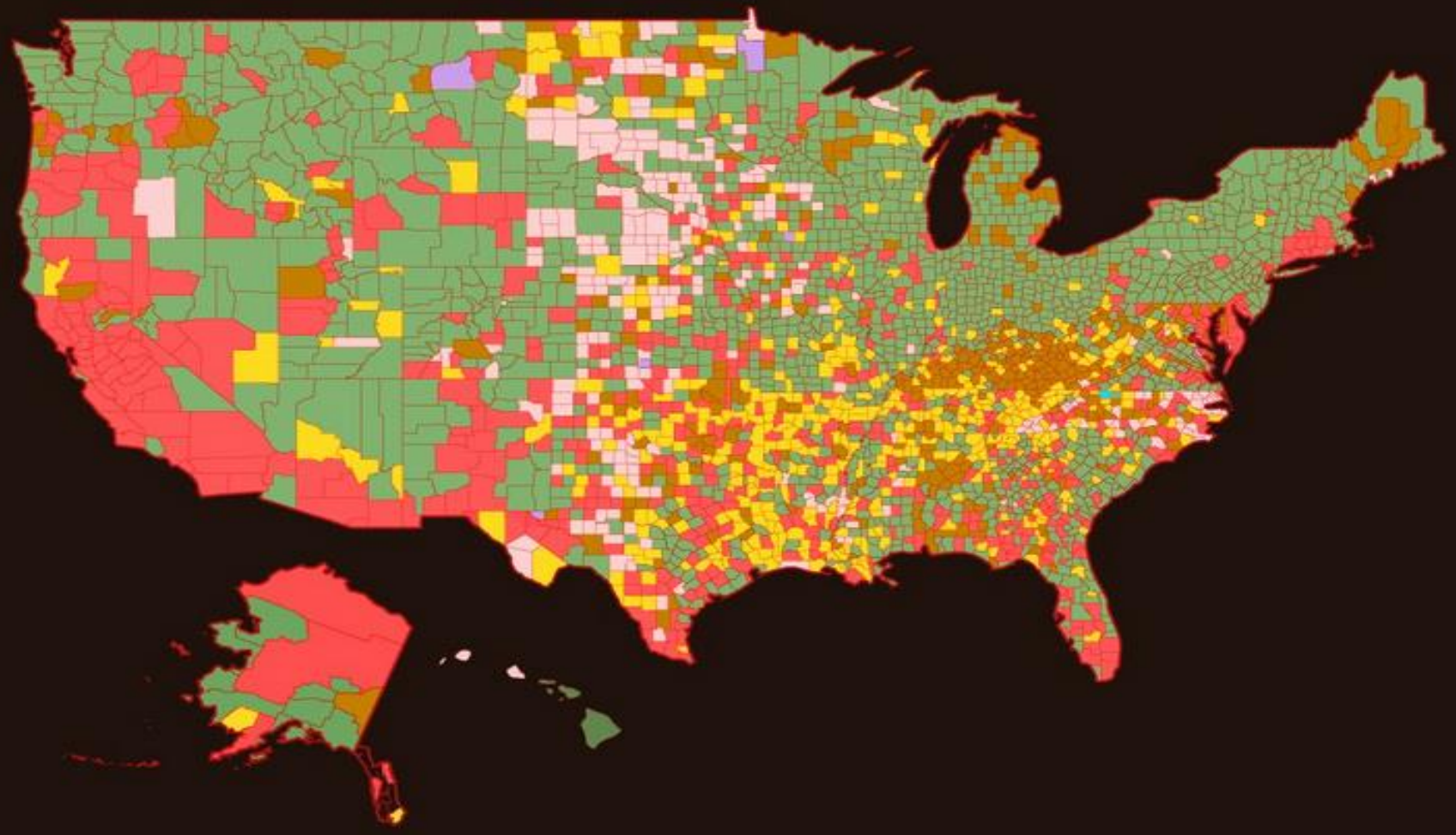
GHSA Governors Highway Safety Association The States' Voice on Highway Safety

RESPONSIBILITY.ORG

DRUGGED COUNTIES

Most **Commonly Detected Drugs** for Drivers* in Fatal Automobile Accidents From *1995–2013* by County

CANNABINOIDS
ANABOLIC STEROIDS
DEPRESSANTS
HALLUCINOGENS
NARCOTICS
NOT ENOUGH DATA
STIMULANTS



* *Includes all drivers involved in accidents that caused the death of at least one person.*

Source: *http://www-fars.nhtsa.dot.gov*

DRUGTREATMENT.COM

Roadside data

- **The most recent roadside survey data revealed an increase in drugged driving.**
- Results from the NHTSA National Roadside Survey in 2013-2014 found that more than **22.5%** of night-time drivers tested positive for illegal, prescription, or OTC medications.
  - Comparatively, only 1.5% of night-time drivers tested positive for a BAC above the legal limit of .08.
  - This is much higher than the 16.3% of weekend nighttime drivers who tested positive in 2007.

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

ROADSIDE SURVEYS:

	Weekday Days	Weekend Nights
Tested positive for some drug or medication	22.4%	22.5%
Illegal drugs, including marijuana	12.1%	15.2%
Medication	10.3%	7.3%
Marijuana	11.7%	12.6%
Alcohol	1.1%	8.3%

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

November 2012…

Colorado: Amendment 64

Washington: Initiative 502

DUID in Colorado: Fatalities

Traffic Deaths Related to Marijuana*			
Crash Year	Total Statewide Fatalities	Fatalities with Operators Testing Positive for Marijuana	Percentage Total Fatalities (Marijuana)
2006	535	37	6.92%
2007	554	39	7.04%
2008	548	43	7.85%
2009	465	47	10.10%
2010	450	49	10.89%
2011	447	63	14.09%
2012	472	78	16.53%
2013	481	71	14.76%
2014	488	94	19.26%
2015	547	115	21.02%

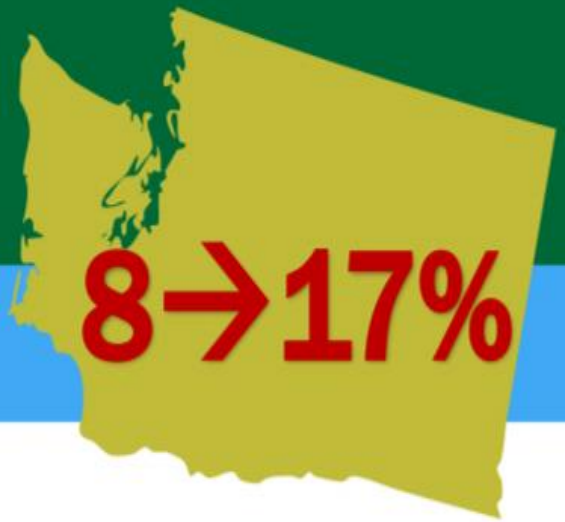
*Fatalities Involving Operators Testing Positive for Marijuana

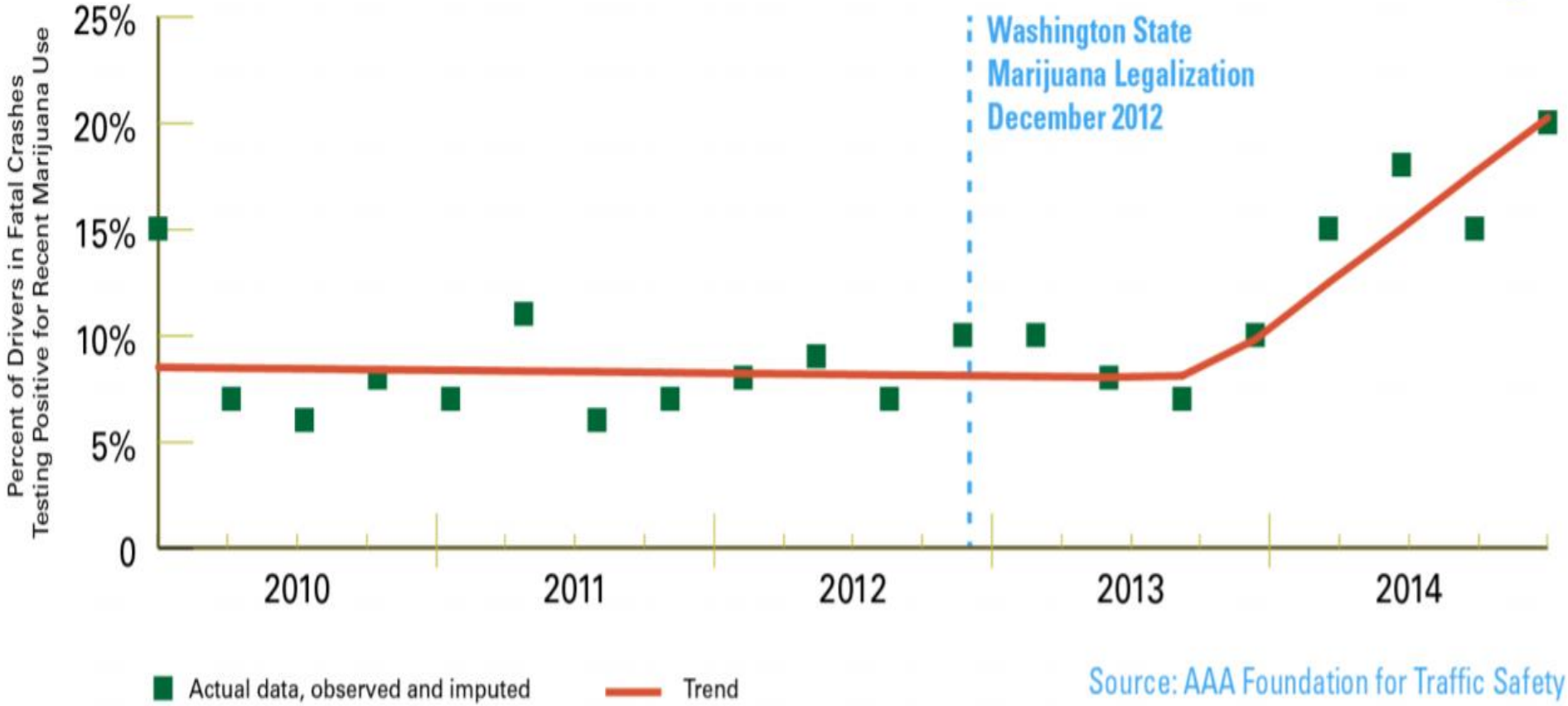
SOURCE: National Highway Traffic Safety Administration, Fatality Analysis Reporting System (FARS)

Source: Wong et al. (2016). The Legalization of Marijuana in Colorado: The Impact (Vol. 4). Denver: Rocky Mountain HIDTA.

Fatal Road Crashes Involving Marijuana Double After State Legalizes Drug

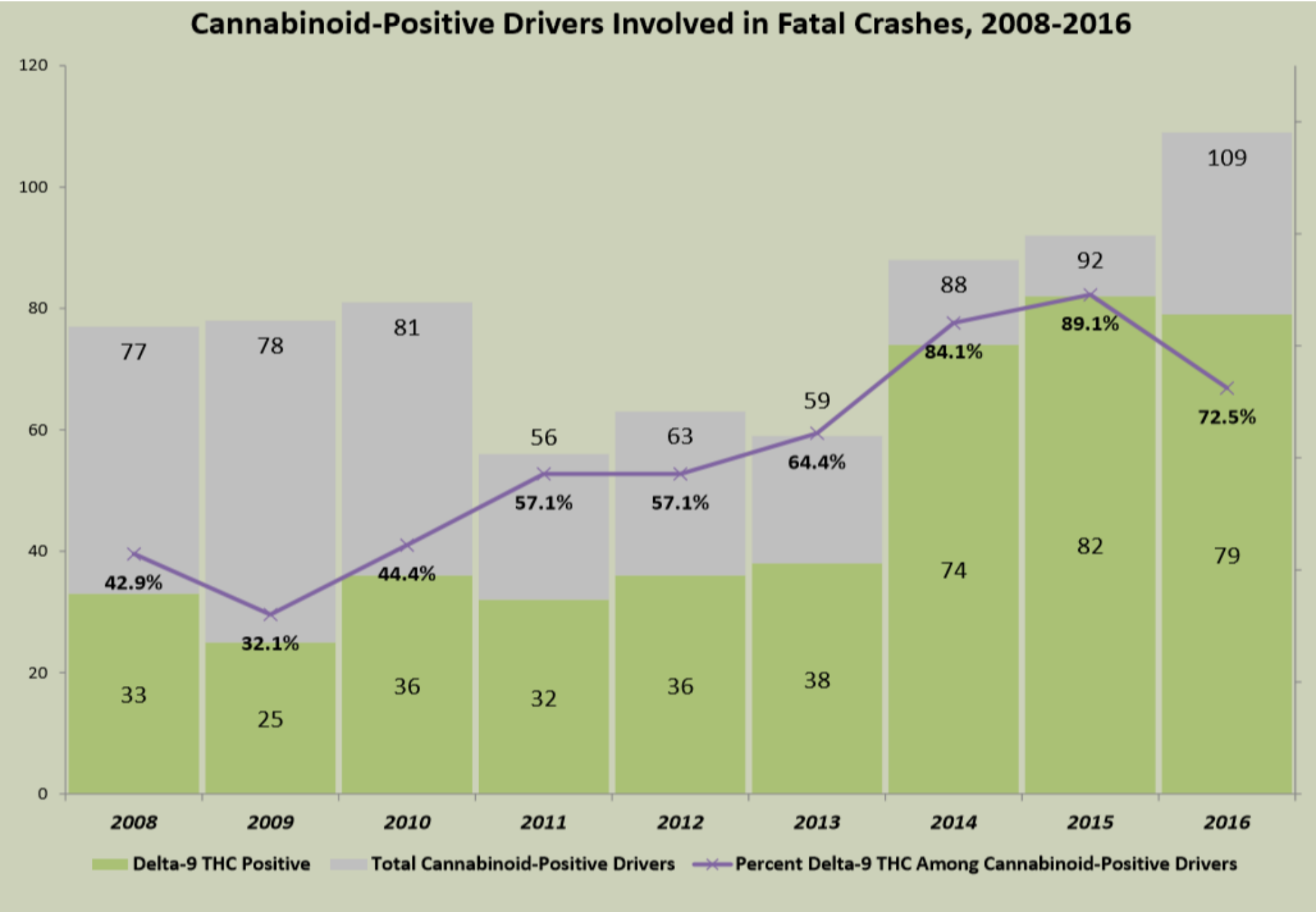
FATAL CRASHES INVOLVING DRIVERS WHO RECENTLY USED MARIJUANA DOUBLED IN WASHINGTON AFTER THE STATE LEGALIZED THE DRUG IN 2012.





Source: AAA Foundation for Traffic Safety

DUID in Washington



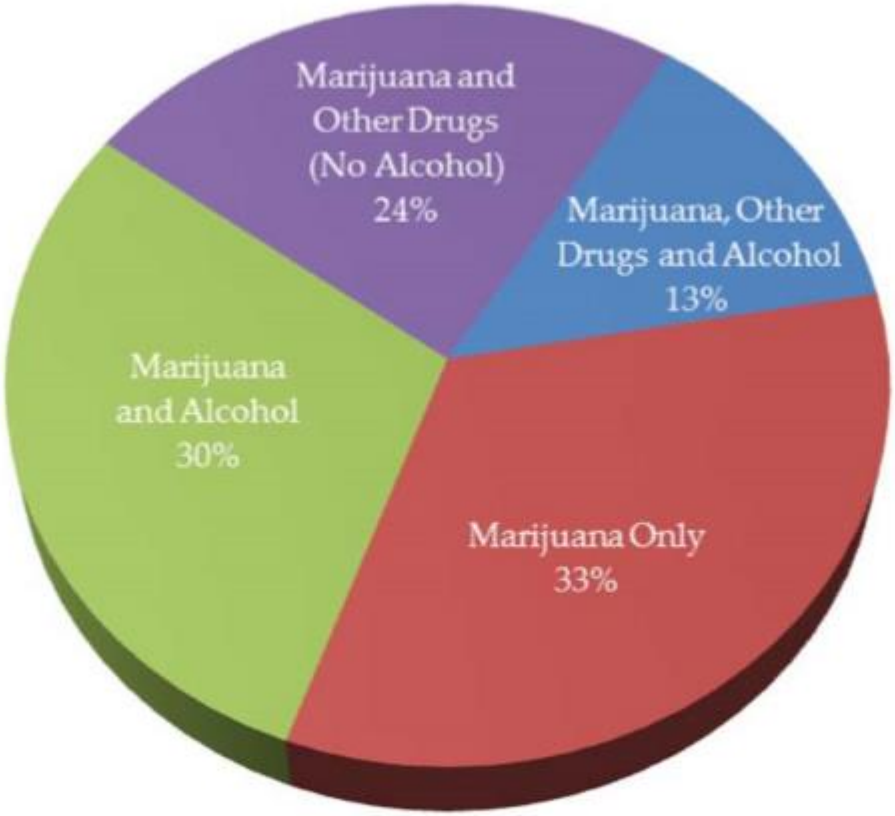
Fatalities with presence of cannabinoids

Marijuana Result	2010	2011	2012	2013	2014	Total
Any Cannabinoids	81	56	63	59	89	348
Carboxy-THC	45 55.6%	24 42.9%	27 42.9%	21 35.6%	14 15.7%	131 37.6%
Any THC	36 44.4%	32 57.1%	36 57.1%	38 64.4%	75 84.3%	217 62.4%
THC <5 ng/ml	24 66.7%	19 59.4%	23 63.9%	19 50.0%	38 50.7%	123 56.7%
THC ≥5 ng/ml	12 33.3%	13 40.6%	12 33.3%	18 47.4%	37 49.3%	92 42.4%
THC Result Unk	0	0	1	1	0	2

Source: WTSC (2015). Driver Toxicology Testing and the Involvement of Marijuana in Fatal Crashes, 2010-2014.

The challenge of polysubstance use

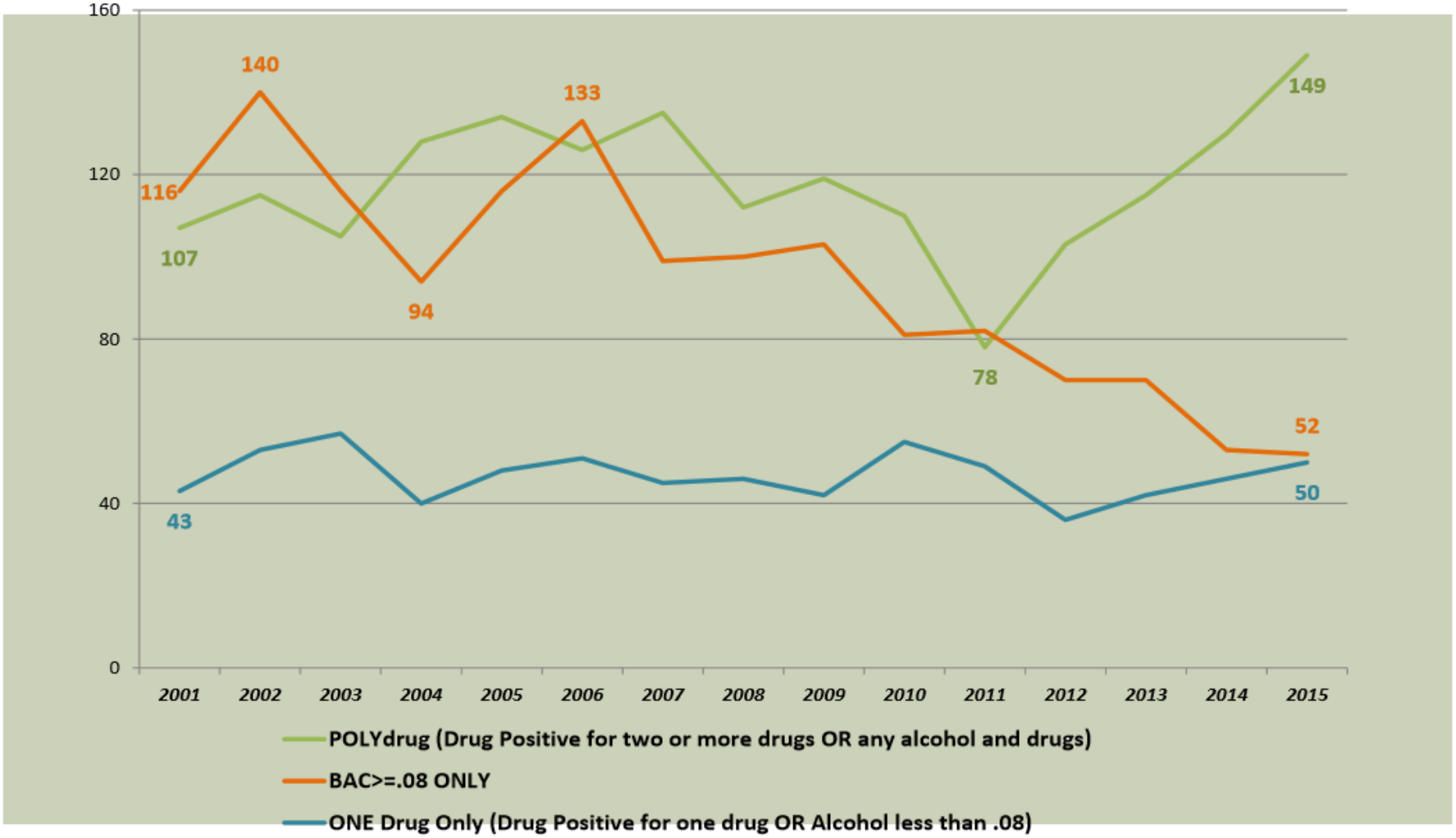
Drug Combinations for Operators Positive for Marijuana*, 2015



*Toxicology results for all substances present in individuals who tested positive for marijuana

SOURCE: National Highway Traffic Safety Administration, Fatality Analysis Reporting System (FARS), 2006-2011 and Colorado Department of Transportation 2012-2015

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



Source: WTSC, 2016

What can states do?

Planning

- Assess your state's drugged driving issues
- Build broad partnerships
- Create a drugged driving strategic plan
  - Example: **California** ***DUID Blueprint***
  - OTS convened working groups comprised of practitioners and national experts to formulate recommendations to address various aspects of the problem (e.g., data collection, enforcement, license issues, prevention, etc.).

What can states do?

Data collection

- Collect baseline data
- Test more drivers – fatal and serious injury crashes; arrestees
- Analyze chemical samples for active THC, active and inactive metabolites
- Track DUID and DUI separately in crash, arrest, court data
- Evaluate the effectiveness of drugged driving laws

DRUGS & DRIVING

Class of drug	Effects on driving
Cannabis	Poor attention to tasks; time and distance perception; slower reaction time/slower braking; poor lane tracking/more steering corrections; poor speed maintenance
Depressants	Slower reaction time; poor attention to task; poor lane positioning; poor speed maintenance; fail to obey traffic signs
Dissociative anesthetics	Poor attention to task; poor reaction time
Hallucinogens	Slower reaction time; perceive things that are not there and react to them
Inhalants	Slower reaction time; fall asleep at wheel
Narcotic analgesics	Slower reaction time; poor lane positioning; drive slowly; fall asleep at wheel
Stimulants	May increase reaction time; may increase erratic/aggressive driving; possible rebound effect (sleepiness)

Cannabis and driving

- Poor attention to tasks
- Time and distance perception
- Slower braking/reaction time
- Poor speed maintenance
- Poor lane tracking/more steering corrections
- Drivers impaired by marijuana may compensate by driving slower and increasing following distance
- Level of impairment increases with dose

Sources: Compton and Berning, 2015; Hartman and Huestis, 2013; Kelly-Baker, 2014.

DRUG-IMPAIRED DRIVING POLICY

Drugged driving is more complicated than drunk driving.

	DRUGGED DRIVING	DRUNK DRIVING
Number:	Hundreds of drugs	Alcohol is alcohol
Data on Use by Drivers & Crashes:	Limited	Abundant
Use by Drivers:	Increasing	Decreasing
Impairment:	Varies by type	Well-documented
Crash Risk:	Varies by type	Precise
Beliefs & Attitudes:	No strong attitudes – public indifferent	Socially unacceptable

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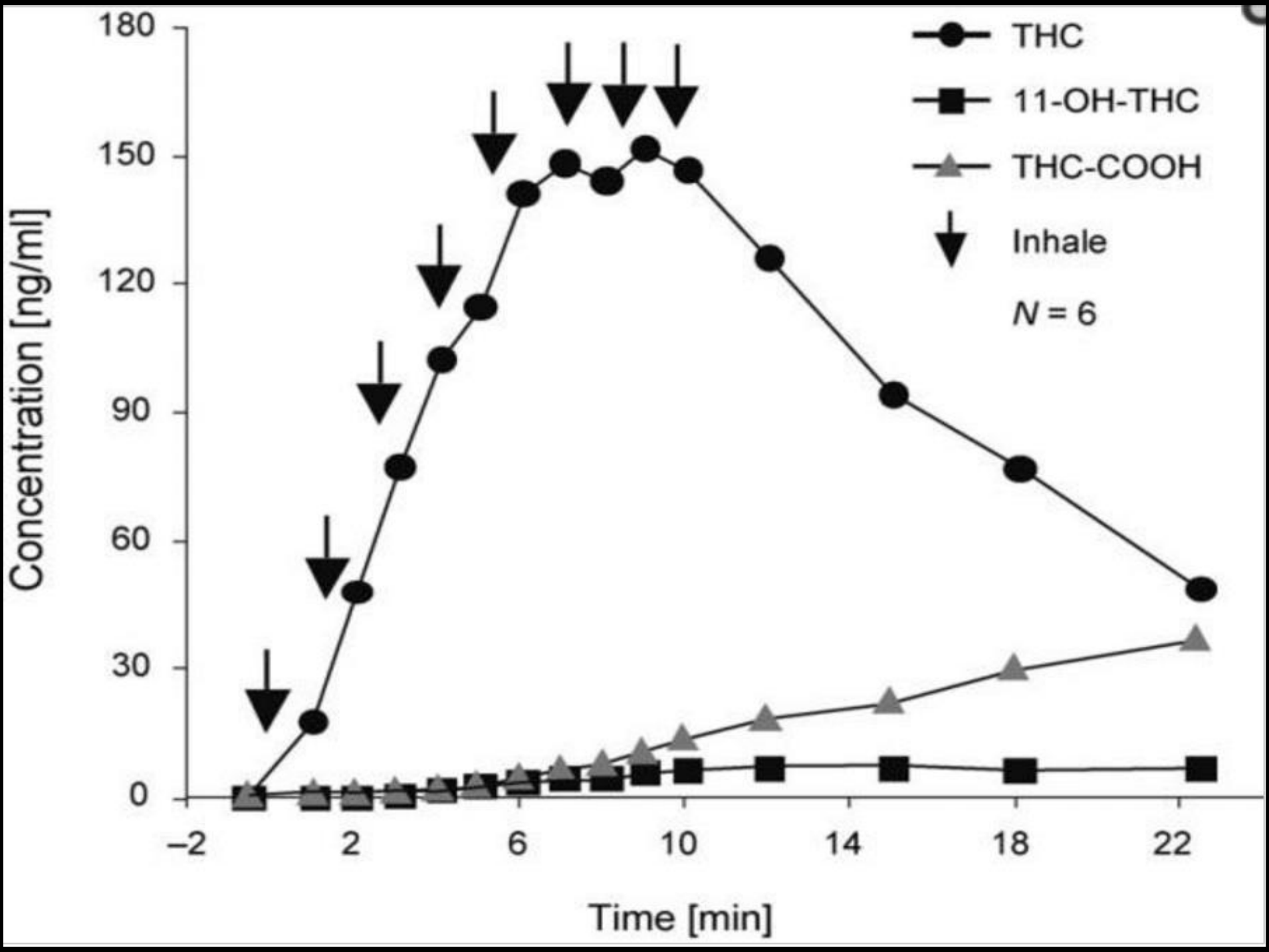
Presence vs. Impairment

- **Relationship between a drug's presence in the body and its impairing effects is complex and not well understood.**
- **Presence of a drug ≠ impairment**
  - Some drugs/metabolites may remain in the body for days or weeks after initial impairment has dissipated.
  - Individuals differ considerably in the rate of absorption, distribution, action, and elimination of drugs.
  - Some people are more sensitive to the effects of drugs, particularly first-time or infrequent users.
  - Wide ranges of drug concentrations in different individuals produce similar levels of impairment in experimental situations.

Presence vs. Impairment: Marijuana

- **Marijuana metabolites can remain in the body for 30 days +**
- **THC concentrations fall to about 60% of their peak within 15 minutes after smoking; 20% of their peak 30 minutes after smoking; impairment can last 2-4 hours.**
- **There is no DUID equivalent to .08 BAC.**
  - It is currently impossible to define DUID impairment with an illegal limit as drug concentration levels cannot be reliably equated with a specific degree of driver impairment.

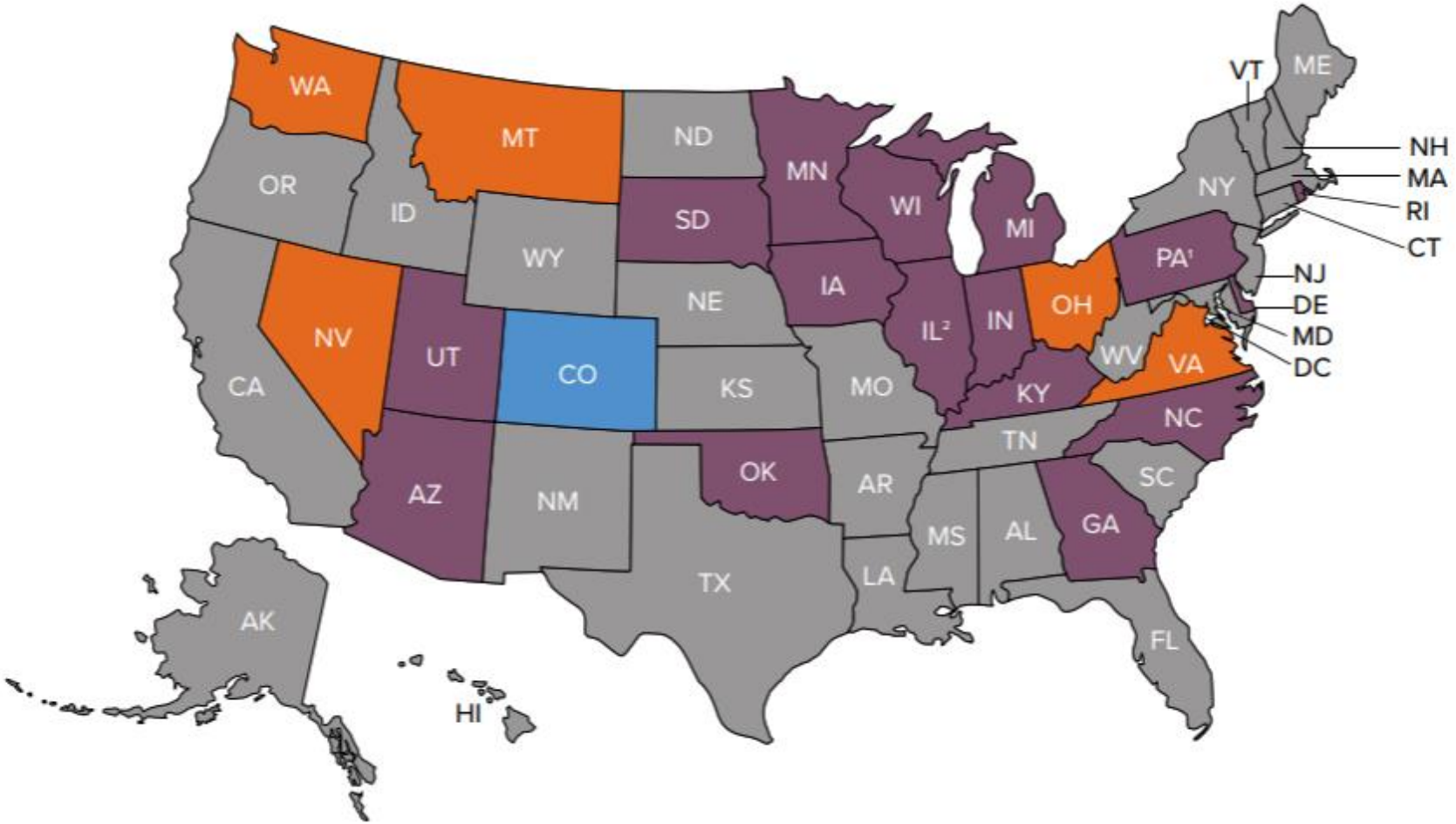

180
150
120
90
60
30
0
Concentration [ng/ml]
–2
2
6
10
14
18
22
Time [min]
THC
11-OH-THC
THC-COOH
Inhale
N = 6

Method of ingestion matters!

STATE BY STATE:

DUID ZT or *Per se* for Some Drugs

AS OF APRIL 2017

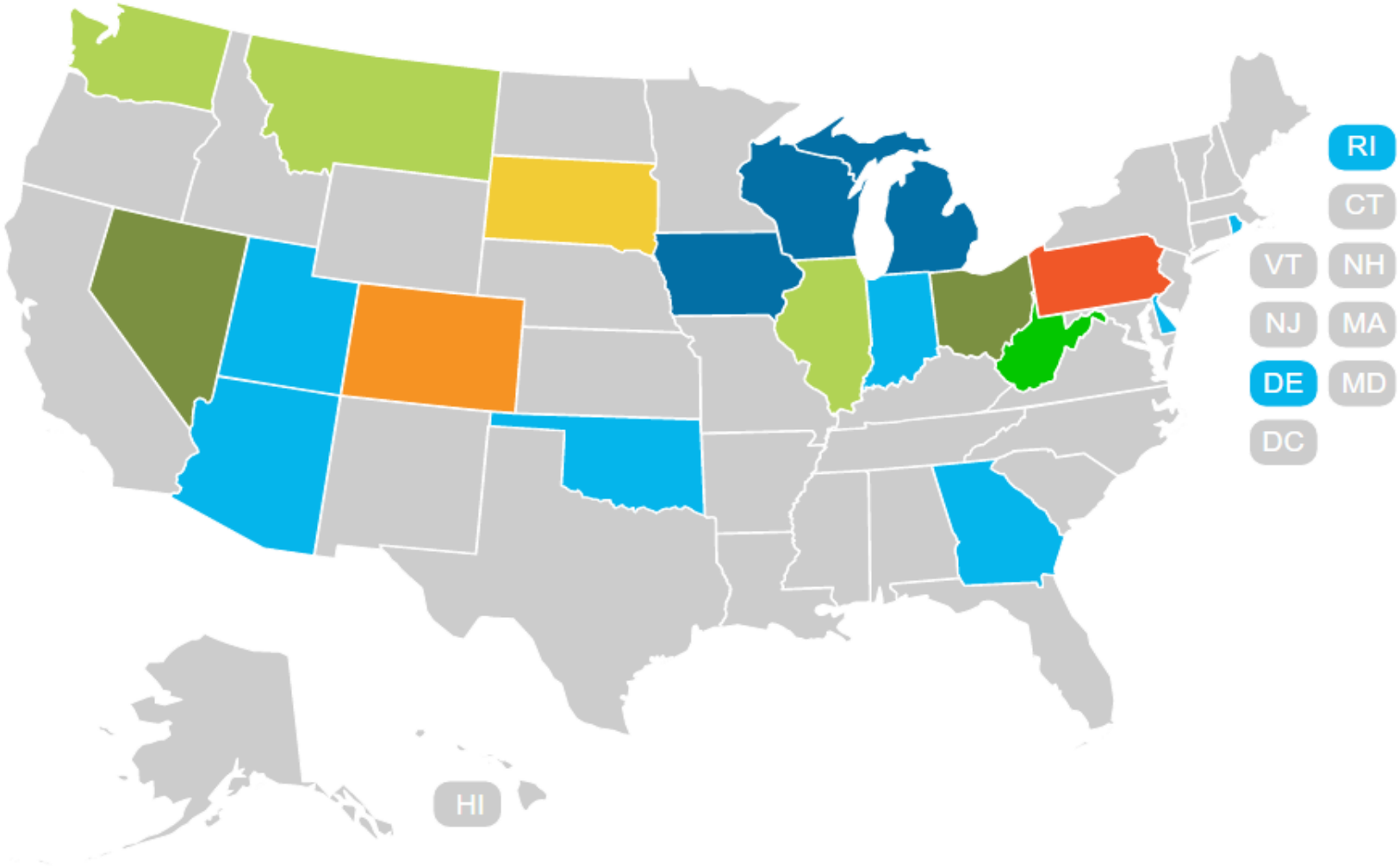


1 Pennsylvania has both a zero tolerance law for some drugs and a 1 ng *per se* law for THC. Pennsylvania's 1 ng *per se* law is in effect a zero tolerance law*.

2 Illinois has both a zero tolerance law for some drugs and a 5 ng per se law for THC.

Click on a color to highlight the states in that category

- *Per se* limit greater than zero for some drugs
- Zero tolerance for some drugs
- Reasonable inference law with a limit greater than zero for THC



STATE LAW: MARIJUANA DRUG-IMPAIRED DRIVING LAWS

- Zero tolerance for THC only
- Zero tolerance for THC and metabolites
- Zero tolerance for THC and metabolites (applies only to drivers under age 21)
- THC per se (1 nanogram)
- THC per se (2 nanograms)
- THC per se (3 nanograms)
- THC per se (5 nanograms)
- Reasonable inference THC law (5 nanograms)
- No marijuana-specific drugged driving law

“There is no BAC for THC”

What can states do?

Laws and sanctions

- Zero tolerance for illegal drugs
- Zero tolerance for drivers under 21 for all drugs
- Enhanced penalties for polysubstance use
- ALR for drugged drivers
- Mandatory screening/assessment and treatment
- Separate DUI and DUID charges
- Modify implied consent language
- Appropriations for law enforcement training

DUID Enforcement & Prosecution

Traditional impaired driving enforcement

- **DUI is the *ONLY* crime where the police stop investigating once they obtain a minimum amount of evidence according to standard operating procedure.**
- **Current protocols prevent drug testing once a suspect registers an illegal BAC limit (.08>).**
- **Implications of this practice:**
  - Hinders the ability to measure the true magnitude of the drug-impaired driving problem is unknown.
  - Many DUI arrests are **inaccurately attributed to alcohol alone**.

Enforcement challenges

- **Many officers are not trained to identify the signs and symptoms of drivers impaired by drugs.**
- **Delays in collecting a chemical sample may allow drugs to metabolize; the driver's concentration levels may not reflect levels at the time of arrest.**
  - Warrant requirements for blood draws.
- **Drug testing is expensive and time-consuming (lab backlogs).**

Is Canada ready to deal with stoned drivers?

As Canada prepares to legalize marijuana, it is totally unprepared to deal with the most dangerous side effect

DUID detection training

- **A variety of different detection strategies are available to law enforcement to identify drug-impaired drivers.**
- **It all begins with training:**
  - SFST academy and refresher training
  - Advanced Roadside Impaired Driving Enforcement (ARIDE) program
  - Drug Evaluation and Classification Program (DEC)

Drug Recognition Experts (DREs)

- **The DEC program was established in 1980 by the LAPD.**
- **Officers are required to go through three phases of training totaling more than 100hrs before they are eligible to receive DRE field certification.**
  - DRE Pre-School: 16hrs of classroom training
  - DRE School: 56hrs of classroom training
  - DRE Field Certification: approximately 80hrs
  - A total of **152 hours of training**
- **DREs must be recertified every two years (they must perform a minimum of four evaluations and attend eight hours of training in the process)**

Drug Recognition Experts (DREs)

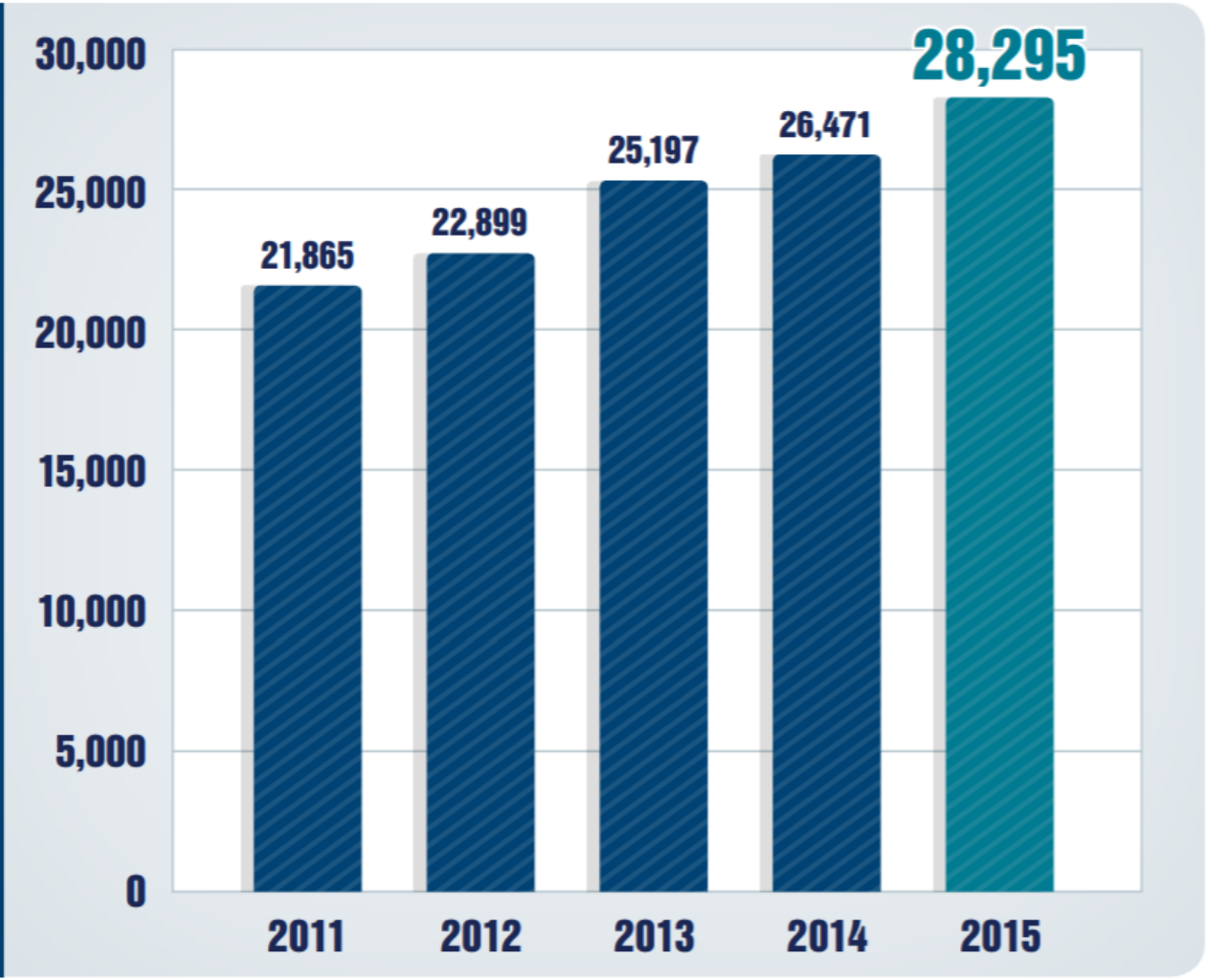
- **DREs use a standardized 12-step protocol that allows them to determine whether a suspect:**
  - is impaired;
  - if that impairment is caused by drugs or can be attributed to a medical condition; and,
  - the category of drug(s) that are the cause of the impairment (seven categories).
- **Today, all 50 states, Canada, and the United Kingdom participate in the DEC program.**
  - But not every jurisdiction in the country has an officer trained as a DRE; often an issue of resources.
- For more information, visit www.decp.org

ARIDE

- ARIDE was created in an effort to increase education and training among patrol officers more broadly.
- Designed to bridge the gap between SFST and the DEC program in that it is an additional 16 hours of training but does not amount to the level of knowledge and training that DREs receive.
- The program trains officers to observe and identify signs of drug-related impairment.
- Can be delivered in-person or online (free of cost to interested agencies).

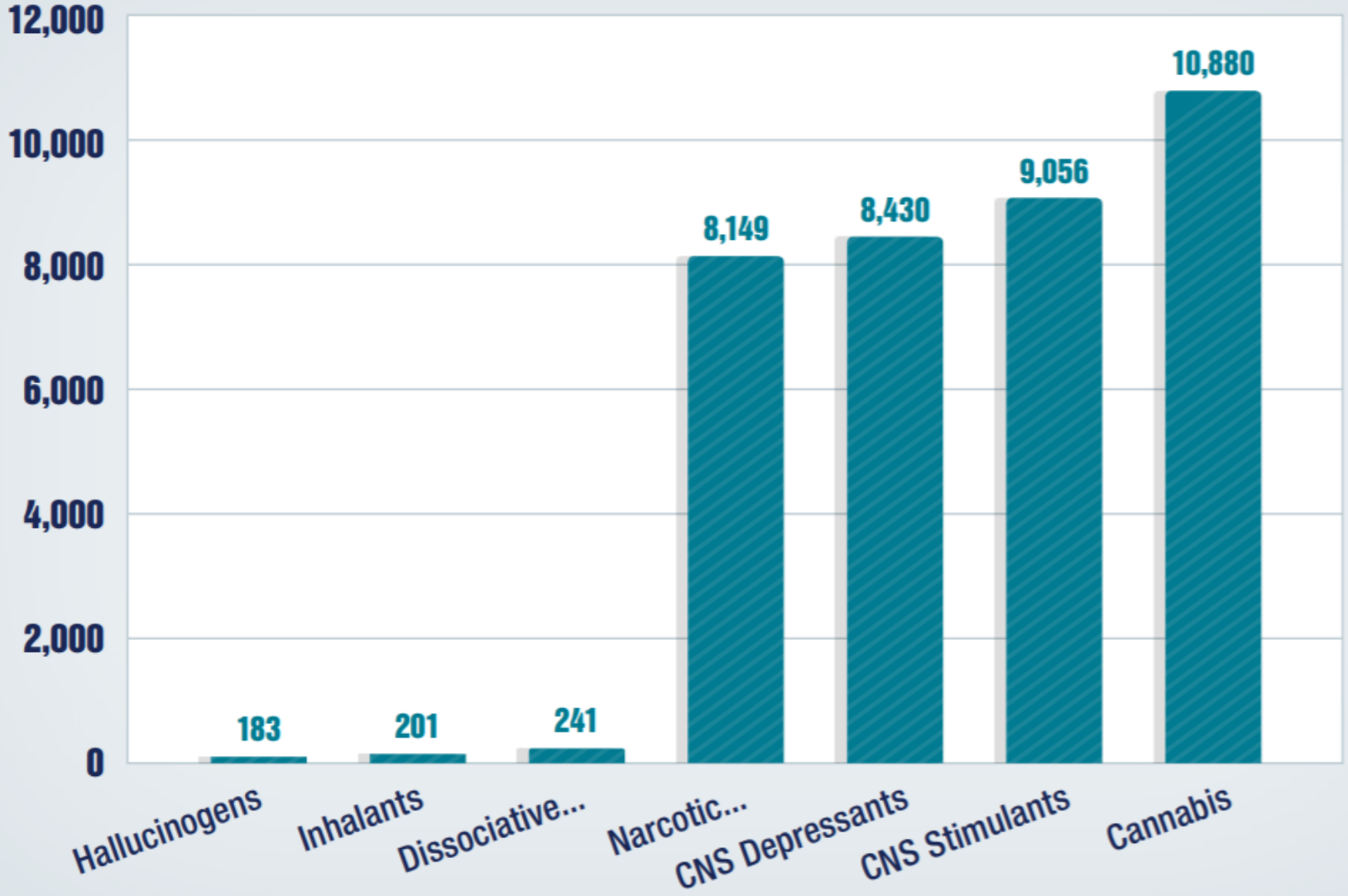
DRE

ENFORCEMENT EVALUATIONS 2010 – 2015



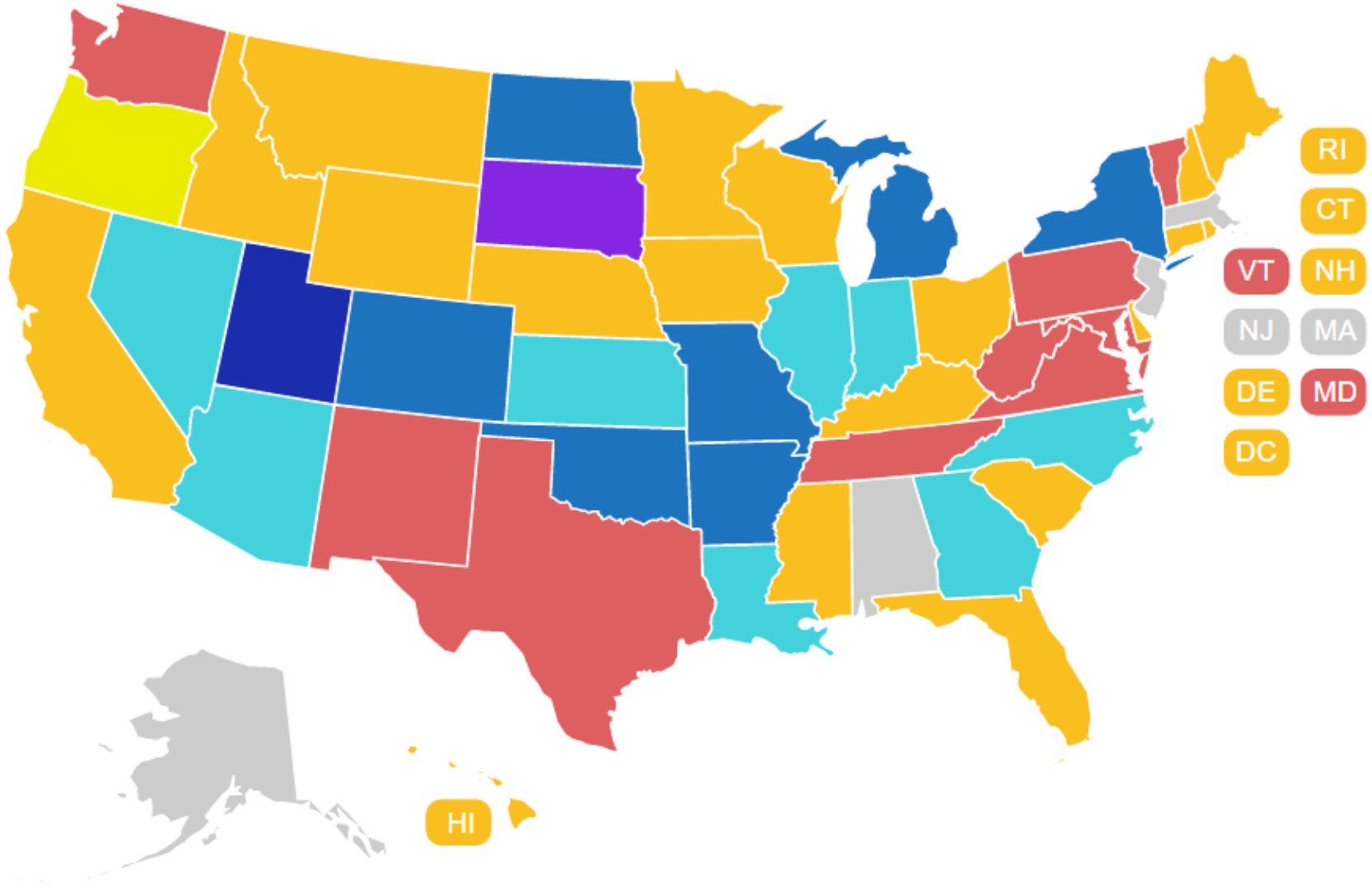
2015 DRE Enforcement Evaluation Opinions

BY DRUG CATEGORY



DUID testing

Testing method	Location	Pros	Cons
Oral fluid/saliva	Roadside (screening)	- Identifies presence of recent use - Easy to administer - Inexpensive - Results in less than five minutes	- Quality of kits varies - Not overly sensitive, especially for cannabis - Not specific; generally test for drug classes - Short window of detection
Blood	Laboratory (evidentiary)	- 'Gold standard' - Conclusive, sensitive, and specific	- Short window of detection - Expensive (e.g., $300 in CO) - Requires trained individual to conduct blood draw
Urine	Laboratory (evidentiary)	- Long window of detection - Conclusive, sensitive, and specific	- Officers must observe suspects - Expensive
Oral fluid/saliva	Laboratory (evidentiary)	- Conclusive, sensitive, and specific	- Short window of detection - Very expensive - Few qualified labs



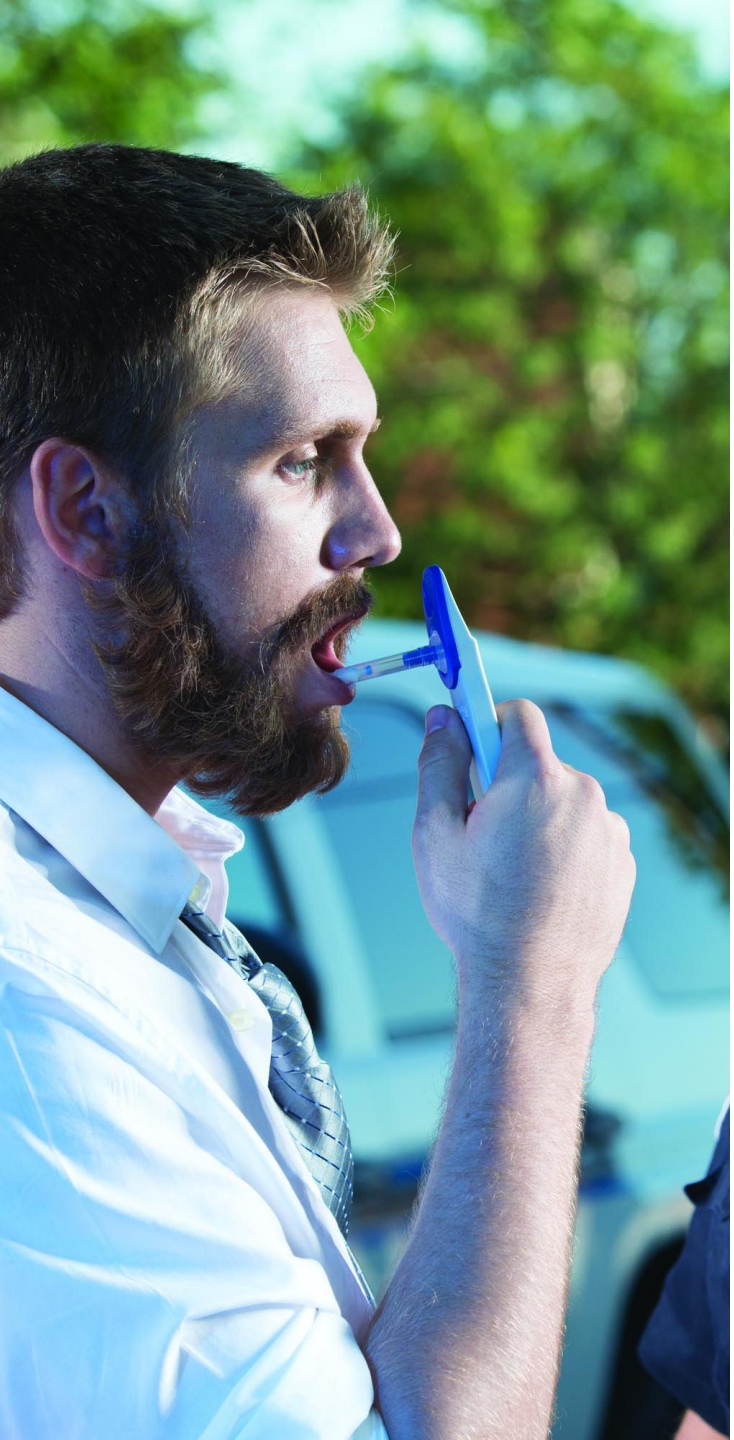
STATE LAW: DUID: IMPLIED CONSENT TESTING METHODS

- Blood
- Urine
- Blood and urine
- Blood and other bodily substances
- Blood, urine, and saliva
- Blood, urine, and oral fluid
- Blood, urine, and other bodily substances
- Does not extend to drugs

States w/OF implied consent provisions

Saliva	Oral fluid	Other bodily substances
Arkansas Colorado Michigan Missouri New York North Dakota Oklahoma	Utah **17 states**	Arizona Georgia Illinois Indiana Kansas Louisiana Nevada North Carolina South Dakota

Source: Walsh (2009); NMS Labs (2014); NAMSDL (2016).



Oral fluid testing

- Would provide objective data to justify a DUID arrest and to require a blood or urine sample for an evidential test.
- Pilot testing of roadside oral fluid screening is ongoing throughout the country (e.g., CA, KY, OK).
- Several states have introduced legislation to either add oral fluid/saliva language to implied consent statutes or to establish their own pilots (e.g., MI, MD).

Police in Michigan will begin testing drivers' saliva for the presence of drugs during a pilot program in five counties that began in Nov.

Future testing methods

Cannabis breathalyzers

Intelligent fingerprinting

Prosecution issues

- Many prosecutors and judges are not familiar with drugged driving cases.
- Due to laboratory backlogs, drug test results may not be available when a DUID case goes to trial.
- Prosecution can be difficult because judges expect a specific drug concentration; they may not accept DRE evidence of impairment.
- Need to overcome jury perceptions with respect to marijuana harm and performance on SFSTs.

What can states do?

Train practitioners

- Law enforcement (ARIDE and DEC)
- Prosecutors (NTLC, TSRPs)
- Judges (JOLs, National Judicial College)
- Probation (NHTSA/APPA Probation Fellow)

Testing/tools

- Develop accurate, inexpensive, and convenient roadside testing devices (e.g., oral fluid)

R.org partnered with GHSA and Shaq to provide $20,000 grants to states to increase the number of officers trained in ARIDE or certified as DREs.

CHALLENGE PUBLIC PERCEPTIONS

Perceptions of risk

- **There are many common misperceptions about drugged driving, specifically marijuana-impaired driving:**
  - Drugged driving is not a serious problem.
  - Some drug use does not adversely affect driving ability.
  - Some drug use improves driving ability (due to compensation strategies).
  - Driving high is a safer alternative to driving drunk.
  - Driving high isn't illegal.
  - The likelihood of detection and apprehension for drugged driving is low.

Washington Roadside Survey

- Survey conducted by PIRE in June 2014 (prior to start date for recreational sales).
- Voluntary participation of drivers; included THC questionnaire and oral fluid sample.
- Of the 220 drivers who stated that they had used marijuana in the past year, 44% reported using marijuana within two hours prior to driving.
  - 62% felt that their recent marijuana use did not make any difference in their driving;
  - 25% felt that recent marijuana use made their driving better;
  - Only 3% felt that recent marijuana use made their driving worse.

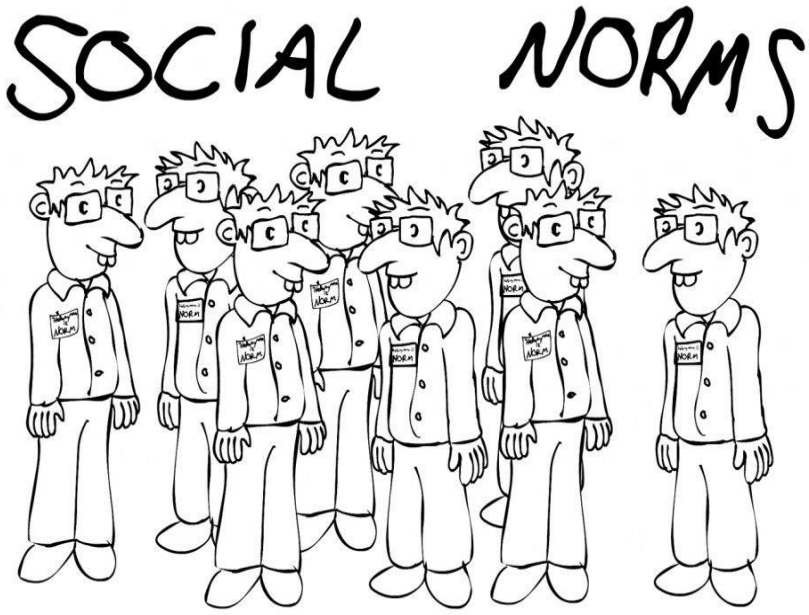
Teen perceptions

- Survey of 2,800 teens from high schools across the country and 1,000 parents of licensed teenage drivers.
- 22% of teens admit that driving under the influence of marijuana is common among their peers.
- 33% of teens perceive it to be legal to drive under the influence of marijuana in states where it is legal for recreational use; 27% of parents agree.
- 88% of teens think driving under the influence of alcohol is dangerous but only 68% think driving under the influence of marijuana is dangerous. Among parents, it is only marginally higher – 93% vs 76%.
- Overall, the study indicates that teens are receiving mixed messages.

What can states do?

Education

- Survey public opinions and attitudes
- Develop and implement a campaign
- Develop targeted messaging for high-risk groups
- Do community outreach



Colorado: *Drive High, Get A DUI*


GRINDING ONE
CAN CRASH THE OTHER
DON'T DRIVE HIGH

CONSUMING CAN CAUSE CRASHING.

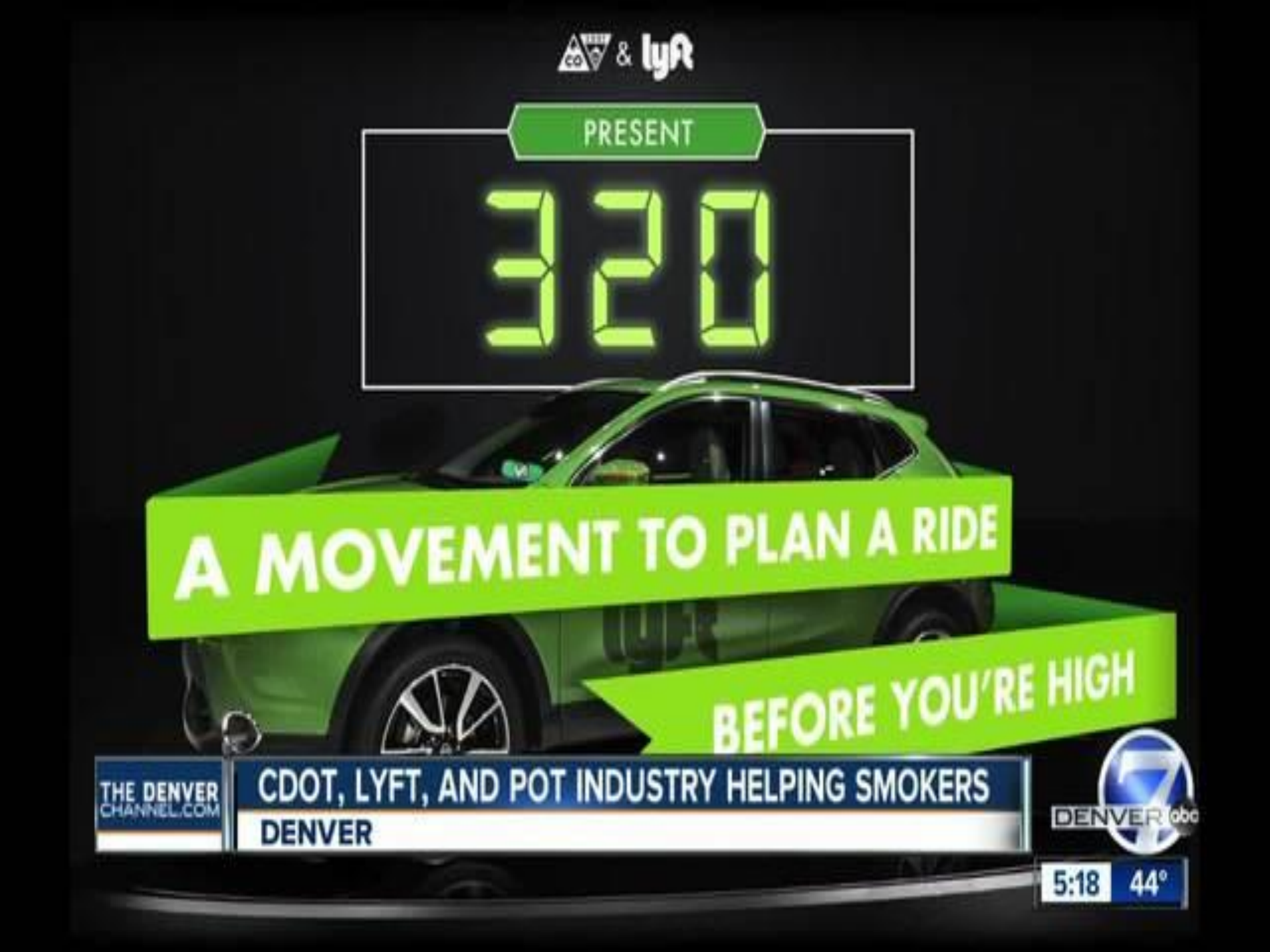
It takes up to two hours for an edible to affect you.
Don't be behind the wheel when your high hits.

IF YOU'RE HIGH, DON'T DRIVE.

DRIVE HIGH GET A DUI

CDOT COLORADO Department of Transportation

CO COLORADO MOVING TOWARDS ZERO DEATHS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PRESENT
320
A MOVEMENT TO PLAN A RIDE
BEFORE YOU'RE HIGH
THE DENVER CHANNEL.COM
CDOT, LYFT, AND POT INDUSTRY HELPING SMOKERS
DENVER
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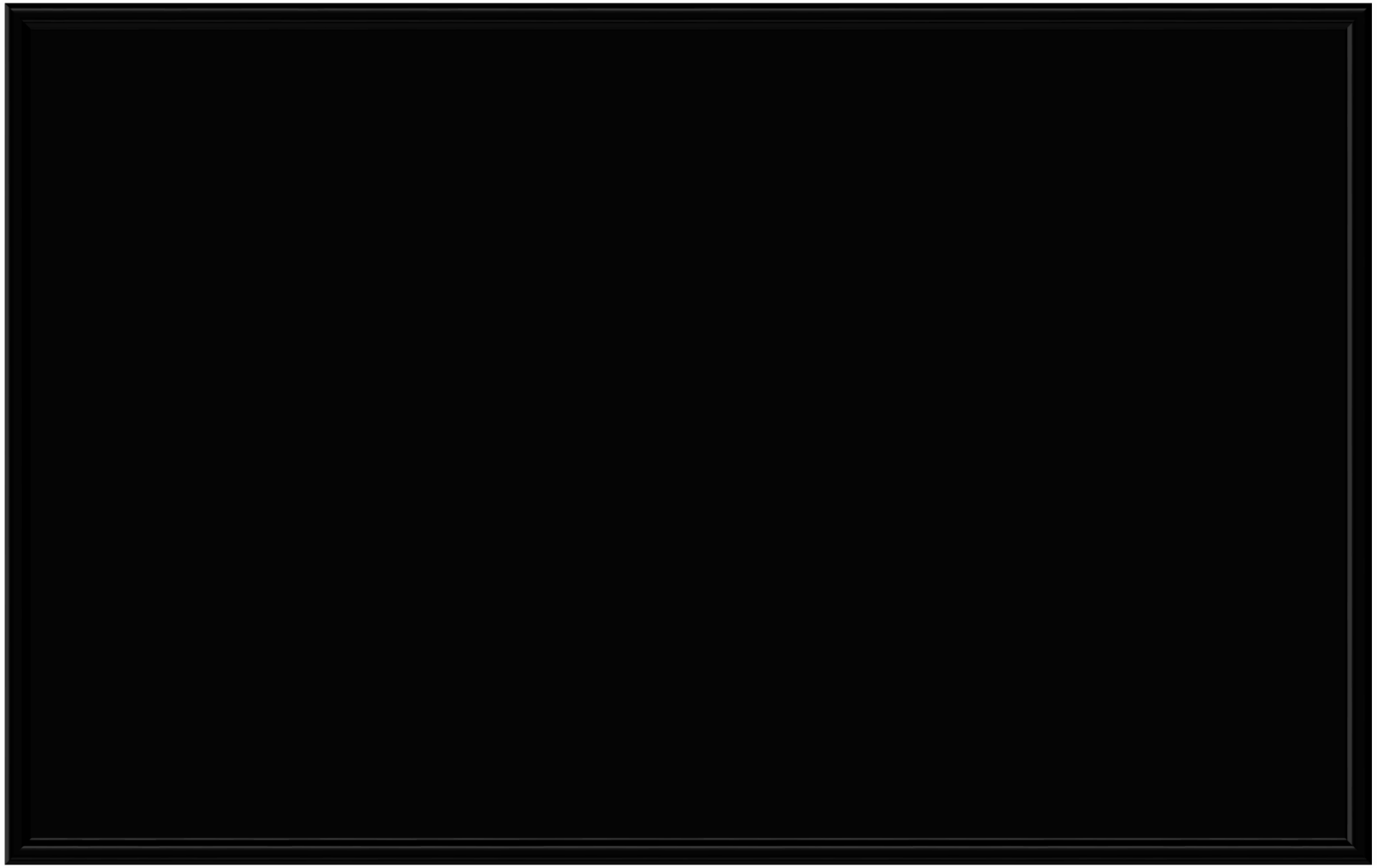
5:18
44°

R.Org: *Drive Like You Give A #&%@!*



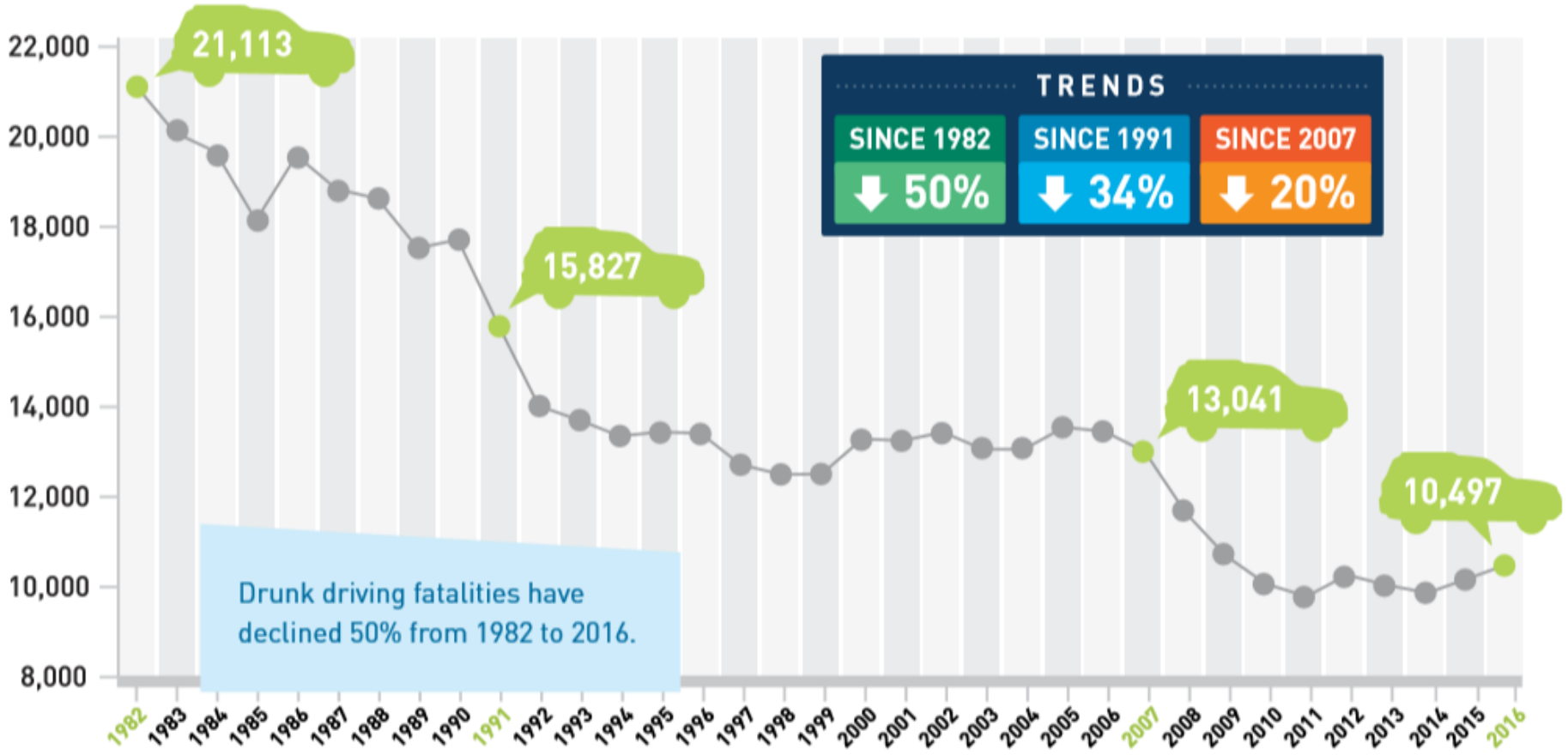
California: *DUI Doesn't Just Mean Booze*

HOW DO WE SOLVE THIS PROBLEM?

Alcohol-Impaired Driving Fatalities 1982-2016

Learn more at
Responsibility.org

TOTAL ALCOHOL-IMPAIRED DRIVING FATALITIES



Source: NHTSA/FARS, 10/17

Why have we made progress?

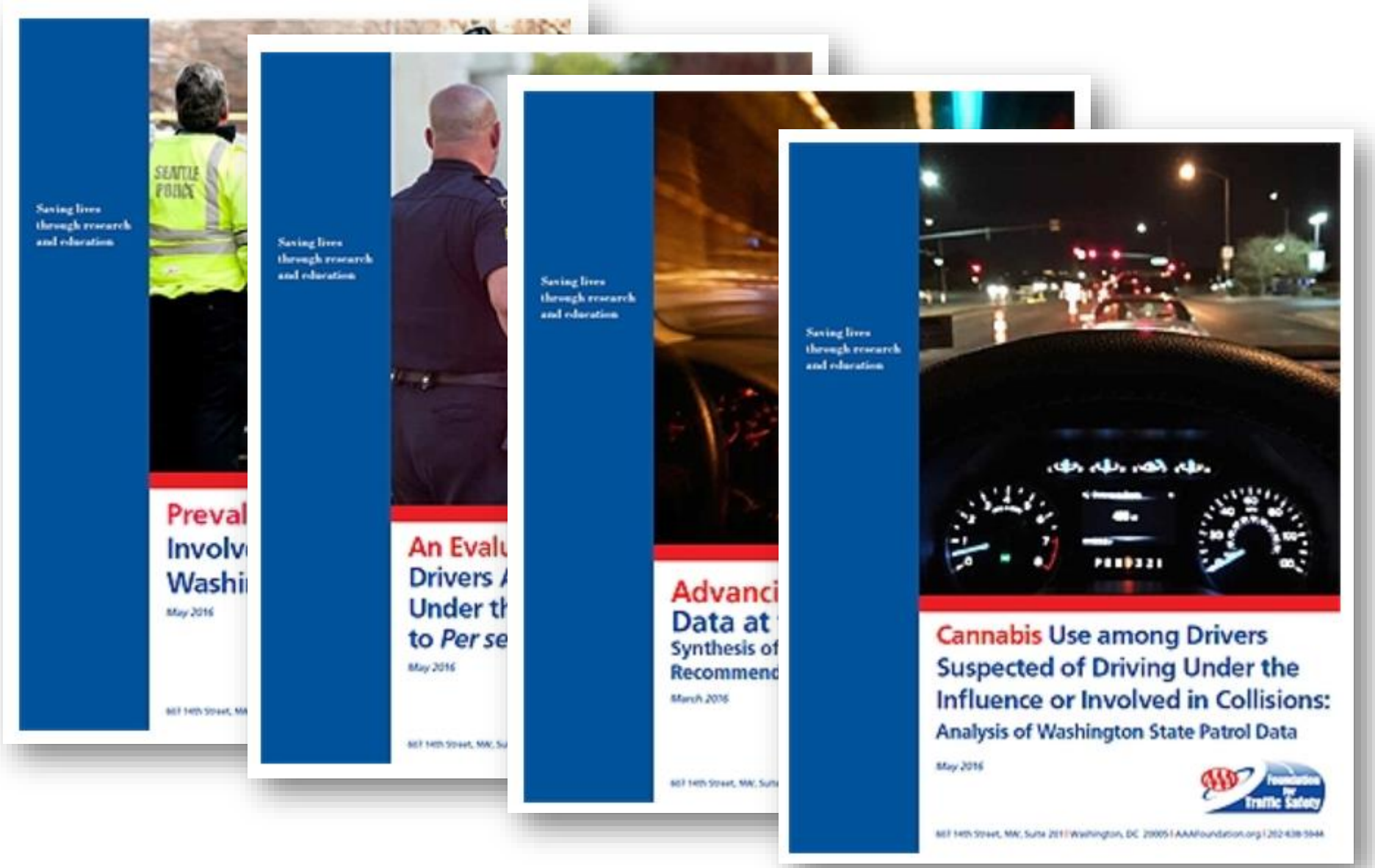
- Passage of laws to target multiple facets of the problem
- Sustained and high visibility enforcement efforts
- Identifying the countermeasures that work; evaluation and strengthening of programs
- Targeting high-risk offenders
- Assessment and treatment
- Public education and awareness
- Changing societal norms

RESOURCES

Report authored by Dr. Jim Hedlund

Recommendations formed by an expert panel consisting of representatives from:

- NHTSA
- ONDCP
- GHSA
- National Traffic Law Center
- AAMVA
- Colorado HSO
- WTSC
- Institute for Behavior and Health
- Responsibility.org



AAA studies: https://www.aaafoundation.org/impaired-driving-and-cannabis

POLICY OPTIONS

Establish a state task force to address DUID.

Include every facet of the DUI system, including advocacy groups and other interested parties, to create a strategic plan to prevent and reduce DUID.

Require treatment if indicated by an assessment.

Tie treatment completion to re-licensing as a condition of probation.

Provide more tools to law enforcement.

- Provide funding to train officers (DRE/ARIDE).
- Launch an oral fluid pilot program to identify DUID drivers effectively and efficiently.

Increase the number of DUI or hybrid DUI/Drug Courts.

Increase the number of DUI or hybrid DUI/Drug Courts in your state to deal with the highest-risk offenders (e.g., repeat offenders). These programs are highly effective in reducing recidivism and saving costs.

Establish enhanced penalties for polysubstance-impaired driving.

Drugs used in combination or with alcohol cause greater impairment and heighten crash risk. This justifies tougher sanctions similar to those in place with drivers who have high blood alcohol concentrations (BACs of .15 >).

Improve your state's DUID data collection.

- Mandate alcohol and drug testing of all fatally-injured drivers.
- Encourage alcohol and drugs testing for surviving drivers in fatal and serious-injury crashes.

Create parity in sanctions between DUI and DUID where appropriate.

Many states have unequal penalties for DUI and DUID.

Mandate screening and assessment.

All impaired drivers need substance use and mental health disorder screening/assessment to identify underlying causes of offending and to reduce recidivism.

Establish a zero tolerance law for all drugs, including marijuana, for drivers under the age of 21.

Impairment plus inexperience increases youth crash risk relative to other age groups. This law establishes parity with existing zero tolerance laws for alcohol for drivers under the age of 21.

Separate DUI and DUID statutes.

It is important to accurately quantify alcohol, drug, and polysubstance-impaired driving and not report all three as a single behavior.

Ensure that the language in your DUID statute is broad enough.

Ensure that the language in your DUID statute is broad enough to include inhalants and emerging synthetic/designer drugs.

Additional Sources

For more information about DUID, refer to **Drug-Impaired Driving: A Guide for What States Can Do**, produced by the Governors Highway Safety Association (GHSA) with funding from Responsibility.org. It summarizes the state of knowledge on DUID and identifies state actions to address the problem.


QUESTIONS?

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