CRITICAL DUI SYSTEM REFORMS: LAW ENFORCEMENT

Facilitate comprehensive and efficient alcohol and drug testing during DUI investigations.

Call to Action

To reduce recidivism and intervene in a meaningful way, the system must do a better job of identifying drug and multi-substance impaired drivers. These individuals can be identified early in the process during DUI investigations. Therefore, a system improvement priority is facilitating comprehensive and efficient alcohol and drug testing.

To identify high-risk individuals, officers must be able to efficiently collect blood or other chemical samples in DUI cases and analyze them to identify drug presence. To make this process as efficient as possible, three strategies are recommended:

- Develop and implement electronic **warrant systems** to facilitate the timely collection of blood samples in DUI cases when people refuse to provide samples voluntarily.

- Train and certify **law enforcement officers as phlebotomists** to reduce the length of time required to obtain a blood sample and safeguard against other issues (e.g., chain of custody, medical personnel testimony, hospital policies/procedures, etc.).

- Use **oral fluid testing** to screen all DUI suspects, including those above the legal alcohol limit, to identify recent drug use. This practice can identify multi-substance users who historically avoid detection and possibly reduce lab costs as the analyses run in these cases could be informed by the oral fluid results.

Challenge/ Background

DUI is the only crime where the investigation stops after minimal evidence is obtained according to standard operating procedure (SOP). If a law enforcement officer observes impairment and can detect a blood or breath alcohol concentration (BAC or BrAC) level above the legal limit, they typically do not check for drugs. This approach saves time and money. In fact, in some states there are policies in place that prevent laboratory testing for the presence of drugs when a BAC is above .08 or .10 unless a request for additional testing is made.

Unfortunately, the result of this current practice is that many drug and multi-substance impaired drivers escape detection. Two negative repercussions result from this policy. First, the magnitude and characteristics of the drug-impaired driving problem are not accurately captured because a large segment of the population (i.e., multi-substance impaired drivers) is not identified. It is difficult to prioritize the issue if data is limited. Second, failure to identify drug use can have significant implications in the criminal justice process. If an individual is adjudicated for DUI and there is no reason to suspect that drug use is an issue, that person will likely be subject to assessment, monitoring, testing, and treatment that is specific to alcohol. If drug dependence is also an issue, it may be overlooked, and the system misses opportunities to make informed decisions regarding sentencing, supervision and treatment. This leads to recidivism and public safety concerns.

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Challenge/ Background

Emerging fatality data as well as oral fluid pilot testing of drivers above the legal limit reveal that a significant number of alcohol-impaired drivers are multi-substance impaired drivers who currently are not identified under normal SOPs. Research shows multi-substance impaired drivers have significantly greater impairment and higher crash risk. If these individuals enter the system as DUI alcohol offenders, they are likely to be assessed for the presence of alcohol use disorder, subject to monitoring conditions such as the use of an ignition interlock and referred to alcohol education or treatment. If drug issues are also present but conditions are not put in place to monitor drug use, behavior change is unlikely. If multi-substance offenders recognize that their drug use will go undetected and unsanctioned, they will not be inclined to change their behavior. This lack of accountability may explain why 25-30% of the impaired driver population continues to offend regardless of the sanctions and/or treatment imposed. Research has shown that better outcomes are produced when risk level and criminogenic needs are accurately identified, and individuals are paired with treatment interventions that match their specific needs.

To prevent the revolving door effect that is common among high-risk impaired drivers, it is imperative that multi-substance impaired drivers be identified to ensure that these cases are processed in a way that facilitates informed decision-making and maximizes accountability. Practitioners cannot monitor or treat what they fail to identify. The first opportunity to identify multi-substance impaired drivers occurs at roadside.

Strategies to Implement Solutions

Jurisdictions are encouraged to explore the feasibility of implementing all of these solutions. While the use of each solution in isolation will help streamline DUI investigations, used in combination these strategies could greatly enhance the efficiency of the process that law enforcement currently uses to obtain chemical samples in impaired driving cases. The added benefit of implementing these strategies is that it provides an opportunity to collect evidence in a timely manner thereby preserving chemical evidence that rapidly metabolizes within the body. E-warrant systems and law enforcement phlebotomy programs are proven tools and oral fluid testing is beginning to be tested and adopted by law enforcement agencies internationally.

For law enforcement agencies that do not have any of these solutions in place, it is recommended that one be prioritized, and the others incorporated over time as resources permit. Regardless of which solution is selected, jurisdictions should consider the following, which apply to the implementation of any new program, protocol, or practice.

Strategies to Implement Solutions

- **Learn lessons from other jurisdictions and agencies** – the good news is that many jurisdictions have implemented each of these solutions and their experiences can be instructive. Agencies that are considering e-warrant systems, law enforcement phlebotomy programs, and/or oral fluid protocols are encouraged to connect with other jurisdictions that have already navigated these implementation processes. There is no need to "re-invent the wheel" and agencies might be able to address challenges or barriers at the outset by learning from the success and failure of counterparts. Other agencies might also have resources, templates, and forms that can be shared and replicated saving both time and money.

- **Designate one agency as the main authority** – a single agency should take the lead and be responsible for coordinating and overseeing all efforts related to the implementation of the initiative. This agency should convene stakeholders, oversee development and planning, and make necessary decisions regarding implementation. The advantages of having one agency assume this role is that it streamlines the process, reduces the potential for confusion, and keeps all entities organized and aligned. This agency serves as a central hub, keeping all stakeholders abreast of developments, timelines, and issues while simultaneously working to ensure that all parties remain goal-oriented and focused.

- **Utilize a collaborative approach and involve all relevant stakeholders** – during the early planning stages it is imperative to convene representatives from agencies that will be affected by the initiative. This is likely to include law enforcement agencies, prosecutors, judges, and other criminal justice entities. By convening stakeholders early and often, the lead agency can coordinate efforts and address concerns. If a diverse group of stakeholders has a voice in the process, unforeseen issues can be anticipated and addressed and buy-in can be obtained. Communication with stakeholders should continue throughout the planning, development, and implementation phases to elicit feedback and support for the effort.

- **Identify specific goals and develop an action plan** – the lead agency in consultation with stakeholders should map out what the proposed change entails and how it will improve upon existing practice. To accomplish this task, the lead agency should clearly state the problem to be solved, develop a series of goals and objectives, and outline the steps needed to achieve each goal. The action plan should include information or data that must be gathered, specific action items needed, and timelines to accomplish each task. Robust planning can facilitate successful implementation and keep the initiative on track if unanticipated issues arise.

Strategies to Implement Solutions

- **Identify issues that require legislative support** – Legislation may be required to implement one or more of the proposed solutions. Even when not required, legislation can provide agencies with additional authority and appropriations to assist in their efforts. Part of the early planning process should involve review of existing statutes to determine whether changes can be made to strengthen practice. Policymakers should be educated about the purpose and goals of the effort and enlisted to support DUI system improvements. If legislative changes are needed, policymakers can introduce bills that will aid agencies in accomplishing their goals.

- **Identify funding sources** – an integral part of the planning process for each solution is a high-level cost estimate for the development and/or implementation of these programs. One benefit of involving multiple stakeholders in this process is the potential to pool resources so that no single agency assumes the burden of funding the entire initiative. Various funding sources should be explored (e.g., state or grant funding, fees for cost recovery, and other creative solutions) to determine their viability. Policymakers can also be consulted to determine whether appropriations can be set aside to support the implementation of these system solutions.

- **Offer consistent training** – in advance of the implementation of any new practice, consideration must be given to the training of practitioners who will be responsible for implementation. Regardless of whether the solution is an e-warrant system, phlebotomy program, or oral fluid protocol, an agency should be responsible for developing comprehensive and consistent training to prepare officers. There are multiple training approaches that could be utilized including self-guided training, in-person training, online help resources; jurisdictions are encouraged to use the approach that will be best received among the target audience and to update content as necessary or based on feedback.

- **Pilot test: start small and expand** – when implementing any new system or practice, the initiative should begin with an initial pilot. This small-scale testing period provides an opportunity to build support for the new process and to address any issues that arise. Pilots provide an opportunity to learn lessons, obtain feedback from frontline practitioners, and identify ways to improve practice before the solution is instituted in multiple jurisdictions.

**Strategies to
Implement Solutions**

- **Evaluate and refine as necessary** – the advantage of pilot testing any new practice is that it provides the opportunity to evaluate what is being done and determine whether desired results are being achieved. Evaluation should be incorporated into the implementation plan and when the solution is piloted, data must be collected. By evaluating outcomes, agencies are better positioned to make the case to legislators or other decision-makers that the proposed solution is warranted and that investment in this practice will produce positive outcomes.

- **Educate the public** – to have a deterrent effect, the public must be aware that law enforcement has tools at their disposal to collect chemical samples and identify individuals who have consumed alcohol and drugs. If the public understands that breath test refusal will lead to a blood draw, they may be less likely to refuse. Moreover, if people understand that both blood and oral fluid tests can be analyzed to identify the presence of drugs in the body and that these tests can be used to build an impaired driving case, they may think twice about driving after using drugs. Media campaigns and coverage should occur around the time of these program launches. The public should be educated about the purpose of each program and how law enforcement will use these tools to remove impaired drivers from the roads.

**Electronic
Warrant Systems**

With the advent of new technology, lengthy and time-consuming processes for obtaining search warrants are becoming a relic of the past in many jurisdictions. Electronic warrant systems (commonly referred to as E-warrants) provide a mechanism for officers to obtain accurate BAC or toxicology results in a timely manner. This can help ensure that DUI offenders are held accountable for their actions.

E-warrants are diverse and can range from a very simple Microsoft Word document or an Adobe Acrobat file (PDF) to an online, fillable form. The process by which E-warrants are stored and transmitted is known as the e-warrant system.

Benefits of This Practice Include:

- Incorporates forms that make it easier for officers to draft warrants.

- Streamlines the warrant drafting, submission, and approval process which reduces the potential for errors and omissions and strengthens DUI cases.

- Reduces the amount of time that officers are "off the street" and the amount of time between the request, approval, and execution of the warrant.

- Produces fewer continuances, which in turn reduces the amount of overtime pay to law enforcement officers who are often required to appear at court each time a case is reset.

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Electronic Warrant Systems

- Reduces workload due to being able to access warrants electronically (i.e., in the squad car via a tablet or laptop).

- Strengthens DUI cases by ensuring that BAC and toxicology results are available. This can lead to faster case resolutions and lessened burden on the system.

- Improves sentencing as toxicology results can guide judges in ordering assessments needed to ensure that appropriate supervision conditions and treatment interventions are ordered.

- Produces a deterrent effect by educating the public that officers can easily obtain warrants for blood draws if a suspect refuses testing.

By automating the warrant process, law enforcement officers have a streamlined tool for pursuing justice and ensuring that individuals who drive while impaired are held accountable for their actions.

Among jurisdictions that have implemented E-warrants and e-warrant systems, the benefits of doing so have far outweighed any concerns about the impact on officers and courts for having to obtain warrants for all DUI blood tests.

Steps for Successful Implementation of E-warrant Systems

The Justice Management Institute (JMI) with support from Responsibility.org, produced an e-warrant implementation guide and case studies that offer insight into the planning, development, and implementation of these systems. The following outlines some of the steps that interested stakeholders should follow when creating and launching their own system:

Planning and Development:

To begin, one agency must assume responsibility for coordinating the e-warrant initiative. Four key steps must occur during this initial phase including identifying and engaging relevant stakeholders in the process, engaging in high-level preparation to determine the scope of the project, analyzing business processes, and determining technological requirements needed to implement the e-warrant system. Actions required to accomplish each of these tasks are outlined in detail.

Steps for Successful Implementation of E-warrant Systems

- **Identify and engage agencies and individuals.** Early collaboration is key, and this should involve convening traditional and non-traditional partners including law enforcement, prosecutors, judges, and IT personnel. Other individuals that should be consulted include legislators, laboratory technicians involved in the analysis of blood tests, the defense bar, county or state government representatives, state department of transportation/office of highway and traffic safety, traffic safety resource prosecutors (TSRPs), sheriffs and police chief associations, and the state driver licensing authority.

- **Engage in high-level preparation** – this step commences after a collaborative project management team is selected to oversee system development. Important tasks include:

  o Clearly state the problem to be solved (i.e., articulate what issues the eWarrant system will address) and define the goals and objectives of the project.

  o Determine who will conduct an analysis of the current process for requesting and issuing warrants.

  o Identify who will be the lead organization to manage the analysis.

  o Determine whether an existing system already has a built-in solution.

  o Designate one agency/entity with the authority and responsibility to address future issues as they arise.

  o Develop a budget based on in-house estimates, information from other agencies that have implemented their own systems, and consultation with vendors and consultants.

  o Map a planning process in terms of time, resources, and responsible parties.

  o Procure technical assistance if using a consultant.

- **Analyze business processes.** For an e-warrant system, the analysis will likely deal with software, hardware, and existing processes. The business analysis will typically take between six to nine months to complete and involve the following steps:

  o Undertake information-gathering (e.g., collect data and gather existing process documentation; conduct interviews and site visits to gather requirements from key stakeholders and users; conduct statutory research).

  o Map the existing "as-is" business processes (e.g., use information gathered to create a narrative description, workflow diagrams, user lists, and data/document indexes and repositories).

  o Map the new, proposed business processes (e.g., complete a business requirements document, requirements traceability matrix, workflow diagrams, business rules, and user roles and permissions).

Steps for Successful Implementation of E-warrant Systems

o Identify all data and information exchange touchpoints.

o Catalogue all forms and documents to be automated.

o Define administrative tools (i.e., identify who requires access and to what degree as well as the particular values or items that need to be included in order to navigate through the system).

o Specify performance requirements (i.e., anticipate agency decision-maker and frontline staff expectations for system performance and work with system developers to mitigate issues and ensure that the system functions to meet the needs of its users).

• **Determine technological requirements.** A business process analysis for an e-warrant system will need to be paralleled or followed by an analysis of the technological requirements, which should involve state or county IT personnel to help understand what technology options are available currently and what may be needed. Throughout this process, consideration must be given to security and privacy issues related to any existing platform or a new platform to be developed, in addition to the design features. To produce a system that practitioners support, it is necessary to identify the expectations that law enforcement, prosecutors, and judges have about how the system should operate, particularly in terms of how they will access and use the system.

• Ideally, the e-warrant system can be built onto an existing platform. Use of an existing platform can reduce the need for user hardware, benefit from use of existing access and security protocols, and streamline the implementation process. However, if a new system is needed, the development of technology requirements can be conducted in parallel with a business process analysis but should be predicated on business requirements.

o Perform technology information-gathering (i.e., document existing technologies and infrastructure including network diagram, network hardware and software (including bandwidth, security, access controls, and operating systems) host systems, end-user hardware and software, and mobile technologies that may be used by law enforcement or other stakeholders).

o Conduct a technology gap analysis to assess whether the existing network and application technologies will support a solution, or whether the foundational technologies need to be upgraded/supplemented.

o Define architecture of the new system (i.e., identify the key components and delineate which agencies or entities have ownership of each of these components).

o Define suite of technologies that will meet the needs for the e-warrant system (e.g., if the jurisdiction is currently using faxed affidavits and warrants, how much will the system simply mirror a document management exchange in digital format?).

Steps for Successful Implementation of E-warrant Systems

Funding;

The cost of e-warrant systems varies significantly from one jurisdiction to another and largely depends on system functionality. Larger statewide systems that grant access to multiple agencies and perform a number of functions are likely to be more costly than basic systems. Costs may also vary depending on the technical capabilities that agencies already have in place. Some jurisdictions may be better positioned to implement an e-warrant system than others based on work that has already been done

One of the important tasks to accomplish during the high-level preparation phase is determining early cost parameters and developing a realistic estimate of the funds needed to develop and implement the system. This initial estimate can be revised over time as more planning occurs and there is a better understanding of what upgrades are needed to existing processes. All agencies can anticipate that a project of this nature will involve hardware and software costs as well as personnel costs for programming. There may also be costs associated with hiring consultants to conduct business process analyses. A good planning process should take all possible costs into consideration to identify opportunities for multiple funding sources and cost-sharing.

Agencies should be creative in identifying ways to offset e-warrant costs. While common options include criminal justice and highway safety grant funds, there are other options available. If legislators are involved in the process, they can request appropriations to fund the project and the maintenance and/or expansion of the system. Other options include recovering costs from state DUI funds or levying additional fees against offenders.

Policy and Operations:

To ensure that the e-warrant system operates in an effective manner, there are several policies that should be considered and addressed prior to implementation. These include:

Steps for Successful Implementation of E-warrant Systems

- **Authentication and security.** User authentication is paramount for ensuring that judges can identify the law enforcement officers with whom they are dealing and vice versa. Authentication and security risks decrease if the system is both secure and verifiable at each end of the communication and if the network is secure. As e-warrant systems are created, agencies must determine what user identification methods are required as well as what network security measures must be put in place. If there are not current authentication and security protocols in place for other systems that can be incorporated into an e-warrant application, jurisdictions should consider conducting a security needs analysis.

- **Officer's oath and swearing to factual statements.** One of the challenges to an e-warrant system is the need to take officers' oaths and have them swear to the facts contained within the warrant. In many places, statute or local rule requires this be done in-person, which can present a barrier to the timely issuance of the warrant. In some jurisdictions, it may be necessary to engage the courts in changing the administrative rules of criminal procedure to allow probable cause statements to be sworn in electronically or digitally. In other instances, legislation may need to be changed. Some options for addressing oath issues include: adding a penalty of perjury statement on the warrant (i.e., declaring the facts stated in the warrant to be true and correct) which is then signed and dated; allowing the swearing-in to occur over a recorded telephone line or video conference; or allowing law enforcement officers to swear in other law enforcement officers.

- **Warrant retention.** Agencies must also determine how long, and where, pending and executed warrants must be retained. In making determinations about the retention policy, some questions to consider include: Are there statutory requirements for the retention of records, specifically warrants? Which agency will have responsibility for storing the warrants? What is the impact on storage space (largely determined by length of retention policies)? For what purposes might someone need access to stored warrants, and who would be authorized to access these documents?

Steps for Successful Implementation of E-warrant Systems

Implementation:

The implementation of any e-warrant system should begin in a limited capacity. Going "live" in too many jurisdictions or involving too many agencies in the initial rollout could lead to significant complications if there are system malfunctions. The best course of action is to start small, refine as needed, and expand over time.

Pilot testing. To identify potential challenges or issues with a new e-warrant system, many jurisdictions opt to run a pilot in either a single jurisdiction or among a select group of practitioners (i.e., one law enforcement agency and several judges). Many of the current statewide systems, such as the e-warrant systems in Arizona and Utah, began in a single jurisdiction with a single law enforcement agency. The pilot test validates the processes and functionality of the system, identifies potential glitches in the software, and highlights any unforeseen challenges. The pilot test also provides insight into whether existing training is adequate or any areas of additional resistance to change that may need to be addressed.

During and following the pilot test, it is important to collect and assess feedback. Both user experience and system performance should be analyzed to inform improvements and identify other concerns that must be addressed before the system is ready to be implemented more broadly. Standardized questionnaires to solicit user feedback, along with metrics on system performance, are both useful tools for documenting the pilot test process.

Training. To ensure that users of any e-warrant system can navigate the system efficiently, proper training is necessary. The better and more comprehensive the training, the less likely that users will encounter problems, thus minimizing frustration with the process and increasing acceptance and support for the system's use. The following steps should be completed to ensure comprehensive training is implemented:

- Identify agencies that may require training and education on system implementation and use.

- Identify responsible entity for developing a training curricula and associated materials.

- Identify who will be responsible for conducting training.

- Develop a standard training curricula and materials for use by all parties to ensure consistency.

- Determine when it is most advantageous to train system users and in what venue.

- Offer continuing legal education (CLE) credits as an incentive for completing the training.

- Update training to reflect user feedback to troubleshoot or avoid complications.

Steps for Successful Implementation of E-warrant Systems

Evaluation. To ensure that e-warrant systems operate effectively and that all practitioners involved are satisfied with the system, ongoing evaluation is critical. By measuring effectiveness, agencies can ensure that the system is meeting its intended goals, identify areas for future improvement, and determine how best to improve implementation and overall system efficiency.

If a jurisdiction is creating an e-warrant system, attention should be given to the types of metrics that can be built into the system as a data dashboard or for regular reporting (e.g., number of system logins; number of warrant requests submitted; number of warrants approved and rejected; average length of time from submission to return of service, etc.). Other metrics that can be helpful are those that document the user's experience. Although these metrics typically are not built into the system itself, a short annual questionnaire or roundtable at the state law enforcement/judicial conference can be used to collect information. Lastly, benchmarking process is important and being able to quantify the impact that the use of these systems has with respect to overall DUI system efficiency and effectiveness is necessary. Not only does this justify the investment in the process, it also provides justification for ongoing use as well as system expansion. An example of one of these measures is showing the amount of time that can be saved by transitioning to an electronic warrant system or reductions in warrant rejection due to errors.

Reform in Action

Minnesota recently implemented added a DUI component to the statewide electronic charging system. In addition to criminal complaints and search warrants, e-Charging is used for electronic citation processing, DUI processing, and law enforcement incident report submission to prosecutors. Minnesota prioritized the development of electronic search warrants for blood draws in impaired driving cases because in addition to court decisions requiring search warrants for blood or urine tests, the state was experiencing a growing number of legal challenges around blood draws and implied consent. These factors combined with a significant increase in blood draw requests and the challenges to obtaining time-sensitive warrants in rural areas provided the needed impetus for the creation of an electronic system.

The Bureau of Criminal Apprehension (BCA) was responsible for the planning, design, and implementation of the eSearch warrant application with a $350,000 grant from the Department of Public Safety's Office of Traffic Safety. To facilitate the development process, a group of stakeholders, including law enforcement, the State Court Administrator's Office, and district court judges, worked together to draft the warrant template. The roll-out began in a limited capacity in October 2016 with a 3-month pilot program in Hennepin County. By mid-November, eight municipal police departments had been added to the pilot, with successive rollouts across the state by judicial district. By April 2017, the system had gone statewide. This launch approach afforded the involved agencies enough time to identify and address system issues before expanding use across the entire state.

The system itself is fairly straightforward and was designed to maximize efficiency for all parties. Officers seeking a warrant for a blood draw simply log into a secure portal to complete and submit an electronic search warrant application to a judge. The system is designed to interface with Driver and Vehicle Services which allows officers to conduct a search based on name and date of birth to confirm the identity of suspects and auto-populate demographic fields (e.g., address; driver's license) as well as vehicle information. On-call judges receive an email with a hyperlink directly to the warrant when one enters the system queue. Upon review of the warrant, judges can either issue it by applying an electronic signature or reject the application. Experienced law enforcement officers can typically prepare warrants in under 10 minutes. Overall, the average processing time, from submission to judicial approval, is between 15- 20 minutes. Since the launch of the platform, error rates on forms have been reduced from 30% to nearly zero and practitioners report that obtaining a warrant in impaired driving cases is far easier and more efficient.

For more information about Minnesota's e-Charging platform and other examples of robust e-warrant systems, including programs in Arizona and Utah, refer to these case studies.

E-warrant systems are becoming increasingly common and guidance on how to implement these systems can be found in the Guide to Implementing Electronic Warrants.

The International Association of Chiefs of Police (IACP) and the National Sheriffs' Association (NSA) passed joint resolutions in support of the use of e-warrant systems.

A primary concern among law enforcement is being able to obtain blood draws in impaired driving cases as quickly as possible to preserve chemical evidence. Especially in drug-impaired driving cases, the rapid metabolization of substances can result in a weakened case if it takes an extended period of time to get a warrant and transport a suspect to a medical facility to have a blood draw performed. One way to eliminate part of this wait time is to train officers as phlebotomists. Once a warrant is obtained, a certified officer can conduct the blood draw onsite.

Several high-profile cases in recent years involving conflict between law enforcement and hospital personnel have highlighted the need to change current practice. Common issues include concerns over patient and practitioner safety, an unwillingness on the part of the individual drawing the blood to be called to testify in court, and hospital policies that prevent staff from performing blood draws in DUI cases even if a warrant has been obtained. Also, each facility has different protocols and procedures which can create confusion and possible conflict. As a result of these concerns, the training of law enforcement phlebotomists is a viable alternative to current practice.

Phlebotomy Programs for Law Enforcement

There are multiple advantages to the use of law enforcement phlebotomists. Several of these benefits are highlighted in a new toolkit released by NHTSA (2019):

- Decreases the amount of time that passes between the traffic stop and collection of the blood sample. Timely collection reduces the risk of lowered alcohol or drug concentrations in the body which in turn allows criminal justice practitioners to make better informed decisions as the case makes its way through the system.

- Eliminates the need to contract with a phlebotomist and/or pay hospital fees for drawing and testing suspect blood. These costs can range from $40-100 per blood draw.

- Reduce the likelihood of administrative hearings by obtaining blood evidence to strengthen the overall impaired driving case. If prosecutors have strong chemical evidence, it makes DUI cases easier to adjudicate because a positive result shows that the defendant had alcohol and/or drugs in his/her system at the time of the offense.

- Reduces overtime pay that officers incur from waiting at hospitals for blood draws to be performed.

- Improves law enforcement testimony by eliminating issues like chain of custody.

- Facilitates collection of blood samples at the scene of fatal crashes.

- Allows officers to get back on the street quickly because DUI case processing times are decreased when blood draws are performed in-house.

The training of law enforcement as certified phlebotomists is not a new concept and since its initial use, support for this approach has slowly grown in popularity. The Arizona Department of Public Safety (DPS) was the first agency to establish a law enforcement phlebotomy program back in 1995. The primary motivation for establishing this program was to address concerns about the volume of DUI cases that were proceeding to court without a chemical test result on account of high refusal rats. Combined with well-established issues in dealing with hospital staff who needed to perform blood draws and the length of time needed to transport suspects to medical facilities in rural counties, DPS was forced to innovate and find ways to address these issues.

Steps for Successful Implementation of Law Enforcement Phlebotomy Programs:

The NHTSA Toolkit for implementing law enforcement phlebotomy programs offers great insight into the steps that agencies need to follow and issues to consider when establishing this type of program. The following outlines some of the steps include in the toolkit that interested stakeholders should follow when establishing a phlebotomy program.

Phlebotomy Programs for Law Enforcement

Planning and Development:

To begin this process, one law enforcement agency should be selected to serve as a pilot. If the program operates as intended with this agency, then stakeholders can consider expansion to include other law enforcement agencies in the program. The initial planning stage and development of the program begins with a review of state laws to ensure that no legislative changes are needed to grant law enforcement the authority to perform blood draws. Actions required during this initial phase are listed below:

- Identify one law enforcement agency interested in serving as a phlebotomy pilot. This agency does not have to be large and in some jurisdictions, smaller agencies have been selected because it is more manageable to have a few officers trained and then expand the program once it has been implemented for a sufficient amount of time.

- Convene all necessary stakeholders to outline what needs to be accomplished to move forward with the program. This meeting should include law enforcement executives from the chosen agency, frontline officers who are interested in being trained, prosecutors who can offer insight into potential legal challenges (i.e., TSRPs), highway safety office personnel, representatives from the department that oversees phlebotomy programs, trained/certified phlebotomists, and other decision-makers as appropriate (this may include policymakers). Later in the process, media should be informed about the program as they can raise awareness and hopefully, deter impaired drivers from refusing tests.

- Review state statutes and ensure that the testing laws are written in such a way that would allow law enforcement officers to draw blood from a DUI suspect. Identify who can perform this task (i.e., a certified or trained individual). If law enforcement does not meet existing definitions legislative work will be needed, and this will stall the process.

- Develop an estimate of the total costs needed to train officers and administer the program. This includes officer training and certification, re-certification, location for testing, blood draw (venipuncture) equipment, laboratory costs for blood analysis, and possibly salary increases for officers trained as phlebotomists. When the estimate is developed, stakeholders should identify grant funding opportunities and other creative funding mechanisms to help offset the costs.

- Estimate how much money and officer investigation time the implementation of the program will save. It is important to do a basic cost-benefit analysis to demonstrate to decision-makers that this investment will result in significant savings and greater efficiency in DUI cases. Examples of metrics that should be identified include: how much money is saved when officers perform the blood draw as opposed to healthcare professionals, how much time is saved as a result of doing the blood draw at the station as opposed to transporting the suspect to a medical facility, and the number of refusals and whether there is an increase or decrease following the implementation and publicization of the phlebotomy program, etc.

Phlebotomy Programs for Law Enforcement

- Determine the scope of the training required and identify how many officers can be trained as phlebotomists based on existing budget estimates.

- Develop timelines for training and the launch of the program.

- Assign authority for training officers to one entity to ensure consistency. Review the curriculum to ensure that it is sufficient for these purposes. Also, identify any additional training that is required that is not offered by the entity responsible for phlebotomy certification (i.e., protocols for restraining suspects, instructions that must be articulated to suspects, etc.).

Funding:

Similar to e-warrant systems, a lack of funding and resources can hamper the implementation of a phlebotomy program or limit the number of officers who can receive training. During the initial planning phase, an estimate of costs to train officers and administer the program should be generated along with a list of potential funding sources. Highway safety offices are the most common source of funding for these programs and are often the driving force behind them. It was the Arizona Governor's Office of Highway Safety that was responsible for funding the first phlebotomy program in the mid-1990s.

The total cost to administer a law enforcement phlebotomy program varies depending on the size and scope of the initiative. Training is expensive but if it is delivered by a state agency as opposed to a private entity, some of these costs may be offset. Other budget considerations include the equipment needed to perform the blood draw, setting up a sanitary space where officers can perform the procedure, lab fees for analysis of the blood samples, and increases in pay for officers who receive certification. This last element will vary by state. Some agencies offer an increase in pay to incentivize officers to receive their certification while others do not. In some states, officers are willing to obtain the certification because it allows them to perform blood draws outside of the agency on a part-time basis which adds to their income.

Phlebotomy Programs for Law Enforcement

As stated above, it is also important to articulate the value of the phlebotomy program to potential grant funders. In addition to providing an estimate of program costs, the agency applying for funds should outline the savings that will be accrued as a result of doing blood testing 'in-house.' Moreover, the agency should also identify how this program will lead to greater efficiency in DUI investigations which can improve outcomes. This includes how much officer investigation time is saved, how quickly the blood draw can be obtained once the suspect is brought to the station (i.e., is chemical evidence, particularly the presence of drugs captured in a timely fashion), and whether the ability to obtain these samples quickly helps prosecutors build a stronger case in court. In short, agencies should articulate how the benefits of the phlebotomy program greatly outweigh the costs. For example, in the NHTSA Phlebotomy Toolkit (2019), the Utah Highway Patrol estimated that their law enforcement phlebotomy program saved approximately $30,000 in its first year of implementation. That is a large sum of money that can be put towards other DUI enforcement needs.

Policy and Operations:

To develop and implement a phlebotomy program there are many issues that must be addressed, and policies and protocols must be developed by the law enforcement agency overseeing the program. These policies and protocols must be followed to protect the agency against liability and to safeguard against potential defense claims in court. Before a phlebotomy program is implemented, the following should be considered:

- Develop general policies that articulate the scope of the phlebotomy program that includes all relevant details including officer training and certification/re-certification requirements; equipment use, maintenance, and disposal; designated locations for blood draws; procedures for voluntary and involuntary blood draws; use of force and associated protocols for involuntary blood draws; documentation and reporting of the procedure; etc. These policies should be reviewed and updated over time.

- Designate a phlebotomy program coordinator who oversees the implementation of the program and is responsible for developing needed policies. This officer should also be responsible for ensuring that the program operates according to protocol and that any issues that are identified are addressed immediately.

- Develop specific policies and protocols that will facilitate the lawful collection of a DUI suspect's blood. These include:

  o Ensuring both officer and suspect safety throughout the blood collection process.

  o Obtaining a search warrant in cases where the suspect refuses to provide a chemical sample. As highlighted in this guide, e-warrant systems should be implemented to facilitate expedient submission and approval of search warrants.

  o Restraining a suspect and using force to get them in a position that would allow the officer to perform a blood draw even if the suspect is non-cooperative.

Phlebotomy Programs for Law Enforcement

o Performing the blood draw according to appropriate clinical procedures and certified training protocols.

o Maintaining chain of custody when the blood sample has been collected.

o Submitting the blood sample to a laboratory for chemical analysis.

o Documenting the entire procedure with a sufficient level of detail and submitting this paperwork according to protocol.

- Determine the location where the blood draw will take place. There are many possible options. Most frequently, a room or space will be designated in the station or department. This space should be clean and in compliance with OSHA standards. It should contain all necessary venipuncture equipment and suspect restraints. If this space is not available, there may be room in the county jail or detention facility. Law enforcement may also collect blood in a mobile command center or "BAT mobile" where large volumes of suspects are processed during high visibility enforcement initiatives.

- Determine how to document the procedure. This includes video and audio recording to protect both the officer and suspect against claims and preserve the evidence that is collected. There should also be standardized forms that officers complete to detail the procedure from start to finish. There must be a protocol for the submission and retention of all of these items.

- Develop a clear chain of custody that is documented and ensure that all blood vials are properly labeled and cannot be contaminated.

- Determine how many officers need to be certified as phlebotomists to give the agency 24/7 coverage. Alternately, create a rotating overtime schedule that would provide an agency with the opportunity to call-in an officer to perform blood draws.

- Guard against liability by ensuring that all officers are adequately trained using approved curricula and that all protocols and policies are followed religiously.

Implementation:

Law enforcement phlebotomy programs should only commence after the aforementioned policies and protocols are in place and there is a high degree of confidence in the training and skills of the officers selected to serve as phlebotomists. The public and defense counsel will be critical of the program if officers deviate from training and procedure and it only takes one negative incident to bring a media spotlight to the department and the program. In order to prevent this from happening, any agency that plans to implement a program must ensure that officers have the level of clinical training to perform blood draws according to procedure and that all encounters are properly documented. To prevent liability, NHTSA (2019) recommends that all officers stay within their training and adhere to guidelines.

The success of these programs is dependent on the ability to follow protocol. The designated program coordinator should be diligent in observing all blood draws during the early stages of implementation. Any deviations from practice or policy should be noted and the coordinator should offer guidance to officers. The coordinator should also oversee the documentation of blood draw procedures and be able to identify and address any errors.

Phlebotomy Programs for Law Enforcement

All documentation for blood draws should be developed and standardized before the phlebotomy program goes live. The officers must be trained on how to fill out the phlebotomy or blood draw reports. These reports should include detailed information about the officer performing the blood draw as well as the procedures that were followed. These are documents that are likely to be scrutinized in court and therefore, it is imperative that officers understand the importance of accurately and consistently documenting all relevant information. One mistake could lead to the blood being excluded as evidence.

Training. The most important aspect of any phlebotomy program is the training of the officers and subsequent certification in accordance with state regulations. If an officer receives inadequate training or deviates from what he/she has been taught, it creates opportunities for defense counsel to challenge the chemical evidence. As such, training is the cornerstone of any program. In Arizona, officers seeking to be certified as phlebotomists must complete a 60-hour training course that is offered through various colleges. In other states, the training may be more stringent or lax; this is typically dependent on the regulations and requirements outlined in state statute.

Agencies that are looking for robust training are encouraged to connect with other law enforcement entities that have already implemented phlebotomy programs. Agencies should also be familiar with the phlebotomy programs that are available in the state as these programs are readily available and only require enrollment. Most of these programs are offered through colleges or universities. If these existing programs do not meet the needs of law enforcement, discussions should ensue about how to augment the courses to include components that are specific to law enforcement procedures. If agencies opt to create their own training program as opposed to relying on state curricula, it is beneficial to see what is being done in other states and replicate what works. Regardless of the approach taken, the training must be robust enough to meet state requirements for certification.

All phlebotomy training programs should include a mix of classroom hours and clinical practicums. Officers should learn and practice the skills that they are developing in a clinical setting. Most programs have a final written exam as well as a practical assessment that requires them to successfully demonstrate their skills in performing venipuncture. The hands-on training and assessments often require that students perform a requisite number of successful blood draws. While law enforcement must be able to successfully complete these courses, their focus tends to be on following procedures to restrain subjects, perform the blood draw, document the procedure, and submit the blood for analysis.

Evaluation. While a formal evaluation of law enforcement phlebotomy programs may not be a high priority it is important to consistently review policies, procedures, and protocols and ensure that these documents are up-to-date and that they are followed to the letter. These programs should be monitored, and issues identified early before they can result in case dismissal or acquittals. Some metrics that should be collected include the number of voluntary and involuntary blood draws performed, an estimate of the amount of time having an on-site phlebotomist saves in DUI investigations, the resources and funds saved by performing blood draws in-house as opposed to outsourcing to medical facilities, and whether there are decreases in refusals and increases in convictions based on the availability of phlebotomists to quickly perform blood draws.

CRITICAL DUI SYSTEM REFORMS: LAW ENFORCEMENT

Reform in Action

Arizona pioneered law enforcement phlebotomy programs and the state's initiative, which serves as a model for other jurisdictions, has been active for nearly 25 years. The program is funded through the Governor's Office of Highway Safety (GOHS) and was conceptualized as a way to address high rates of test refusal in DUI cases. The Department of Public Safety and the Attorney General's Office collaborated to ensure that existing laws would permit law enforcement officers to draw blood if properly trained. Once it was established that the statute was broad enough, officers underwent training to become certified phlebotomists. By 2000, a specialized 60-hour course was created by Phoenix College specifically for officers and a total of three institutions now offer similar training. While officers who are trained as phlebotomists work primarily on DUI cases, they are also able to assist in other types of criminal investigations.

Since its inception, the law enforcement phlebotomy program has been highly successful. When the program began in 1995, there was a 20% statewide refusal rate and by 2009 this had declined to 6%. In addition to supporting the program, a public awareness campaign was launched to educate the public that officers could obtain blood draws even if suspects refused to submit to chemical testing. The Arizona GOHS continues to fund the program and views it as integral to streamlining DUI investigations. Not only has it led to a reduction in refusals, it also reduces the amount of time it takes to collect a chemical sample as officers no longer have to transport suspects to medical facilities and rely on practitioners to draw blood. More information about Arizona's model program can be accessed here.

Resources

The NHTSA *Law Enforcement Phlebotomy Toolkit* is a great resource that contains many of the steps and considerations included in this guide. The toolkit also provides an overview of existing phlebotomy programs and includes sample documents.

Other important resources include an example of a law enforcement phlebotomy protocol from the Gilbert Police Department and a TSRP resource that highlights the evolution of these programs and how trained law enforcement phlebotomists can be useful in implementing 'No Refusal' programs and other high visibility DUI enforcement initiatives.

Oral Fluid On-Site Screening for Drugs

The use of oral fluid screening devices to test for the presence of drugs at roadside or in a police station has the potential to assist law enforcement in identifying a larger number of drug and multi-substance impaired drivers who would otherwise avoid detection. This practice would provide objective data that could support the arrest decision and help practitioners determine whether an evidential chemical sample (likely a blood draw) may be worth doing. It is recommended that this technology be utilized within the context of a broader impaired driving investigation similar to preliminary breath tests.

Oral fluid devices offer many advantages over other forms of testing namely because oral fluid testing is quick and easy to use, the procedure is minimally invasive, the devices have a short detection window (i.e., positive findings are indicative of recent as opposed to historical use), and officers can collect a chemical sample proximal to the time of driving (Bosker & Huestis, 2009).

Oral Fluid On-Site Screening for Drugs

As noted earlier, DUI is the only crime where the investigation stops after minimal evidence is obtained. If an officer can proceed with an alcohol-impaired driving case it is common for no additional testing to be done as a way to save time and resources. Unfortunately, this leads to missed opportunities to intervene with multi-substance impaired drivers. Several oral fluid pilots underscore the importance of testing beyond alcohol. In a study conducted in Miami-Dade County (Logan et al., 2014), 39% 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% of the subjects with BACs exceeding .10 screened positive for one or more drug categories in both oral fluid and blood (Edwards et al., 2017). In a real-world setting, the vast majority of these individuals would be identified as merely alcohol-impaired drivers.

Multiple studies have found these devices to be reliable and valid including a formal evaluation done in the European Union that identified several devices with both sensitivity and specificity of more than 80% (Schulze et al., 2009) and a recent Canadian evaluation that found sensitivity exceeded 80% for most drug categories (including cannabis) and specificity exceeded 90% for all drug categories (Beirness & Smith, 2017). As a result of these findings, Canadian law enforcement agencies moved forward with the deployment of oral fluid testing after legalizing recreational cannabis in the fall of 2018. Canadian laws were amended to allow law enforcement officers to compel an oral fluid test if they have reasonable suspicion that an individual is impaired by drugs. Other countries such as Australia and the United Kingdom have been using this roadside drug testing technology for years.

Jurisdictions across the United States (including AL, CA, CO, FL, KS, MI, OK, VT) 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. In addition to providing law enforcement with another investigative tool, oral fluid testing could facilitate the creation of administrative license suspension/revocation (ALS/ALR) systems like those that exists for alcohol because of the onsite nature of the results. Current testing mechanisms (e.g., blood and urine testing) make the establishment of this administrative process far more difficult to implement.

Steps for Successful Implementation of Oral Fluid Programs

To implement an oral fluid program, states must make a variety of decisions regarding the nature and structure of the program. All states that have considered the use of oral fluid have first opted to launch a pilot which is typically done to evaluate the validity of the technology and identify optimal strategies for further device usage. The majority of oral fluids pilots have been established by individual law enforcement agencies in conjunction with toxicologists. In Michigan and Canada, oral fluid use has been approved via legislation. While legislation is not always necessary to conduct a pilot, it may be required if the purpose of the pilot is to collect samples from all individuals, not only those who voluntarily submit to testing. Protocols exist that agencies can follow as they seek to implement these programs including the 'Miami Protocol' as well as guidelines from the Society of Forensic Toxicologists (SOFT). Regardless of the approach taken, the incorporation of oral fluid testing into DUI investigations in a screening capacity will help law enforcement identify drug and multi-substance impaired drivers that are likely to go undetected using traditional enforcement methods.

Planning and Development:

During the planning and development stage, decisions about the scope of the oral fluid project should be decided along with a strategy to educate the public and policymakers. If there are legislative requirements, this will delay the launch of the pilot as bills must first be enacted to support the use of the technology.

- Determine whether existing implied consent and/or testing laws permit the use of oral fluid/saliva testing or include a broader overarching term like 'other bodily substances.' If these methods are not included in statute, policymakers should be encouraged to add them to facilitate the use of new and emerging alcohol and drug detection technologies if the case law does not permit their use independent of the implied consent law.

- Decide whether the pilot should be legislated which requires its implementation and reporting of data collected or if it is easier/preferable to establish a pilot without legislative support. Both approaches have pros and cons. To date, Michigan is the only state that has legislated an oral fluid pilot, and this allowed them to add teeth to the oral fluid law by applying penalties for individuals who refused to submit to the oral fluid test.

- Identify and convene a committee of relevant stakeholders to educate them about oral fluid technology and decide how to structure the pilot. These stakeholders should include law enforcement executives as well as drug recognition experts (DREs) and frontline traffic enforcement officers, prosecutors (including state Traffic Safety Resource Prosecutors), toxicologists, highway safety office personnel, device manufacturers, and policymakers.

- Identify the objectives of the pilot and what questions should be answered. Some common objectives are outlined by SOFT including:

  o To collect information on drug intake from stopped drivers.

  o To use the information to potentially aid the identification and prosecution (including sentencing) of DUID offenders, if allowable.

Steps for Successful Implementation of Oral Fluid Programs

o   To use the information to potentially aid prosecution of DUID offenders, if allowable.

o   If necessary, to provide data to assist in changing the law to include the analysis of oral fluid as a viable specimen for DUID cases, or to provide data to implement the use of oral fluid.

o   To deter drug intake prior to driving by demonstrating reliable drug detection.

• Determine how large the pilot will be and how many agencies will participate. Prior to making this decision, the committee should gauge the level of interest among law enforcement agencies in the state and determine how many are willing to participate.

o   If multiple agencies or counties are being considered, establish selection criteria to narrow down choices. In Michigan, five counties were chosen based on the number of serious injury and fatal impaired driving crashes, the number of trained DRE and DRE prosecutors in the county, and the level of knowledge of the program and willingness to participate in the pilot. There was also a desire to include both urban and rural counties. Each oral fluid committee should develop selection criteria.

• Designate one individual who will oversee the pilot including the implementation process at each pilot site. By having one person responsible for the project, every participating agency will know who to refer questions to and this person can serve as a de facto spokesperson for any media inquiries.

• Identify any potential barriers or challenges to implementation and develop a plan to address each of these issues. Stakeholders should consult with other jurisdictions that have implemented oral fluid pilots and learn from their experiences. If mistakes or problems can be avoided, it is helpful to know what other jurisdictions would have done in hindsight.

• Develop an estimate of the total costs needed to train officers and administer the pilot program. At this stage, the stakeholder committee should meet with oral fluid manufacturers to determine device costs (or whether they can be loaned for the purpose of the pilot). Once a cost estimate is produced, the committee may be able to narrow down how many law enforcement agencies should/can feasibly participate given the level of resources available.

• Develop a request for proposal (RFP) for device manufacturers. The committee should consult with both law enforcement and toxicologists to determine the parameters of the RFP and the criteria that each device must meet in order to be considered for the pilot. In the Michigan pilot, the Michigan State Police (MSP) created a list of criteria (page 6) that manufacturers had to meet to be selected. When a device is selected, the administering agency should create device standards that other manufacturers have to abide by in the future.

• Determine the scope of the training required and identify how many officers should be trained to use the oral fluid technology (i.e., how many officers from each participating agency should receive training).

Steps for Successful Implementation of Oral Fluid Programs

- Partner with a lab that can process evidential confirmation testing relatively quickly. Also determine whether the evidential sample will be blood, oral fluid, or both. By collecting both options, more analyses can be run, and more data can be collected.

- Identify which entities should conduct the training. Representatives from the selected manufacturers should be present to educate officers on the use of the devices. Supplemental training on protocols and procedures should be delivered by one designated agency to ensure consistency.

- Develop timelines for training and the launch of the oral fluid pilot program.

- Begin to have meetings with stakeholders to educate them about oral fluid technology and to dispel any misperceptions. Outreach to the media is important as they must publish accurate information about the devices' capabilities and limitations. By involving the media, the public can begin to be educated about how the technology operates and that there are devices available to detect the presence of drugs.

Funding:

Oral fluid pilots can be funded in a number of ways. If these programs are mandated as a result of legislation, the state legislature should allocate appropriations to assist in covering the costs associated with implementation. These costs include purchasing devices and cartridges, law enforcement training and associated materials, laboratory confirmation testing (of evidential samples), and data analysis and reporting. Funds should also be set aside to facilitate public education campaigns.

Other funding mechanisms available include more traditional highway safety office grants and criminal justice or enforcement grants. Individual agencies might also invest in smaller pilots if funds are available. Lastly, agencies can offset some of the costs of implementation if manufacturers are willing to loan devices for the purpose of the pilots. Some of these devices cost in excess of $5,000 and if agencies require multiple devices for officers to use, this could become cost prohibitive. Manufacturers have frequently supplied devices as it is in the companies' best interest to have their products being used in the field.

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[1] Note that the type and timing of sample collection and testing matters. Blood, breath, urine, and oral fluid equipment (including laboratory equipment) may test for different things (i.e., parent drug versus metabolites), have different windows of detection, and different sensitivities. Further, a difference in results may occur if there is a significant delay between the screening and confirmation tests due to metabolism. Thus, one should not be surprised if testing different samples yields different results (i.e., they should not be considered "conflicting").

Steps for Successful Implementation of Oral Fluid Programs

Policy and Operations:

Prior to implementation, multiple decisions must be made about the structure of the program and decisions are required regarding who uses the oral fluid devices and under what circumstances. It is at this phase that devices should be selected. The following are considerations that law enforcement or other involved agencies must consider before launching any oral fluid initiative:

- Determine the length of the pilot. Is the duration a set amount of time or does the pilot end when a certain number of samples are collected?

- Determine which agencies will participate in the pilot and how many officers from each agency must complete the training.

- Identify which type of officers can use the oral fluid device – i.e., is it limited to DREs; officers who have completed Advanced Roadside Impaired Driving Enforcement (ARIDE) training; officers who only have Standardized Field Sobriety Test (SFST) training

  o Some pilot programs have limited use to DREs (e.g., Michigan) whereas other pilots allowed officers who only had SFST training to use the device (e.g., Canada).

- Determine which drivers get tested – i.e., any driver suspected to be under the influence of drugs; any driver who has no or a low BAC that does not align with the signs of impairment; any driver with a BAC above .08; all suspected impaired drivers

  o Will drivers have the option to submit to the oral fluid test (i.e., voluntary participation) or are they required to submit to the test if any officer requests it? The latter situation will likely require a law change that makes it a civil infraction to refuse the oral fluid test.

- Identify where the test will be completed – i.e., at the police station or at roadside if the device is portable. For officer safety reasons, some officers prefer using the devices at the station even if they are portable.

- Develop a protocol for testing the oral fluid devices to ensure that they are working properly and that tests are accurate. Require that officers who use the oral fluid devices perform negative and positive quality control checks with the oral fluid device at the beginning of each shift to ensure the instrument is functioning properly (this protocol will vary depending on the device(s) selected; for example, some standalone kits would not require this type of equipment check).

- Develop a protocol for administering the oral fluid test. This includes instructions to the impaired driving suspect and a process for collecting the oral fluid sample and analyzing it in the device. Officer safety should be taken into consideration and they should not be required to have their hands near a suspect's mouth for officer safety reasons. Instead, the officer should hand the cartridge to the suspect and instruct them on how to collect an adequate amount of oral fluid for the test. SOFT has developed a protocol for administering oral fluid tests that agencies are encouraged to consider. Ultimately, the protocol should reflect the goals of individual initiatives and ensure that agencies acquire the samples/data needed.

Steps for Successful Implementation of Oral Fluid Programs

- Ensure that officers are trained on how to review onsite screening test results and troubleshoot should an invalid result show or other complications arise.

- Educate officers that a negative test result does not mean that an individual is not impaired, it simply means that they are not testing positive for the substances that the device tests for at specified cutoff levels. Officers should be trained to proceed with their DUI investigation and make an arrest if there is probable cause to do so.

- Develop procedures for the collection, handling, documentation, and submission of all confirmation samples of pilot subjects. Law enforcement must maintain chain of custody and preserve all relevant documentation related to oral fluid test results.

The above decisions should be made in consultation with all of the law enforcement agencies that are participating in the pilot program as well as the prosecutor's office with jurisdiction. By addressing questions and concerns, educating officers, and facilitating an ongoing dialogue, buy-in will be increased and the officers might be more motivated to use the devices as part of their DUI investigations.

Implementation:

When it is time to implement the pilot program the most important aspects are training officers and generating awareness among the public. If officers are properly trained on the use of the instrument and follow all policies and procedures established for the collection and analysis of the oral fluid samples the pilot is likely to run smoothly. Inadequate training can result in challenges in court and possible case dismissals or acquittals if the investigating officer deviated from protocol. Educating the public is also important. During the initial stages of planning, consideration should be given to the launch of a media campaign to coincide with program implementation. Similar to high visibility enforcement efforts, if the public is made aware that more law enforcement is on the streets and that they now have technology available to detect drug use, then a deterrent effect may be generated as people fear being caught driving impaired.

Training. Even though onsite oral fluid technology is very easy to use, all officers participating in the pilot along with the other stakeholders involved in the planning and implementation of the program should attend the training. It is vitally important that all participants receive the same information and fully understand policies and procedures in addition to how the device operates.

Steps for Successful Implementation of Oral Fluid Programs

In the Canadian pilot, recommended training included a mixture of classroom instruction with hands-on device training. The instruction featured multiple modules on relevant issues including the science related to per se limits, oral fluid, and the functionality of the device, drugs that impair, instruction on the device use by the manufacturer, officer safety, and finally, hands-on training using the device and oral fluid swab. In addition to these modules, SOFT recommends offering a 4 to 6-hour training for all relevant stakeholders that focuses on the process of oral fluid collection (both screening and confirmation), on-site test training and operation of devices, and reviewing the device results. Time should also be devoted to instruction on completing all relevant forms and documentation as well as the protocol for collection and submission of evidential specimen(s) (e.g. blood) to an appropriate laboratory.

Agencies should work collaboratively with device manufacturers when delivering training. It is often necessary for representative from these companies to educate officers on how to properly use and troubleshoot the devices. These companies might be willing to provide this service free of cost to participating law enforcement agencies.

Evaluation. Each oral fluid pilot should have an evaluation plan for analyzing the data that is collected. The agency or individual selected to oversee the pilot should convene the stakeholders to determine what information can be collected and analyzed and who is responsible for compiling all of this information. In Michigan, the legislature required MSP to do an analysis and author a report of the findings after the pilot ended. In other jurisdictions that implemented less formal or structured pilots, one agency typically took responsibility for data analysis; for some pilots, the data is never released or published which misses an opportunity to add to the growing oral fluid literature. At minimum, an agency should collect and analyze the data to determine:

- Number of positive, negative, and invalid tests

- Number of positive, negative, and invalid tests for each drug category

- Comparisons between the results of the onsite (roadside) oral fluid test, independent lab results, and blood test (this is assuming that oral fluid confirmation tests and blood draws were collected from each subject who provided the initial oral fluid screening sample) for each drug category

- Number of drivers with a positive BAC that tested positive for at least one drug

- Number of drivers with a BAC above the illegal limit that tested positive for at least one drug

- Number of drivers who tested positive for multiple drugs

When doing analyses that compare the oral fluid screening device with evidential or confirmatory testing it is important to know whether the lab is testing for the parent drug or also including metabolites. It is also important to know the various cutoff levels.

Reform in Action

In the United States, Michigan became the first state to implement an oral fluid pilot as a result of state legislation (Public Act 243). This legislation was passed following the deaths of Barbara and Thomas Swift who were killed by a drug-impaired commercial driver. Their son, Brian Swift, advocated for the oral fluid legislation to provide law enforcement with tools to identify drivers who are under the influence of drugs and prevent other families from enduring the same tragedy as his own.

The initial pilot was conducted in five counties (Berrien, Delta, Kent, St. Clair, and Washtenaw) and utilized DREs to administer the oral fluid test as part of their DUI investigation. The Michigan State Police (MSP) was given the authority to develop a written policy and promulgate administrative rules as necessary for the implementation of the program. Results of the pilot were released in a report to the state legislature. The recommendation of the Oral Fluid Roadside Analysis Pilot Program Committee was that "the pilot program be expanded for one year to include all DREs in the state of Michigan."

In December 2018, the Michigan Legislature agreed to support the ongoing funding of the oral fluid pilot and the expansion of the program to additional interested, qualified counties around the state. An appropriation of $626,000 for the extension of the Oral Fluid Roadside Analysis Pilot Program was included in the supplemental funding bill that became Public Act 618. Michigan has now begun a statewide pilot that will run for one year and involve more than 40 law enforcement agencies. Other states are encouraged to learn lessons from Michigan's experience rolling out the initial five county pilot and the subsequent statewide program. The hope is that if the larger program has promising results that the legislature and law enforcement agencies will transition from the pilot to making the use of oral fluid a standard part of impaired driving investigations.

Resources

Michigan Oral Fluid Roadside Analysis Pilot Program (MSP, 2019)

Canada Final Report on the Oral Fluid Drug Screening Device Pilot Project (Public Safety Canada, RCMP, Canadian Council of Motor Transport Administrators, 2018).

Oral Fluid as a Test Specimen for Roadside Studies: Guidelines for Implementing a Data Collection Program (SOFT, 2014)

Oral Fluid Frequently Asked Questions (SOFT, 2018)

Oral Fluid Testing for Impaired Driving Enforcement (Flannigan et al., 2017)

Stakeholders

Other Important Considerations for Implementing Solutions:

A diverse group of stakeholders must be convened in each of the above projects to make these solutions become a reality. While law enforcement agencies should take the lead in each instance, there are opportunities to include other stakeholders to elicit feedback, create buy-in and support, address questions and concerns, and develop strategies to address common barriers and funding issues.

The following groups of stakeholders should be consulted when implementing e-warrant programs:

- Law enforcement (both executives and frontline officers), prosecutors (including the state TSRP), judges, IT personnel, policymakers, laboratory technicians involved in the analysis of blood tests, the defense bar, county or state government representatives, state department of transportation/office of highway and traffic safety, sheriffs and police chief associations, and the state driver licensing authority.

When developing a law enforcement phlebotomy program, the following stakeholders should be included in the process:

- Law enforcement executives, frontline officers who are interested in being trained as phlebotomists, prosecutors who can offer insight into potential legal challenges (i.e., TSRPs), department legal counsel, highway safety office personnel, representatives from the department that oversees phlebotomy programs, trained/certified phlebotomists, and other decision-makers as appropriate (this may include policymakers). Involve media later in the process to publicize the launch of the program.

For the establishment of oral fluid programs, stakeholders should come from several facets of the criminal justice system to offer guidance. These participants include:

- Law enforcement executives, DREs and frontline law enforcement officers, prosecutors (including state TSRPs), toxicologists, highway safety office personnel, oral fluid device manufacturers, and policymakers. In this scenario it is also important to involve the media to increase awareness among the public about this new technology to create deterrence.

As noted in the opening, to implement any of these strategies it is necessary to work collaboratively and breakdown silos between multiple facets of the system. While these solutions are each geared towards law enforcement, their implementation and use have implications for other facets of the system. Subsequently, convening these stakeholders and offering them an opportunity to provide input can only serve to strengthen the initiative and create greater support for the project objectives.

Legislative/ Policy Changes

E-warrants

For each of these solutions, there may be a need for potential legislative change. While the specific policy and procedural changes are noted in each corresponding section, it is important to identify the type of legislation that should be passed to ensure that these solutions can be successfully implemented. It is also necessary to note that some of these legislative changes, while helpful, are not always necessary.

E-warrants: all 50 states have legislation governing search and seizure that define probable cause, exceptions to the search warrant requirement, and unique restrictions such as the timeframe for the execution of a warrant or rights if a warrantless search is conducted. A total of 45 states include language (either in legislation or in court rules) allowing the issuance of warrants based on telephonic, video, or electronic affidavits. Some important provisions to consider include:

- Provision for the transmission of the warrant by electronic means, ideally allowing for flexibility to adapt to emerging technologies by not prescribing the specific electronic or digital methods of transmission.

- Provision for oral testimony by telephone or video to allow officers to be sworn in remotely without having to give the oath in-person.

- Language that addresses the need for recording the oral statement and certification by the judge that the sworn oral statement is a true recording under oath.

- Language that addresses the retention of the recording as part of the record of proceedings.

- Inclusion of sworn statement under penalty of perjury to provide further efficiency (i.e., allowing the officer to electronically sign a penalty of perjury statement in lieu of providing testimony).

- Permission for electronic or digital signature by the officer and the approving judge, judicial officer, or magistrate, ideally allowing for flexibility for emerging technologies, but at a minimum including electronic encrypted digital signatures, signatures affixed by electronic stylus, or typewritten signatures.

- If electronic or digital signatures are going to be permissible, inclusion of language related to identity verification protocols should be included, again without being too prescriptive to allow for flexibility as security protocols evolve.

- Language allowing the reporting of failed tests to licensing agencies, ideally allowing for electronic information exchange between e-warrant systems and licensing agency systems.

E-warrants

Phlebotomy programs: some states may lack legislation that allows law enforcement officers to legally draw blood. To rectify this problem, statutes should be amended to allow for anyone who is "qualified" or "certified" according to state requirements to draw blood for the purpose of alcohol and drug testing.

Oral fluid pilots: only a handful of states have modified their implied consent and testing statutes to include testing methods beyond breath, blood, and urine. To allow for the use of oral fluid, those statutes may need to be amended to include either oral fluid or saliva as test options or alternatively, an overarching term like 'other bodily substances.' Most states choose the latter as it is broad enough to facilitate current and future testing methods.

Another law change that should be considered is adding provisions that give oral fluid laws teeth. For most pilots, participation is voluntary which means that drivers are not compelled to provide an oral fluid sample. When Michigan passed its law, refusal to submit to an oral fluid test when instructed to do so by law enforcement was classified as an infraction and penalties apply. This is meant to deter people from refusing to provide the sample. Other jurisdictions might consider a similar approach or, may opt to go one step further and criminalize refusals.

Lastly, the use of oral fluid technology to screen for drugs should receive more support at the Federal level. The National Highway Traffic Safety Administration (NHTSA) has been researching the feasibility of incorporating on-site oral fluid devices into criminal justice processes. Given the pressing need to better identify drug-impaired drivers, Congress should support NHTSA in expediting this research and prioritize the creation of minimum guidelines for these devices (similar to what has been done for breath testing instruments and ignition interlocks). If NHTSA created these guidelines, state agencies might have more confidence in selecting instruments and encouraging officers to use them as part of standard operating procedure during impaired driving investigations. In addition to supporting the use of oral fluid devices, Congress should also support the ongoing development and testing of new drug detection technologies such as cannabis breathalyzers and transdermal devices. Law enforcement need reliable and accurate tools to help identify drug presence and new technologies could aid them during roadside stops. It is important to note that technology is not a substitute for law enforcement training and observations. These devices identify drug presence, not drug impairment. The results generated by these instruments combined with officer observations could be used to build strong impaired driving cases.

Barriers and Challenges:

The implementation of each of these solutions inevitably requires overcoming certain barriers. There are several common barriers that apply to each of the solutions discussed in this guide. These include:

- Resistance to change on the part of law enforcement leadership as well as frontline officers. These agencies should be directly involved in the planning and implementation of each of these solutions and should have a say in how they are developed and ultimately operate. By leading the effort and being able to communicate the benefits associated with e-warrants, phlebotomy programs, and oral fluid testing, leadership can obtain buy-in from law enforcement as well as other stakeholders. Overall, it is necessary to articulate how these solutions will assist officers in DUI investigations and produce better case outcomes.

- Lack of legislation that allows for the use of each of these strategies. While legislation is not always imperative for implementation of some of these solutions, it can assist in strengthening the programs that are developed. In many jurisdictions, legislation is needed to implement effective oral fluid testing laws. However, there often are ways to implement e-warrant systems and phlebotomy programs even without changing the law.

- Limited buy-in for solutions is a common challenge faced by agencies that are instituting change. The best way to overcome lack of buy-in is to invite key stakeholders, including naysayers, to the table and provide them with an opportunity to be heard. If questions and concerns can be adequately addressed and stakeholders feel as though they are included in the development process, it is possible to convert them to supporters who will champion the effort. This is why convening planning and oversight committees that are comprised of a diverse range of traditional and non-traditional partners is critical to the implementation of new programs or ideas.

- Costs and funding are always going to be significant issues on account of constrained budgets and limited resources. It is important to be creative and identify multiple funding sources for projects including grants and possibly offender-pay schemes to offset some of the costs associated with these new technologies or procedures. Agencies should consider pooling resources whenever possible and involving policymakers to gain their support and possibly future appropriations. To make the case for funding it is imperative to demonstrate the value of each strategy. In other words, how will this program or initiative lead to cost savings, improved system efficiency, or better case outcomes.

Barriers and Challenges:
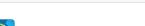
- Legal challenges will always be an issue when dealing with impaired driving cases. DUI defense counsel are experienced in identifying small mistakes or departures from procedure and will use these instances to call evidence into question. The best way to safeguard against legal challenges is to ensure that adequate training is delivered to officers and that they are familiar with and follow all procedures, protocols, and policies to the best of their ability. If they follow all of the correct steps and document and submit evidence as required, defense counsel has much less to point to in court.

- Public perceptions can be difficult to overcome, particularly if these opinions are biased against law enforcement. However, through the use of targeted media campaigns and the use of consistent messaging, law enforcement can educate the public about these new procedures and technology and this can create a deterrent effect. If the public realizes that law enforcement will be able to quickly obtain a blood draw, then refusal rates may go down. Similarly, if the public realizes that law enforcement has technology that can accurately detect the presence of drugs, some individuals may think twice about driving while under the influence of drugs. Instead of being an adversary, the media should be considered a partner as they can relay law enforcement messages to the community at large. If law enforcement partners with the media early in the planning stages, they can enlist them in the effort and ultimately control the narrative put forth.

Resources and Examples of Model Practice

To learn more about the specifics of model e-warrant, phlebotomy, and oral fluid programs? Access the promising **programs and practices** section of our state map where the following model programs are featured:

- **Model e-warrant programs:** Arizona, Minnesota, and Utah.

- **Model phlebotomy programs:** Arizona, Idaho, Minnesota, Utah, and Washington.

- **Model oral fluid programs:** Alabama, Florida, Michigan, Wisconsin. Also look at practice in Canada.

CRITICAL DUI SYSTEM REFORMS: LAW ENFORCEMENT

Increase the number of law enforcement officers who are trained to identify the signs and symptoms of drug-impairment.

Call to Action

Challenge/ Background

With increases in drug-impaired driving across the country, it is imperative that more law enforcement officers receive training to be able to identify signs and symptoms of drug impairment during the course of DUI investigations. While there has been a concerted effort in recent years to increase the number of officers who either receive Advanced Roadside Impaired Driving Enforcement (ARIDE) training or complete the Drug Evaluation and Classification (DEC) Program, there is still a pressing need to train a greater percentage of patrol officers in these programs. To facilitate this process, more investment from highway safety and criminal justice agencies is required as is leadership on the part of law enforcement executives.

While the true magnitude and characteristics of the drug-impaired driving problem are not known due to data limitations, the statistics that are available reveal that this issue needs urgent attention. In 2016, the most recent year for which data are available, the National Highway Traffic Safety Administration (NHTSA) Fatality Analysis Reporting System (FARS) found that drugs were present in 43.6% of fatally injured drivers with a known drug test result. This represents a substantial increase from 2005 when 27.8% of fatally injured drivers tested positive for drugs (NHTSA, 2010; FARS, 2015).

In addition to fatality data, results from NHTSA's National Roadside Survey (NRS) are also instructive in measuring the extent of drug-impaired driving. In 2013-2014, NRS findings revealed that 22.4% of weekday day and 22.5% of weekend night-time drivers tested positive for illegal, prescription, or over-the-counter medications with impairing effects (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% of weekend night-time drivers tested positive for the main psychoactive ingredient in marijuana, Delta-9 tetrahydrocannabinol (THC). This number increased to 12.6% in the 2013-2014 NRS. That is a 48% increase in less than seven years. Marijuana remains the most commonly found drug in the system of fatally injured drivers and drivers who are arrested for DUI.

Polysubstance-impaired driving data is even more alarming. Research has continually shown that drugs used in combination or with alcohol produce greater impairment than substances used on their own. The combination of alcohol and marijuana is particularly risky as it can dramatically impair driving. Increased impairment also produces heightened crash risk. Many studies have shown that the combination of substances (alcohol and drugs or multiple drugs) can produce an additive effect or a multiplicative/synergistic effect. This essentially means that combinations of substances can produce significantly greater impairment together than on their own. If articulated as a mathematical formula, this means 1+1=3.

RESPONSIBILITY.ORG   For more information, go to   **responsibility.org/HRID**

Challenge/ Background

The increased level of impairment and crash risk associated with polysubstance-impaired driving is concerning as is the rate at which this behavior appears to be occurring. According to FARS data, in 2016, 50.5% of fatally injured drug-positive drivers were positive for two or more drugs and 40.7% were found to have alcohol in their system. Data released by the Washington Traffic Safety Commission (WTSC) identifies polysubstance impairment as the most common type of impairment found among drivers involved in fatal crashes. In fact, among drivers in fatal crashes between 2008 and 2016 that tested positive for alcohol or drugs, 44% tested positive for two or more substances. Not surprisingly, alcohol and THC were the most common combination (Grondel, 2018). Oral fluid pilots where drivers above the legal limit were tested for drugs also reveal that approximately 40% of these individuals have more than one substance on board. This is a critical public safety threat and we must rely on law enforcement officers to act as our first line of defense.

Law enforcement officers first began developing methods to identify drug-impaired drivers in the 1970s, when the Los Angeles Police Department established the Drug Evaluation and Classification (DEC) Program. The now international program is coordinated by the International Association of Chiefs of Police (IACP) with support from NHTSA. The purpose of the program is to train officers to become drug recognition experts (DREs), who are capable of identifying drug impairment. Officers are required to go through three phases of training totaling more than 150 hours along with field certification. The DEC program goes beyond the SFST training that most officers receive. 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.

Today, all 50 states, Canada, the United Kingdom, and Hong Kong participate in the DEC program. Unfortunately, every jurisdiction in the country does not have an officer trained as a DRE. Due to the level of commitment required to complete the training and the cost to train officers, it is not always a viable option for agencies that have limited staff and resources. In fact, the DEC program is one of the most expensive certifications that law enforcement officers can obtain, and this training is a large investment, particularly for smaller/rural agencies.

In an effort to increase education and training among patrol officers more broadly, the Advanced Roadside Impaired Driving Enforcement (ARIDE) program was created in 2009. ARIDE is designed to bridge the gap between SFST training and the DEC program in that it is 16 hours of training that educates officers on how to identify the signs and symptoms of drug impairment. In 2018, more than 700 ARIDE classes were offered in 49 states. As a result of these classes, approximately 14,000 law enforcement officers, prosecutors, and toxicologists, received training. In the decade since the program's inception, more than 100,000 practitioners have completed ARIDE. While ARIDE is extremely valuable, it is not a substitute for the DEC Program. Officers trained in ARIDE have the tools to identify cases where observed impairment is likely caused by drugs and make the referral to DREs to perform drug evaluations. ARIDE training can, therefore, be essential in building strong drug-impaired driving cases. As noted in the IACP DRE Section Annual Report, 44% of DRE evaluations conducted in Oregon in 2017 were based on referrals from ARIDE-trained officers. This is the ideal scenario and demonstrates how the provision of both training programs can strengthen impaired driving enforcement.

**Challenge/
Background**

The reality that most jurisdictions struggle with is that there are simply not enough officers trained to keep pace with the growing and changing nature of the impaired driving problem. At the end of 2018, the IACP reported that there were 9,116 certified DREs in the United States. While this may seem like a large number, it represents a very small portion of the active law enforcement officers in the country. DREs are also distributed through different types of agencies with varying jurisdiction. In 2018, the breakdown was as follows:

- 2,608 DREs were employed by state police or highway patrol agencies.

- 4,627 DREs were affiliated with city police or municipal agencies.

- 1,401 DREs were with sheriff's departments.

- 412 DREs were with other agencies such as U.S. Park Police, U.S. Military Police, U.S. Fish and Wildlife Service, motor carrier, etc.

- 1,550 DREs were also certified DRE instructors.

Overall, a total of 3,395 law enforcement agencies have at least one certified DRE among their officers. Similar to ARIDE classes, the number of DRE schools offered annually have increased across the country. In 2019, a total of 96 DRE schools were conducted resulting in the training of 1,636 DRE candidates (completion of DRE school is the first step towards DRE certification; students who complete the course must then obtain field certification before officially becoming DREs). Additionally, there were 37 DRE instructor schools conducted, training 216 new instructors.

In excess of 31,000 drug enforcement evaluations were performed in 2018. This represents a slight increase from the preceding year but a significant increase since 2013 when roughly 25,000 enforcement evaluations were performed. The most common drug category predicted in DRE cases in 2018 was cannabis. DREs also predicted the use of stimulants, narcotic analgesics, and depressants in a significant number of cases. Perhaps the most interesting finding from the 2018 data is that poly-drug use was predicted in more cases than any single drug category. In other words, REs predicted poly-drug use in 13,230 cases which is slightly higher than the 13,215 cases where cannabis use was predicted.

Despite continued growth of the DEC Program and increases in the number of certified DREs and ARIDE-trained officers, there is still a demand for more training that seemingly cannot be met. While the IACP continues to expand the program and highway safety offices fund additional training opportunities, there is also significant turnover that is a reality of the program. Perhaps the greatest challenge facing the DEC program is keeping certified DREs active in the field. These officers are often promoted to higher management or leadership positions and while they may maintain their certification, they are no longer able to consistently perform enforcement evaluations. There is no easy solution to this problem. DREs tend to be highly motivated officers who are sought out for advancement and agencies often lose their best drug recognition experts to executive positions.

**Challenge/
Background**

**Strategies to
Implement Reform**

Another common problem is the lack of availability of DREs in rural jurisdictions. Law enforcement agencies in these counties tend to be much smaller and subsequently, they often have a limited number of officers certified as DREs. Rural counties are often expansive, and officers have a lot of territory to cover. As such, when a drug evaluation needs to be performed, a DRE is not always readily available. In these instances, officers who lack specialized training have to do their best to identify impairment and build a strong impaired driving case without the advantage of a drug evaluation to supplement their initial DUI investigation.

There is consensus within the traffic safety field that more officers need to be trained in ARIDE and certified as DREs. This was one of the priority recommendations identified in the Governors Highway Safety Association (GHSA) drug-impaired driving reports (Hedlund, 2017; 2018) funded by Responsibility.org. In recognition that increases in training is a needed reform, our organization continues to partner with GHSA and the National Sheriffs' Association (NSA) to provide grant funds to facilitate ARIDE training and DRE schools. Now in its fourth year, this grant program has been highly successful and has expanded beyond merely ARIDE and DEC training and includes other innovative educational opportunities include oral fluid workshops, law enforcement and prosecutor cross-trainings, and cannabis "green labs" in states where recreational cannabis is legalized. To date, more than 1,500 law enforcement officers in 15 states have benefited from training as a result of these grants. NHTSA has also been supportive of these efforts and, in recent years, has agreed to supply additional funding to states that have made applications for the GHSA DUID grant program. While most traffic safety organizations are committed to increasing the percentage of officers who are trained in these programs, greater investment is needed at all levels.

To further the growth of these programs and to provide law enforcement with more training and education opportunities, leadership is needed. It is also imperative that data continue to be collected and analyzed to make the case for additional funding in support of these initiatives. Lastly, more research to determine ways to maximize the use of officers and to identify the optimal number of trained officers per jurisdiction and/or agency would be beneficial for executives who must make decisions about resource allocation.

Increase the Priority of Traffic Safety Enforcement:

- Encourage leadership of individual law enforcement agencies to stress the importance of conducting traffic safety enforcement. Leadership sets the tone for frontline officers and while there are a multitude of competing priorities for each agency, executives should consistently articulate the value and importance of impaired driving initiatives. Research has shown that when leadership supports traffic safety, officers are more likely to engage.

- Recognize officers who demonstrate a significant commitment to impaired driving enforcement. Officers who routinely conduct DUI investigations are responsible for removing impaired drivers for the roadways and, subsequently, save lives. These officers should be commended for their actions by their superiors and the community. Highway safety offices might consider ways to acknowledge the dedication of officers with the highest number of DUI arrests each year.

Strategies to Implement Reform

- Engage in high visibility enforcement and other impaired driving initiatives whenever possible. Determine whether these campaigns can be done in partnership with other law enforcement agencies to reduce the burden on resources.

- Encourage officers who are actively engaged in traffic enforcement to pursue educational opportunities as a means of advancement. Law enforcement superiors should identify young officers who demonstrate an aptitude for DUI investigation and mentor them. These officers should also be given opportunities to further their expertise by attending ARIDE classes and, if feasible, DRE school.

- Do not downplay the importance of traffic investigations. Every traffic stop has the potential to turn into a larger case as individuals who drive impaired might also be trafficking in drugs, illegally possess weapons, have open arrest warrants, etc.

- Develop specialized units or fund dedicated officers to focus on traffic enforcement, if feasible.

Identify State-Specific Training Needs:

Before a case can be made to increase the level of law enforcement training, it is necessary to know the scope of existing programs. Moreover, it is also useful to know where and how much investment is needed to meet current and anticipate enforcement demands. States should endeavor to grow their drug-impaired driving enforcement programs which means considering both recruitment and retention.

Each state has a DRE program coordinator who is tasked with overseeing training initiatives. These individuals should also be responsible for collecting and reporting program data to both the state highway safety office and the IACP DRE Section. To determine what the current picture of DUID enforcement looks like, these state coordinators should remain in contact with law enforcement agencies and maintain the following annual statistics:

- Number of certified DREs

- Number of DRE instructors

- Number of ARIDE-trained officers

- Number of ARIDE instructors

- Distribution of DREs per law enforcement agency

- Distribution of DREs per county

- Number of law enforcement agencies that lack DREs

- Annual training numbers including:

    o ARIDE classes

    o DRE schools

    o Number of officers that are enrolled and complete each training

    o Number of officers who obtain DRE field certification following the completion of training

Strategies to Implement Reform

- Annual program growth (i.e., number of new DREs who are certified vs. number of DREs who are promoted, retire, or do not maintain active certification)

- Number of DRE enforcement evaluations performed

- Average number of evaluations performed per DRE (i.e., how active are the DREs in each agency/jurisdiction)

- Conviction rates in cases where a drug evaluation was performed

Through the analysis of the above data, states can determine where further investment is needed and whether certain agencies and/or jurisdictions should be prioritized when it comes to allocating grant funds or scheduling educational opportunities (i.e., it is common to have fewer trained officers in rural jurisdictions). Furthermore, these statistics are important to track the expansion of both the ARIDE and DEC programs over time and to determine whether officers are using the training in the field. For example, if existing DREs are only performing a handful of evaluations per year, then it might be necessary to re-think whether certifying more officers is a worthwhile investment. Ideally, every agency should have a mix of ARIDE-trained officers and DREs and the latter should be fairly active.

Identify Funding Opportunities:

The extent of impaired driving enforcement that agencies conduct is often a function of the level of resources available. While many agencies might prioritize impaired driving enforcement activities, limited resources could affect the degree to which these efforts can be sustained throughout the year. Agencies are encouraged to identify a variety of funding mechanisms for training, staffing, and equipment, beyond state highway safety funds. This might include criminal justice appropriations bills, federal justice grants, and cannabis revenue. The latter potentially holds the greatest promise for securing sustained funding for drug-impaired driving enforcement. Several states that have legalized cannabis for recreational purposes have allocated tax revenue to law enforcement agencies. To guarantee funds, law enforcement should make a specific ask at the time that the program framework is being developed. Ideally, funds would be allocated each year that are devoted solely to training officers and conducting drug-impaired driving enforcement. The California Highway Patrol was successful in getting the state to set aside a significant amount of funds ($3 million annually for five years) to facilitate increased training. Colorado has also allocated cannabis revenue to law enforcement.

Offer a Variety of Educational Opportunities:

- States should consider pooling resources and offer cross-jurisdictional ARIDE classes and/or DRE schools. For example, Massachusetts and Rhode Island have partnered over the years and allowed law enforcement to attend these trainings in the other state. This has saved each state significant funds and allowed them to train more officers in years when it was not feasible to do so alone.

- While the ARIDE and DEC programs are prioritized because of their standardized curricula and widespread use, states are encouraged to offer additional impaired driving training opportunities to law enforcement.

Strategies to Implement Reform

- Supplementary DUI/D training opportunities that state highway safety offices and law enforcement agencies should consider offering each year include:

  o Multidisciplinary state impaired driving conferences that feature the latest research and developments in the field as well as state-specific policy changes and issues.

  o Training with prosecutors to improve courtroom testimony in impaired driving cases.

  o Cannabis 'green labs' in states where recreational cannabis is legal – similar to alcohol 'wet labs,' these trainings offer an opportunity for officers to familiarize themselves with the signs and symptoms of cannabis impairment by observing the physical appearance and behavior of dosed subjects. These classes first originated in Colorado and are now being offered in a number of recreational states.

  o Oral fluid workshops to train practitioners on the use of emerging drug detection technology.

  o Funding/scholarships for officers to attend national conferences such as the Lifesavers Conference, IACP's Drugs, Alcohol, and Impaired Driving (DAID) Conference, etc.

- Encourage cross-training whenever possible. Law enforcement, prosecutors, and toxicologists benefit from these opportunities as it allows each discipline to learn from the other and facilitates relationship-building.

Optimize State DEC Programs:

In recent years, there has been considerable debate about the need to conduct more research to determine how to optimize implementation of the DEC program in each state. To better inform agency administrators about the level of funding required to facilitate increased training it is important to identify:

- How many officers should be certified as DREs in agencies of varying sizes?

- What are the optimal number of DREs needed to cover metropolitan and rural jurisdictions?

- How many DREs should be available during varying timeframes (e.g., during hours when high visibility enforcement efforts are common)?

- How many DREs should be available on an on-call basis?

- How active are existing DREs (i.e., are these officers performing an adequate number of enforcement evaluations or are they limited in their level of engagement)?

- How are most drug-impaired driving cases being referred to DREs (i.e., are DREs doing roadside stops and performing subsequent evaluations or are these cases being referred to them by other officers)?

- What percentage of officers within the agency are ARIDE-trained and is the ratio of ARIDE officers to DREs adequate?

CRITICAL DUI SYSTEM REFORMS: LAW ENFORCEMENT

Strategies to Implement Reform

Research studies that provide insight into the above questions or identify best practices to optimize program implementation are necessary. It is also worth exploring whether a Police Personnel Allocation Model (PAM) could be developed specific to DRE certification to assist agencies when faced with funding and training decisions. The PAM is designed for law enforcement agencies that engage in traffic safety initiatives to assist leadership in addressing resource allocation issues. The purpose of the model is to determine the total number of officers that are required to provide an acceptable level of service within an area and how should a specified number of officers be allocated by geographic region and/or timeframe to maximize agency productivity. The establishment of a similar model for DRE deployment would be very beneficial.

Stakeholders

Training initiatives should involve all levels of law enforcement (from municipal agencies to large state agencies), prosecutors, toxicologists, and state highway safety offices. In addition to practitioners, officers should also be exposed to new and emerging technology and, as such, vendors/manufacturers should attend trainings as appropriate.

To increase appropriations, state law enforcement associations and leaders of large agencies should work collaboratively with policymakers to identify ways to facilitate more training and sustained impaired driving enforcement efforts. In legalization discussions, law enforcement should have a seat at the table and funding for DUID training and initiatives must be considered.

Legislative/ Policy changes

There are several opportunities at both the federal and state level to increase the level of appropriations to law enforcement for the purpose of increasing drug-impaired driving training. At the federal level, the re-authorization of the highway bill always provides an opportunity to convey to policymakers the importance of investing in impaired driving enforcement. In the FAST Act, funds were set aside specifically for the purpose of training more officers to identify drug impairment. As drug-impaired driving remains a significant traffic safety concern, there is reason to believe that Congress will once again be willing to increase the amount of funding available of states to facilitate law enforcement training. In addition to including language in legislation that advocates for more training, increased appropriations should also be sought. While increasing the number of officers who are ARIDE or DEC trained is necessary, policymakers should consider leaving language broad enough to afford states the flexibility to address their respective drug-impaired driving needs. For instance, several states have invested heavily in training and might benefit from technology (such as oral fluid devices).

**Legislative/
Policy changes**

Caveats

At the state level, highway safety grants fund the bulk of impaired driving training and enforcement activities. Additional appropriations may be made as part of larger state appropriations or omnibus bills and law enforcement agencies should take advantage of these opportunities as they arise. If a state is exploring the legalization of recreational cannabis, then law enforcement should be prepared to identify the amount of funding required to adequately address potential increases in drug-impaired driving. As part of these initiatives, state government must make decisions about how cannabis tax revenue will be utilized. This is an opportunity to have a set amount guaranteed for law enforcement training each year. For example, as part of the implementation of Proposition 64 in California, the Highway Patrol (CHP) is set to receive $3 million annually until 2022-2023 to train more officers to identify drug impairment. State law enforcement associations are encouraged to make demands that would facilitate the training of a greater percentage of officers in ARIDE or DEC.

As part of any drug-impaired driving enforcement discussion, it is important to note that ARIDE is not a replacement for the DEC Program. Law enforcement agencies invest a significant amount of money and time to have officers certified as DREs. Prior to the creation of ARIDE, this was the only DUID training option available. With the advent of ARIDE, law enforcement agencies now have training that is offered multiple times per year that provides officers with base knowledge about drug impairment and can be completed in a couple of days. For agencies that have invested heavily in DRE certification only to lose these officers (to promotion, retirement, etc.), increased reliance on ARIDE might become a more attractive choice from a resource perspective. While ARIDE is an important class and agencies should endeavor to have a significant number of their frontline officers trained, it is not a substitute for the DEC Program and it is necessary for agencies to understand that cases will be lost if they fail to maintain and/or grow their number of DREs.

Every law enforcement agency should have at least one DRE available at all times to perform drug evaluations; for larger agencies, this number should be large enough to keep up with demand. An impaired driving case that involves a drug evaluation (performed according to protocol) will almost always be stronger than one without. For this reason, it is imperative that agencies strike a balance and invest in the growth of both programs. By having additional ARIDE-trained officers on the roads, more cases of potential drug and polysubstance-impairment can be identified and referred to DREs for formal evaluations. With a greater number of DREs, agencies can ensure that there is always coverage and officers are available to perform evaluations especially during peak enforcement hours. States, therefore, should endeavor to increase the number of ARIDE-trained officers and certified DREs simultaneously. By collecting the data mentioned earlier in this section, sates can evaluate how to best facilitate the growth of both programs to ensure maximum productivity and effectiveness.

Reform in Action

West Virginia was the last state to establish a DEC Program with the first officers certified in 2014. While the state lagged in initiating the program, in the years since it has steadily expanded and can now serve as a model for other states. For several years, West Virginia has significantly affected by the opioid epidemic and as of 2017, it has the highest age-adjusted rate of opioid overdose deaths in the country. The pervasive nature of drug problems within the state led the Governor's Highway Safety Program (GHSP) and law enforcement to initiate the state's DEC program. Under the leadership of the state DRE coordinator and with continual funding from GHSP, the program has grown to 47 DREs within five years. In 2017, West Virginia was one of several states that were awarded a Responsibility.org/GHSA drug-impaired driving grant in recognition of both the growing need for more DREs as well as the significant progress made in establishing the program. The training done to date has been extremely effective and this is reflected in arrest data. Prior to the establishment of the program, drug-related DUI arrests accounted for less than 4% of all DUI arrests in West Virginia. In 2017, 37% of all DUI arrests were drug related. Stakeholders in West Virginia attribute much of this increase to the dedicated training efforts that have occurred in recent years.

In addition to adhering to an aggressive training schedule, the stakeholders involved in the West Virginia DEC Program also formed a Drug Recognition Expert's Technical Advisory Panel to address state-specific issues. After establishing the program, there was also a commitment to better understand the nature of the state's impaired driving problem. To ensure that officers are able to easily and efficiently report data from drug evaluations, West Virginia became involved in the DRE Data Entry and Management System that was created by the Institute for Traffic Safety Management & Research (ITSMR) in New York. This system is designed to improve the oversight and monitoring of the DRE program and facilitates data collection and analysis. West Virginia is one of several states that requires all DREs to enter drug evaluation data into a tablet application that transmits this information to a larger database where it can be used for research and evaluation. Grant funding was secured to offset equipment costs (e.g., tablets) for officers and facilitate the data collection process. More states have begun to follow West Virginia's example and have joined the data management system (at the time of writing, approximately 11 states had signed license agreements with ITSMR to participate in the data system).

The analysis of DRE evaluation data has assisted West Virginia has assisted law enforcement in identifying drug trends and informing patrol strategies. For example, many drug-impaired driving arrests were found to occur during the daytime as opposed to when traditional DUI enforcement is conducted, and DRE evaluation data supported this finding as 51% of all cases involving a DRE were initiated between 8:00am-8:00pm. Subsequently, law enforcement agencies within the state are now exploring strategies to combat drug-impaired driving during daytime hours.

Reform in Action

Resources

West Virginia is a state that celebrates officers who engage in impaired driving enforcement. Each year, the Governor's Highway Safety Program holds a statewide traffic safety conference that is geared primarily towards law enforcement. This retreat, entitled Highway-2-Enforcement, is a major educational and training opportunity. As part of the conference, GHSP recognizes the accomplishments of the law enforcement officers who demonstrate a significant commitment to combating impaired driving as evidenced by their number of DUI arrests. Undoubtedly, some of these officers who have received recognition in recent years are DREs. In 2018, three DREs performed more than 50 drug evaluations each which far exceeds the state average of 13 evaluations per certified DRE.

IACP Drug Evaluation and Classification Program Annual Report (2017)

IACP Drug Recognition Expert Section

Advanced Roadside Impaired Driving Enforcement Participant Manual (2018)