Did You Know?

• Tetrahydrocannabinol (THC)—the component in cannabis that causes impairment—was more prevalent among seriously or fatally injured drivers during the COVID-19 pandemic than alcohol (32.7% versus 28.3%).

• According to the Centers for Disease Control (CDC), 12.6 million Americans reported driving after using marijuana or other illicit drugs in 2018.

• The use of oral fluid to detect drugs at the roadside leverages a preliminary screening device to identify select drugs in under 15 minutes. It is rapid, simple and non-invasive.

States Explore Oral Fluid Testing to Combat Impaired Driving

BY SAMANTHA BLOCH

Driving under the influence (DUI) of drugs appears to be a factor in an increasing number of impaired-driving crashes. The National Highway Traffic Safety Administration (NHTSA) found drug use among fatally injured drivers who were tested rose from 25% in 2007 to 42% in 2016, and marijuana presence doubled in this time frame.

Recent NHTSA studies suggest the COVID-19 public health emergency exacerbated risky driving behaviors such as driving after consuming alcohol, drugs or a mix of alcohol and other drugs. Updated data show that the worrying trends observed during the first months of the pandemic continued into the second half of 2020.

In addition, tracking and reporting drug-impaired driving is difficult because drivers who may be under the influence of both drugs and alcohol are often cited for an over-the-limit blood alcohol concentration and rarely tested for other substances. Furthering the investigation would take more time and money but would not result in more severe sanctions beyond those brought
by the DUI of alcohol charges. As a result, data on drug-impaired driving is incomplete and inconsistent and does not measure the real scope of the problem.

Determination of impairment based solely on drug test results is problematic due to the lack of an established relationship between the concentration of a drug and the impairment it causes. Additionally, existing drug screening technology for use at the roadside is not regulated by the federal government. Lastly, a recent NHTSA Traffic Tech study evaluated existing field oral fluid drug testing devices and found some promising results but also persistent reliability and validity issues.

Blood analysis is considered the "gold standard" of drug and alcohol testing because it has been leveraged longer and evaluated the most. However, it requires a warrant and taking the driver to a facility where blood can be drawn, and on average two or more hours elapse between the traffic stop and the specimen collection. Since drugs are metabolized by the body relatively fast, this can cause the loss of critical evidence.

As states and law enforcement agencies explore avenues to remedy these issues, the use of oral fluids to detect drugs is gaining popularity.

Oral fluid roadside screening devices test the saliva of an individual for the presence of specific drugs. A positive result indicates drug presence above a certain cut-off level and not a quantifiable drug level. It also indicates relatively recent drug use. This screening method, similar to a breathalyzer, is rapid, simple and non-invasive. One of the greatest benefits of using oral fluid to detect drugs is the ability to collect a specimen at roadside shortly after law enforcement stops an individual. However, a positive result obtained through a screening device is preliminary and requires further testing to establish impairment. It provides a tool for law enforcement to develop probable cause and decide when to pursue laboratory-based confirmation testing or call a Drug Recognition Expert (DRE). The main disadvantage of roadside drug screening is the possibility of erroneous results.

Oral fluid confirmation testing is conducted in a laboratory to obtain more accurate and detailed information, such as quantifiable drug levels, that can be used in an evidentiary capacity.

State Action

Currently, 24 states have statutes authorizing some form of oral fluid specimen use—other terms used include saliva and other bodily substances—in DUI cases. However, most of these states do not collect oral fluid in practice. Two states—Alabama and Indiana—have permanent or active oral fluid roadside screening programs. Michigan allows collection of oral fluid for the state’s pilot program only.

Alabama initially conducted a pilot program established by the Alabama Department of Forensic Sciences and later transitioned to a permanent oral fluid toxicology program. Alabama's field screening devices test for marijuana, cocaine, methamphetamine, amphetamine, opioids and benzodiazepines. Oral fluid devices are administered at roadside in a screening capacity to confirm any suspicion of drug use after law enforcement conducts a standardized field sobriety test. The results help obtain a search warrant to collect blood or oral fluid for a laboratory test that would provide evidence for trial.

Law enforcement officers in Indiana began using roadside screening around the state in December 2020 to build probable cause and determine whether or not to call for a DRE. Data collected through the program will be used to evaluate a possible expansion.

The Michigan legislature (Public Act 242 and 243 of 2016) authorized state police to develop an oral fluid pilot program. The initial pilot was conducted in five counties and used DREs to administer the oral fluid test. Unlike previous programs (like the three-year pilot program in Colorado that began in March of 2015), this program was not voluntary as drivers were not given the option of opting out from providing a sample. The program was extended for a second year and expanded statewide. Michigan State Police released a report concluding it found oral fluid testing accurate for purposes of preliminary roadside testing.

Vermont (SB 54) amended its implied consent law to include the testing of saliva in 2020 for evidentiary purposes only. Law enforcement officers can now require a person to submit to a saliva test when they have reasons to believe that they are under the influence of drugs or a combination of drugs and alcohol. Saliva samples cannot be taken at roadside and must be analyzed in a laboratory.