



Using Oral Fluid to Detect Drugs: State-of-the-States

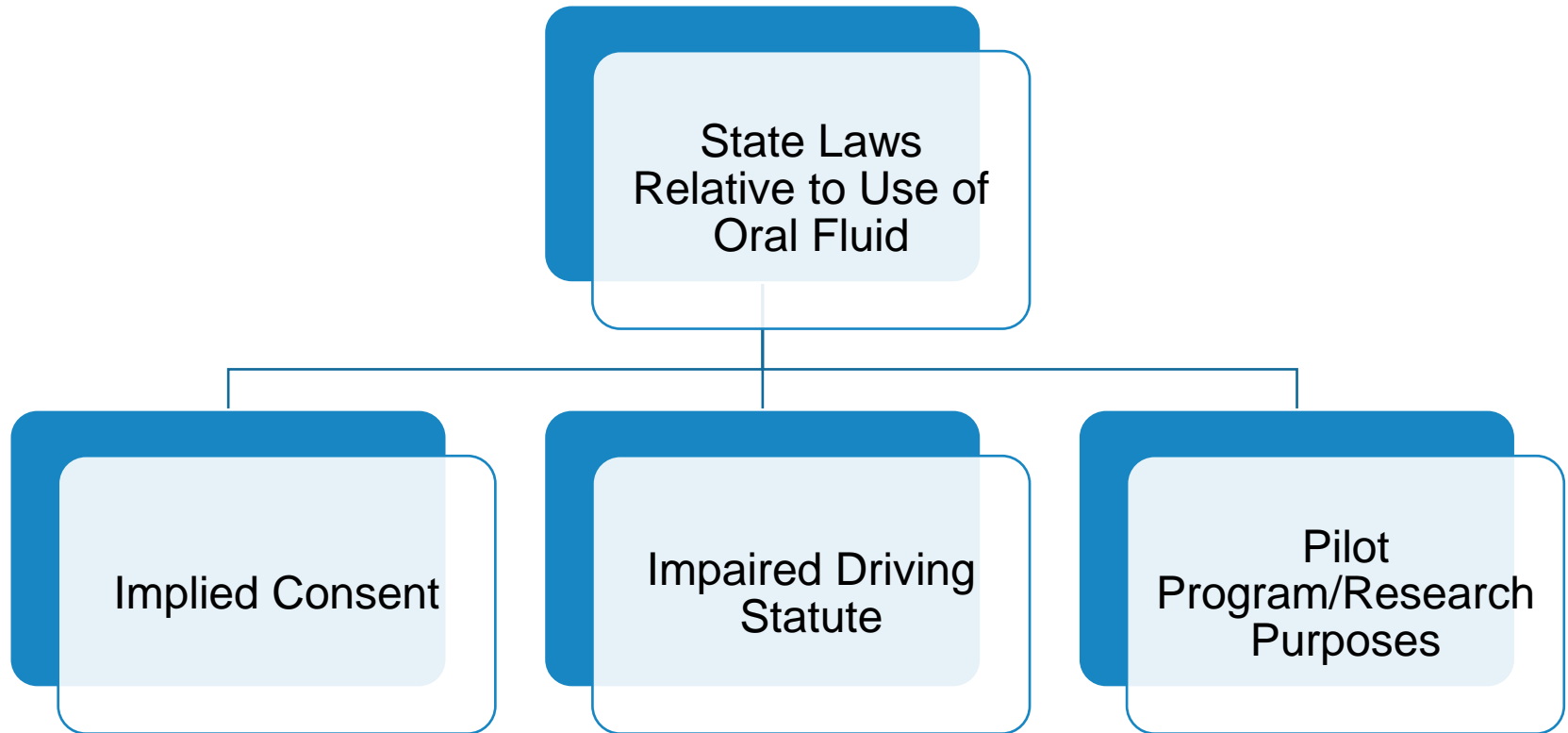
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AAA National Office // Washington, DC

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State Law

- Implied consent laws or other statute must authorize the collection of blood and/or oral fluid specimens.

* and *

- Implied consent law or other statute must extend to drugs other than alcohol.

Notes:

Blood: 40 states

- Exemptions in \geq eight states limit application of the law.

Oral Fluid: 23 states

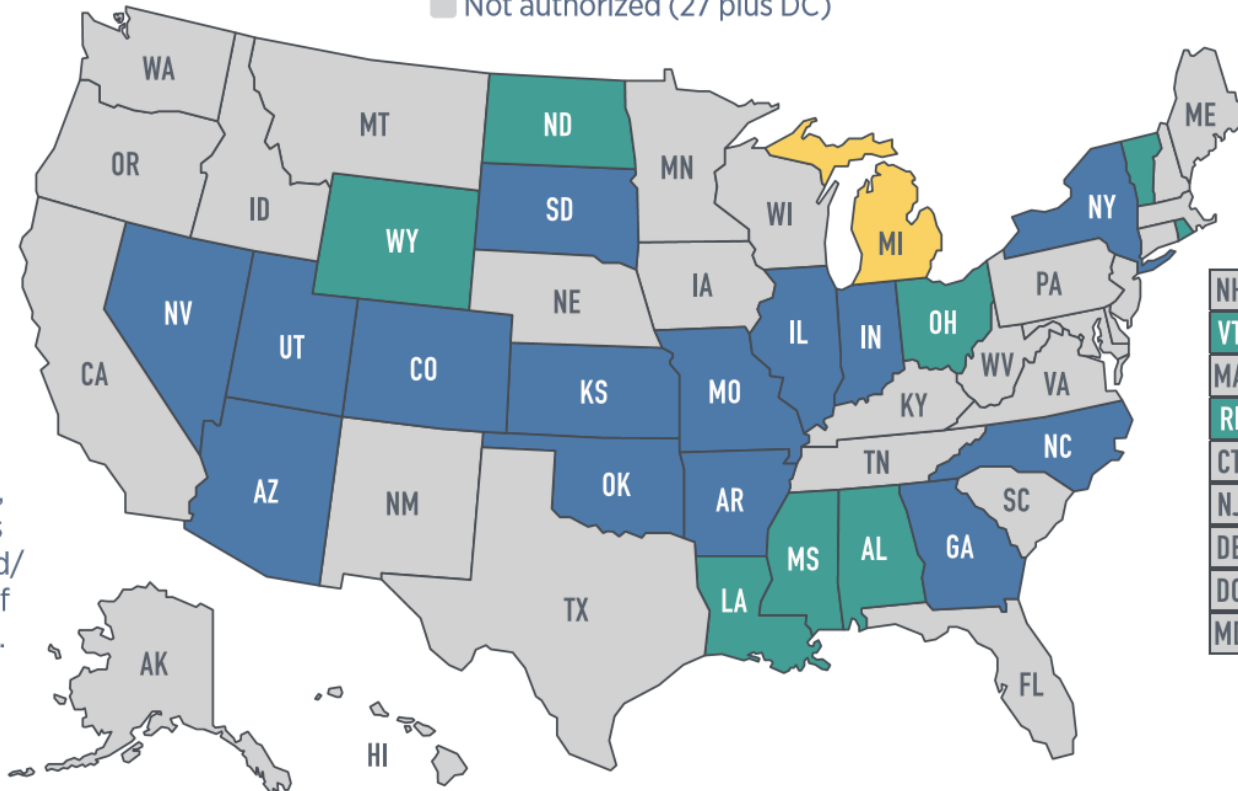
- In practice, most of these states don't collect oral fluid specimens for use in impaired driving cases.



ORAL FLUID AUTHORIZED TO DETECT DRUGS?

October 2020

- Covered by implied consent law (14)
- Authorized by impaired driving statute; implied consent N/A (8)
- Authorized for state pilot program (1)
- Not authorized (27 plus DC)



In practice, oral fluid is not collected/used even if authorized.

States that
collect oral fluid:

INDIANA



Roadside screening devices used to:

- Build Probable Cause, and/or
- Determine whether or not to call for a Drug Recognition Expert.



**Law Enforcement
Agency
Perspective on Use
of Oral Fluid to
Detect Drugs:**

OHIO



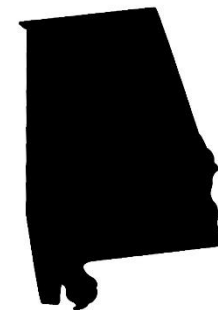
- Priority is to double down on police training (back to the basics).
- Lack of confidence in oral fluid roadside screening devices.
- High degree of interest in collection of oral fluid for evidentiary testing in labs.



States that
collect oral fluid:

ALABAMA

New legislation
pending Gov's
signature.

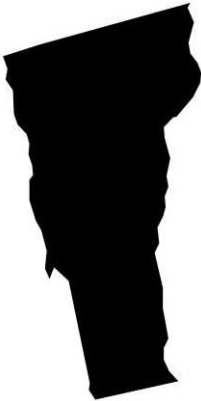


- Collection of oral fluid was not originally covered by implied consent law, but that changed this year.
- Statewide oral fluid drug screening at the roadside and evidentiary confirmation testing in the lab.
- Law enforcement officers collect specimens.



More Recent:
VERMONT

- Not currently collecting oral fluid.
- New legislation established a lab-based program (evidentiary), not a roadside program (screening).
- There's one big problem...



Complicating Factors

STATE LAW

- Expect loopholes/exemptions
- Law makers do not typically understand complexity of establishing oral fluid drug screening/testing programs for impaired driving.
- Funding for program implementation.

LAW ENFORCEMENT AGENCY POLICY

- Existing backlog at labs
- Perception of scientific uncertainty and reliability of roadside oral fluid devices and admissibility of results in court.
- Law enforcement agency policy that BAC \geq .08 is sufficient for arrest/conviction such that drug screening/testing is unnecessary.



Strategies to Boost Use of Oral Fluid

- Significant education effort within states on strengths and limitations of use of oral fluid for:
 - Roadside screening
 - Lab testing
- Facilitate **diverse coalition** of key players to help advance use of oral fluid to meet the needs w/in that state, and to close loopholes.
- Coalition to advocate for amendments to state law (if needed) and shift in law enforcement agency policy.
- Align incentives for law enforcement agencies to pursue drug testing even when BAC \geq .08
- Articulate the ROI in terms of public health/safety of better/faster identification of drugs other than alcohol in impaired driving cases.



When Cannabis Use Becomes Legal...

- Avoid per se standards for cannabis, consider permissible inference
- Direct tax revenue to law enforcement training, public education about drug-impaired driving, and toxicology labs
- Improve data quality and availability on DUID
- Open container law for cannabis
- Require dispensaries to educate consumers about the safety and legal implications of driving high.
- Leverage oral fluid to detect drugged drivers.
- Authorize testing of oral fluid and blood for any substance capable of impairing a driver's ability to safely operate a motor vehicle. Avoid finite drug lists.
- Use electronic warrant systems
- Establish a special commission comprised of qualified experts to advise on evolving science and technology relative to detection of drugged drivers and determination of drug impairment among drivers.

A vertical strip on the left side of the slide features a blurred image of police lights at night, with red and blue lights creating a bokeh effect. The text is overlaid on a dark blue background within this strip.

Using Oral Fluid to Detect Drugged Drivers

Thank you!

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