




Drug-Impaired Driving Laws Overview

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NCSL Traffic Safety Legislative Database

TOPICS Clear		STATES Clear		
<input type="checkbox"/> All Topics	↑ ↓	<input type="checkbox"/> All States	↑ ↓	
<input type="checkbox"/> Aggressive Driving		<input type="checkbox"/> Alabama		
<input type="checkbox"/> Automated Enforcement/Photo Monitoring		<input type="checkbox"/> Alaska		
<input type="checkbox"/> Child Passenger Protection		<input type="checkbox"/> Arizona		
<input type="checkbox"/> Distracted Driving		<input type="checkbox"/> Arkansas		
<input type="checkbox"/> Driver's Licensing		<input type="checkbox"/> California		
<input type="checkbox"/> Impaired Driving		<input type="checkbox"/> Colorado		
<input type="checkbox"/> Motorcycle Safety		<input type="checkbox"/> Connecticut		
<input type="checkbox"/> Pedestrian and Bike Safety		<input type="checkbox"/> Delaware		
<input type="checkbox"/> School Bus Safety		<input type="checkbox"/> District of Columbia		
<input type="checkbox"/> Seatbelts and Occupant Protection		<input type="checkbox"/> Florida		

KEYWORD	STATUS	BILL NUMBER	YEAR	AUTHOR
<input type="text"/>	All <input type="button" value="v"/>	<input type="text"/>	2013 <input type="button" value="v"/>	<input type="text"/>



Drug-Impaired Driving

- The National Highway Traffic Safety Administration (NHTSA) found drug use (other than alcohol) among fatally injured drivers who were tested rose from 25% in 2007 to 42% in 2016, and marijuana presence doubled in this time frame.
- According to the Centers for Disease Control, 12.6 million Americans reported driving after using marijuana or other illicit drugs in 2018.
- A NHTSA study found that 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%).

Polysubstance-Impaired Driving

- The NHTSA study also found that drug and polysubstance—a mix of drugs or a combination of drugs and alcohol—prevalence increased in during the pandemic. Roughly 65% of drivers tested positive for at least one drug (including alcohol) and 25.3% for two or more compared to 50.8% and 17.6%, respectively, before COVID-19.
- States are also reporting a concerning increase in multi-substance impairment. Data from Washington shows that impairment by multiple substances was more common than any other type of impairment in fatal crashes from 2008-2016. Among drivers involved in fatal crashes, 44% tested positive for two or more substances, with alcohol and THC being the most common combination.
- In Colorado, 75% of polydrug toxicology results indicated the presence of both alcohol and THC among drivers charged with DUI.

Impact of Marijuana Legalization on DUIs in Washington

- Research from the AAA Foundation for Traffic Safety concluded that the number of drivers in Washington who test positive for marijuana after a fatal crash has doubled—from about 9% to about 18%—since the state legalized it in 2012. However, the authors pointed out that the study found only a correlation between legalization and an increased number of drivers involved in fatal crashes who tested positive, not a causative link.
- The report also emphasizes that:
 - There is no science showing that drivers reliably become impaired at a specific level of marijuana in the blood. Depending on the individual, drivers with relatively high levels of marijuana in their system might not be impaired, while others with low levels may be unsafe behind the wheel.
 - Because marijuana can affect people differently, it is challenging to develop consistent and fair guidelines. For example, frequent users of marijuana can exhibit persistent levels of the drug long after use, while drug levels can decline more rapidly among occasional users.

Impacts of Marijuana Legalization in Colorado

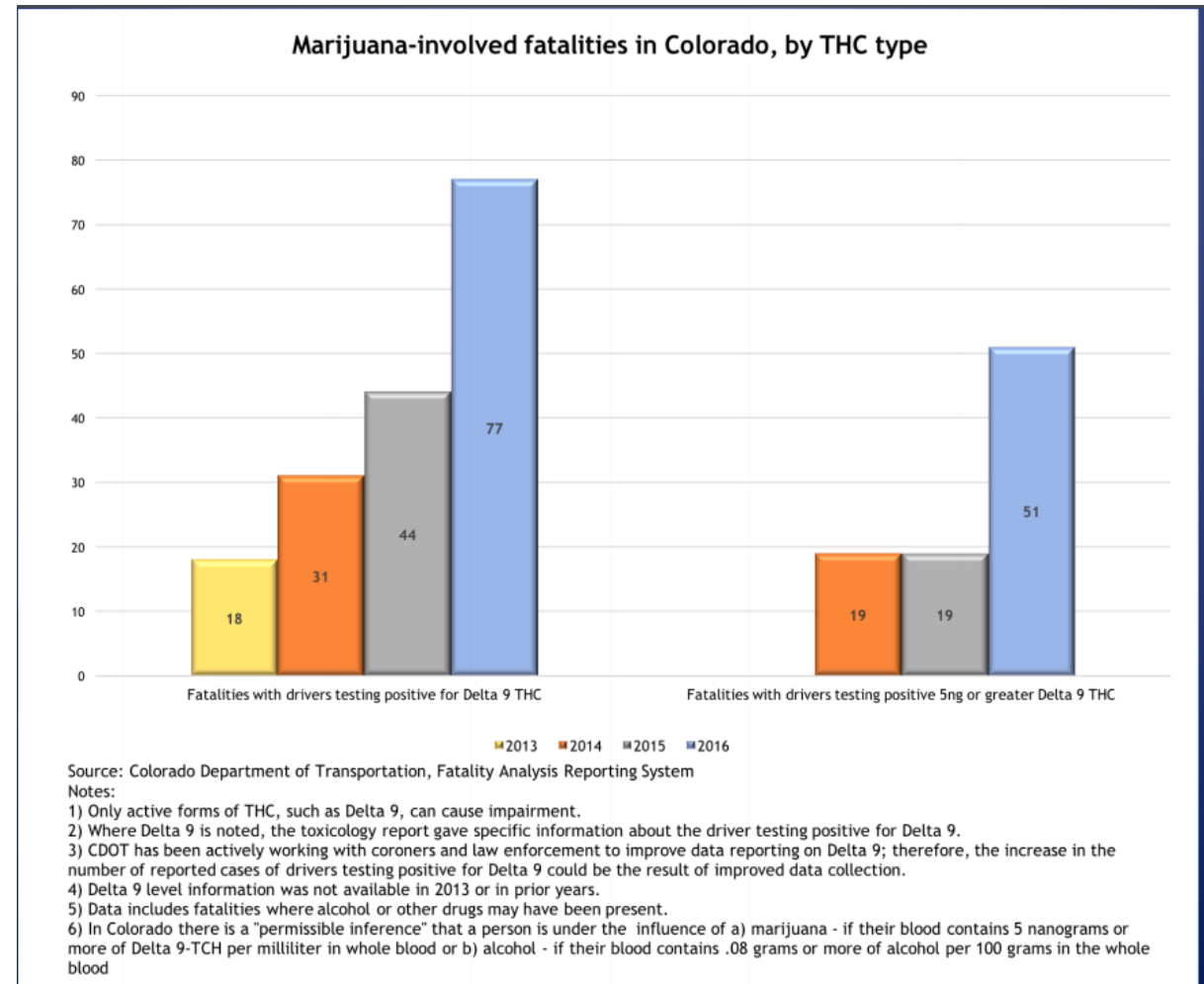
A Report Pursuant to Senate Bill 13-283

Table 21. Colorado roadway fatalities' testing summary, 2013–2017

	2013	2014	2015	2016	2017
Fatalities	481	488	546	608	648
Fatalities with at least one driver drug tested	313	318	369	403	439
% fatalities with at least one driver drug tested	65%	65%	68%	66%	68%
Fatalities with at least one driver alcohol tested	345	338	391	414	448
% fatalities with at least one driver alcohol tested	72%	69%	72%	68%	69%
Drivers	627	684	787	880	940
Drivers drug tested	294	310	361	386	439
% drivers drug tested	47%	45%	46%	45%	47%
Drivers alcohol tested	337	339	397	408	455
% drivers alcohol tested	54%	50%	50%	46%	48%
Crashes	431	451	506	558	600
Crashes with at least one driver drug tested	274	286	334	357	396
% crashes with at least one driver drug tested	64%	63%	66%	64%	66%
Crashes with at least one driver alcohol tested	304	305	356	369	405
% crashes with at least one driver alcohol tested	71%	68%	70%	67%	68%

Source: Colorado Department of Transportation, Data Intelligence Group, Toxicology Data (2018).

Note: There is overlap in drivers tested for both alcohol and drugs.



[Colorado DUID Picture, NHTSA Drugged Driving Call to Action, 2018](#)

NHTSA's Drug-Impaired Driving Criminal Justice Evaluation Tool

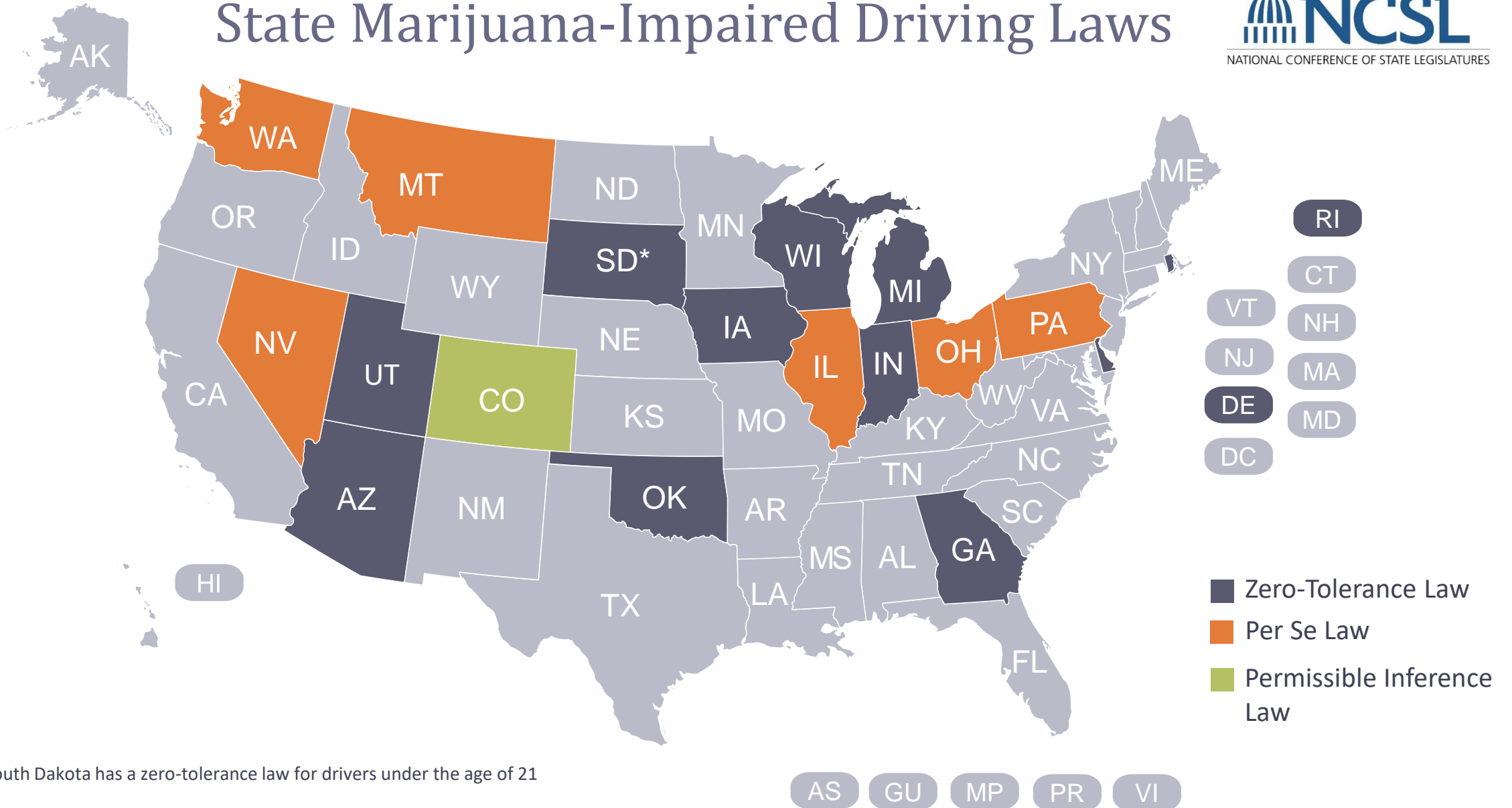
Section 9: Legislation

9.1 State Legislation

	Answer:	Resources
Does your State have separate statutes for alcohol, drugs and poly-substance impaired driving?		Uniform Guideline for State Highway Safety Programs: Impaired Driving: https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/impaireddrivingpdf.pdf
Does your State have a zero-tolerance law for drivers under the age of 21 for drug-impaired driving?		
Does your State have an open container law making it illegal to drive with drugs in the passenger area?		
Is there education of key stakeholders as to why current research does not support a per se level for marijuana-impaired driving?		https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812440-marijuana-impaired-driving-report-to-congress.pdf
Do State statutes allow for drug testing using blood, urine and oral fluids?		
Do State statutes allow for specially trained law enforcement officers to serve as law enforcement phlebotomists?		
Has your State adopted model toxicological testing standards?		Toxicological Investigation of Drug-Impaired Driving and Motor Vehicle Fatalities-2017 Update
Does State statute allow for the establishment of electronic warrant systems and electronic signatures?		
Does your law include penalties for refusing a chemical test and/or DRE evaluation? If so, can these be introduced in court?		
Does your State have administrative license suspension or revocation for drug-impaired driving offenses?		
Does your State allow DWI checkpoints?		

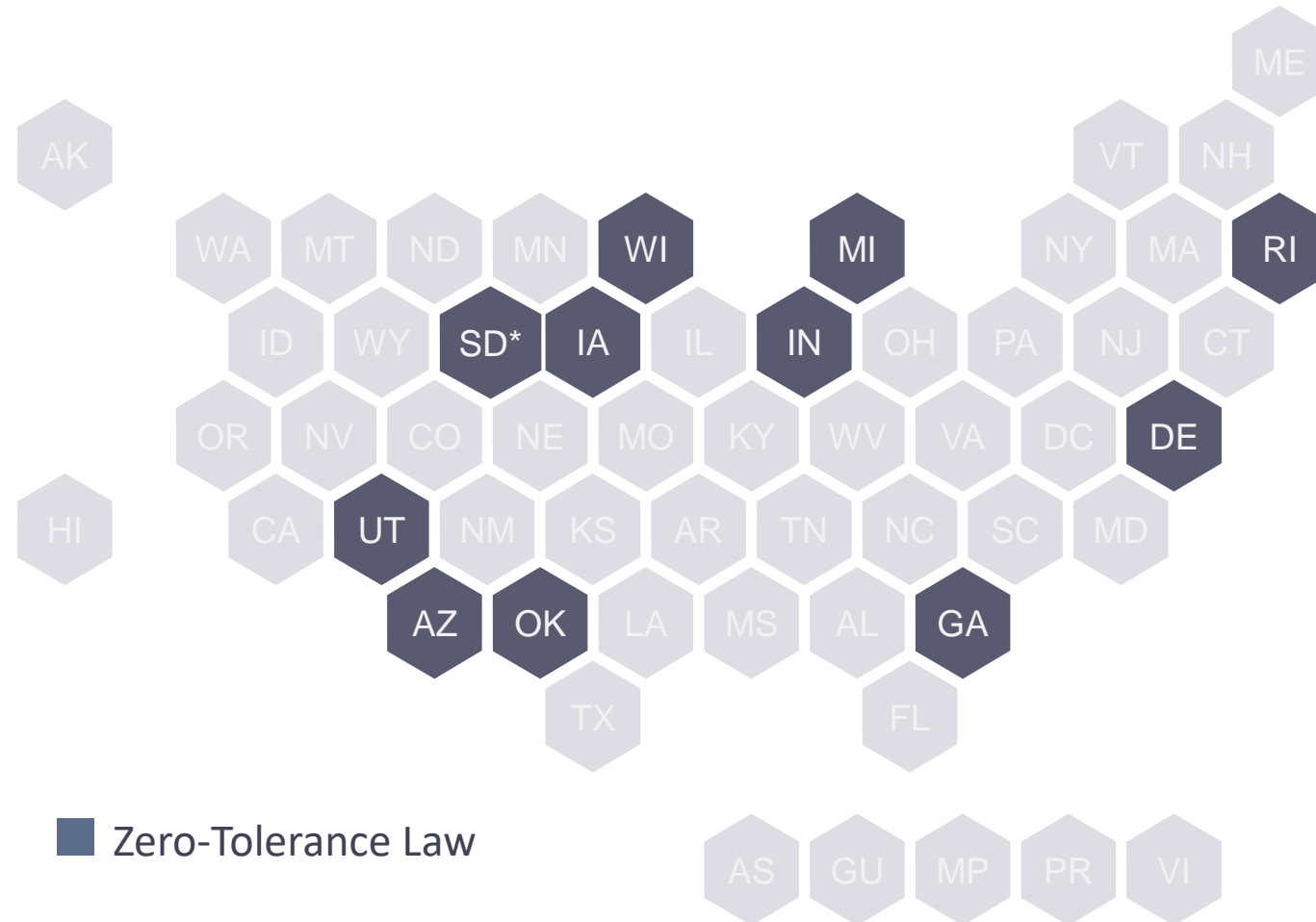
<https://www.nhtsa.gov/drug-impaired-driving-criminal-justice-evaluation-tool>

State Marijuana-Impaired Driving Laws



Zero-Tolerance Laws

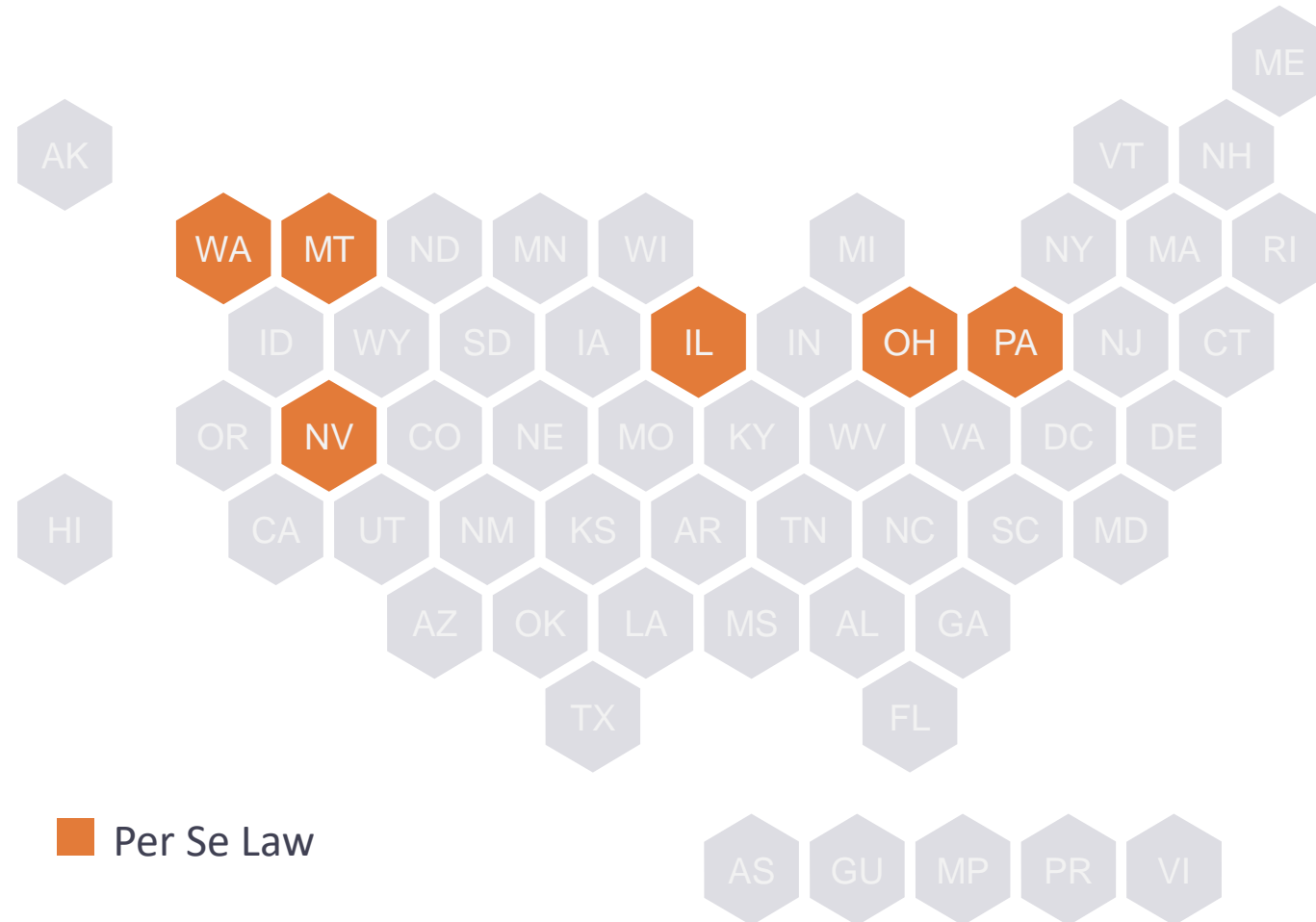
- **Eleven states** have zero-tolerance laws for THC.
- **Zero tolerance laws** prohibit driving with any amount of THC or THC and its metabolites in the body.



*South Dakota has a zero-tolerance law for drivers under the age of 21

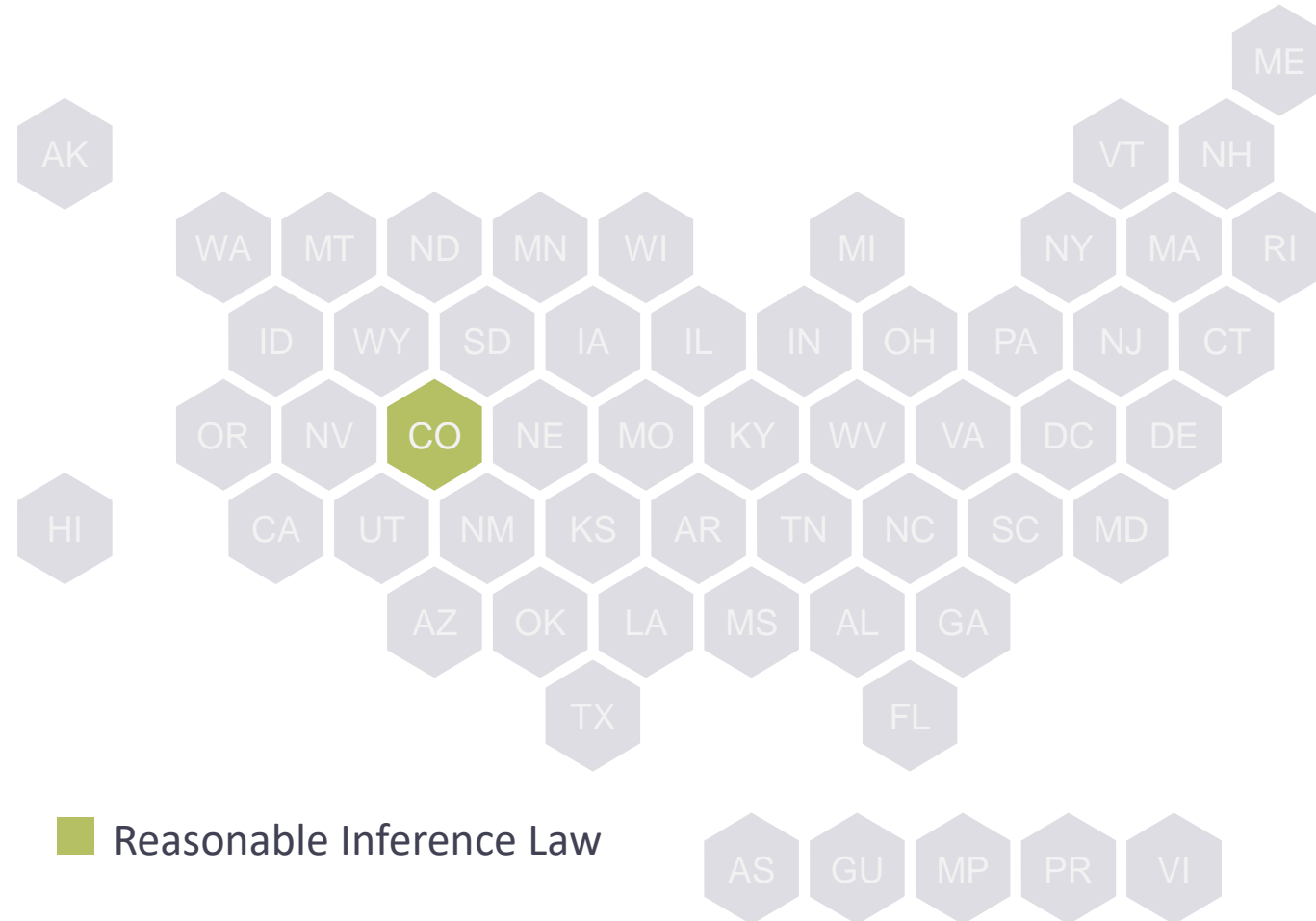
Per Se Laws

- **Six states** have specific per se limits for THC, ranging between 1 nanogram and 5 nanograms per ml.
- **Per se laws** establish that once a person is shown to have reached or surpassed the legal limit, that person will be considered impaired by law.



Reasonable Inference Laws

- **Colorado's reasonable inference law** states that in instances where THC is identified in a driver's blood in quantities of 5ng/ml or higher, it is permissible to assume the driver was under the influence.
- **The Permissible inference standard** is a possible jury instruction.



Driving Under the Influence Laws

- Impaired driving is illegal in every state. General laws that are in place to combat impaired driving can be used for marijuana-impaired driving.
- Drug recognition experts can identify, arrest and prosecute marijuana-impaired drivers even in the absence of specific laws.



States Explore Oral Fluid Testing to Combat Impaired Driving

- Oral fluid roadside screening devices test the saliva of an individual for the presence of specific drugs. A positive **preliminary** result indicates drug presence above a certain cut-off level and not a quantifiable drug level. It also indicates relatively recent drug use.
 - Main advantage: the ability to collect a specimen at roadside shortly after law enforcement stops an individual.
 - Main disadvantage: 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.



Oral Fluid Testing- State Action

Alabama

- Initially conducted a pilot program and later transitioned to a permanent oral fluid toxicology program.
- Impaired driving law allows for oral fluid specimen collection.
- Statewide oral fluid drug screening at the roadside and evidentiary confirmation testing in the lab.
- Law enforcement officers collect specimens.

Michigan

- Michigan authorized state police to develop an oral fluid pilot program.
- Only drug recognition experts can collect oral fluid specimens.
- Unlike in pilots conducted in other states (Colorado), drivers were not given the option of opting out from providing a sample.
- Michigan State Police concluded in a report that it found oral fluid testing accurate for purposes of preliminary roadside screening.

Indiana

- Roadside oral fluid screening devices are used to build probable cause and/or determine whether or not to call a Drug Recognition Expert.
- Data collected will be used to evaluate a possible expansion.

Reporting and Data Collection

Reporting and data collection are critical to understanding the scope of the impaired driving problem. However, reporting across states and jurisdictions is not uniform.

In recent years, at least five states have passed legislation aimed at improving data collection and reporting of DUI offenses. Some examples include:

Colorado

- Since 2017 the Department of Public Safety has annually reported on substance-affected driving to the General Assembly.

California

- Superior courts' reports must specify instances when cannabis was the sole intoxicating drug in a DUI conviction.

Maine

- The Department of Public Safety must maintain separate categories in its uniform crime reporting for offenses involving DUI of alcohol, DUI of intoxicating substances other than alcohol and DUI of a combination of both.

NCSL Resources

Traffic Safety State Bill Tracking Database

- www.ncsl.org/research/transportation/state-traffic-safety-legislation-database.aspx

Drugged Driving/Marijuana-Impaired Driving

- www.ncsl.org/research/transportation/drugged-driving-overview.aspx

LegisBrief - States Explore Oral Fluid Testing to Combat Impaired Driving

- <https://www.ncsl.org/research/transportation/states-explore-oral-fluid-testing-to-combat-impaired-driving.aspx>

Traffic Safety Trends State Legislative Action 2019

- www.ncsl.org/research/transportation/traffic-safety-trends-state-legislative-action-2019.aspx





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