



October 17, 2023

Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Avenue SE,
Washington, DC 20590-0001

RE: Docket Number – NHTSA-2023-0011

Docket Name – Examine Issues with Prosecuting Driving-Under-the-Influence-of Drugs

To whom it may concern:

The Foundation for Advancing Alcohol Responsibility (Responsibility.org) and the National Alliance to Stop Impaired Driving (NASID) support the National Highway Traffic Safety Administration (NHTSA) notice and request for public comment regarding - Examine Issues with Prosecuting Driving-Under-the-Influence-of-Drugs (DUID) Cases [Docket No. NHTSA–2023–0011]. NHTSA’s information collection activities outlined in this notice are necessary and critical for the performance and function of the agency and to enhance the work of addressing DUID from a prosecutorial process.

Background

For over 30 years, the Foundation for Advancing Alcohol Responsibility (Responsibility.org) has been funded by the nation’s leading distilled spirits producers to focus on three core mission areas: to eliminate drunk driving and all forms of impaired driving; eliminate underage drinking; and empower adults to make responsible alcohol choices. To learn more about Responsibility.org and our members, please visit our website [here](#).

The National Alliance to Stop Impaired Driving (NASID) is a coalition established and led by [Responsibility.org](#) to eliminate all forms of impaired driving, especially multiple substance impaired driving, through effective and proven measures such as DUI system reform, DUI detection, prosecution, toxicology, and improved use of data and technology. NASID membership includes stakeholders working in a public/private partnership to achieve these goals. Membership includes law enforcement, prosecutors, judges, toxicologists, probation/parole, academics, safety advocates, and industry leaders to address the full DUI system.

The United States is experiencing a traffic safety crisis with the highest number of traffic related fatal crashes since 1990 according to NHTSA. Data from the Fatality Analysis Reporting System shows 42,939 lives lost in preventable traffic related crashes, in 2021, preliminary data for 2022, shows a slight decrease. Alcohol-related traffic fatalities increased by 14 percent in 2021,

eclipsing 13,000 fatalities for the first time since 2007. In an increasing number of cases alcohol is not the only impairing substance in impaired driving cases. According to NHTSA FARS data, in 2021, 60% of drug-positive driver fatalities, involved a driver who tested positive for drugs but not alcohol, and 40% were positive for both alcohol (BAC=.01+) and at least one other drug. Additionally, 33% of drug-positive driver fatalities involved an alcohol-impaired driver. Data shows that 18% of driver fatalities involved a driver who tested positive for two or more impairing drugs.

Notice for Public Comment - Recommendations

Drugged driving poses a significant threat to roadway safety creating several complexities for law enforcement, toxicologists, and prosecutors. NHTSA research and programs support impaired driving countermeasures; however, there is a critical need for a deeper understanding and examination of the challenges faced when prosecuting drugged drivers.

Commented [MD1]: This is not true based on NHTSA data.

Responsibility.org makes the following recommendations and requests for this important study:

- 1) In reviewing the types of respondents identified for the interviews, we ask that you consider adding the following groups to your list for interviews:
 - a) Representatives from the state highway safety offices: This group can share their perspective about the types of grants they provide for prosecuting DUID cases.
 - b) State judicial outreach liaisons: These individuals can share their experience in educating Judges about drug impaired driving and reducing recidivism.
 - c) Treatment professionals: Treatment professionals who work with individuals who have been prosecuted for DUID should be considered to provide insights on interactions with the court system.
 - d) The National District Attorneys Association's National Traffic Law Center. Responsibility.org and NASID have partnered for many years with the NDAA to identify critical education, training, and resources for prosecuting DUID cases. The following are a few examples of the resources created for review and consideration for the NHTSA technical report:

- i) [Drug Toxicology for Prosecutors](#)
- ii) [Prosecuting DUI Cases](#)
- iii) [Investigation and Prosecution of Drug-Impaired Driving Cases](#)

Commented [MD2]: This seems out of place given in #1 we recommend including other people/groups to speak with.

- 2) We also request that the time allowance for interviewing traffic safety resource prosecutors be extended to 45-minutes. These individuals have strong experience with the complexities of prosecuting DUID in their respective states, and we recommend additional time to fully capture their insights.
- 3) We request that you include a study of data collection and the challenges this poses for the courts as part of your research. In addition to the items noted for prosecution, a

challenge many states face is having a single statute that incorporates charges for alcohol and/or drugs and no way to delineate the types of cases. The NHTSA report should consider a few of the following to track DUID cases and the stage of the adjudication process:

- a) DUI/DUID cases, number of cases with an officer trained in only standard field sobriety test training (SFST) – stage of adjudication process.
- b) DUI/DUID cases, number of cases with an Advanced Roadside Driving Enforcement Officer (ARIDE).
- c) DUI/DUID cases, number of cases with a Drug Recognition Expert (DRE).
- d) DUI cases with blood, oral fluid, or other chemical testing technology.

Conclusion

Responsibility.org and NASID support NHTSA on this notice for public comment Docket No. NHTSA–2023–0011] Examine Issues with Prosecuting Driving-Under-the-Influence-of-Drugs (DUID) Cases. An in-depth examination of the complexities in prosecuting DUID cases is critical and this technical report could be an instrument of change in enhancing state laws, practices, and processes to better adjudicate these types of cases and to help change behavior.

Thank you for the ability to provide comments to this docket. Responsibility.org and NASID stand ready to assist NHTSA in our joint mission to eliminate impaired driving crashes, injuries, and fatalities.

Sincerely,



Leslie Kimball
Executive Director, Responsibility.org



Darrin Grondel
Senior Vice President, Traffic Safety at Responsibility.org
Director, NASID

Commented [KP3]: Do we want to broaden this to say alcohol rather than just "intoxicating liquor?"

Commented [KP4]: I am not sure what this sentence is asking for. Is it accurate if I amend this to say: "NHTSA's study of data collection measures should include several of the following types of cases to track DUID cases and the stage of the adjudication process. This will give insight into the different types of DUID cases that prosecutors face in states across the nation."