

How Is Testing Drivers for Marijuana Different than for Alcohol

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A total of 36 states have now legalized marijuana for medical use and 11 for recreational use. With an increasing number of states legalizing the drug, authorities are more concerned about how drivers should be tested for driving while impaired by marijuana. As a CNN report has highlighted, law enforcement agencies and prosecutors are right to recognize that determining if drivers are under the influence of marijuana is a difficult new problem.

Topics covered in this blog:

Issues in Testing for Impacts of Marijuana

Testing for the *presence* of marijuana in the body vs. testing for *levels* of it in the system is not the same. Further, testing for the actual *effects* of the drug to be consistently expected is a different objective altogether. The need for *all* these types of information and the elusive means to obtain them is the general issue, which is caused by the combination of these 3 legal stumblingblocks:

1. *No Marijuana Testing Technology* — One reason testing drivers for their extent of impairment from marijuana use is not easy at this point is that there is currently no sufficiently developed technology for testing the substance in the body. As the CNN report points out, even if such a device *was* available (for roadside testing or testing at the nearest law enforcement station), that would not be *all* that is required in order to understand the *level* of marijuana or its *effects* at the time of the test.

2. *The Drug Remains in the Body* — Marijuana can remain in the body for a long time after the high from it is over. This means that just detecting the *presence* of marijuana in someone's system does not necessarily mean that the driver can be assumed to be impaired due to it.

3. *Uncertainty About Effects of the Drug* — Additionally, there has not been sufficient research on the *effects* of marijuana to reach a clear conclusion on whether a driver who has used the drug is actually impaired, or is even impacted by it *at all*. On the contrary, there is the contention that, on average, using marijuana might *not* affect individuals' abilities to drive.

How is Marijuana Testing Different From Alcohol Testing?

The essential ways that alcohol testing for impairment of vehicle drivers differs from testing for marijuana effects are all *three* simply mirror reflections of the problems with marijuana testing as listed above. None of those three obstacles to accurate marijuana testing impede testing for alcohol over-consumption. The differences between testing for alcohol and the challenges of marijuana testing are:

1. *The Technology Differences* — A device has not yet been fully developed for accurate testing of impairment of drivers' functioning due to marijuana consumption, whereas the breathalyzer test for alcohol consumption has been in use by law enforcement for nearly 68 years (since 1954).

2. *How Long the Substance Stays in the Body* — Accurately testing for marijuana's effects is challenging because the drug can remain in the body for a long time after the high is over, so detecting marijuana in the body does not necessarily indicate impairment. By contrast, the blood alcohol concentration (BAC) registered in a roadside alcohol test of a driver can be expected to diminish much sooner than marijuana measured in the body at the same time.

3. *Knowledge of Effects of the Substances* — As CNN reports, minimal research exists on how marijuana actually affects driving. The potency and effects of tetrahydrocannabinol (THC), the primary psychoactive agent in marijuana, vary. So merely confirming its presence in the body does not necessarily indicate that an individual is impaired by it. In the case of alcohol consumption, however, its effects at given quantities have been confirmed.

Research has shown consistently enough that people experience diminished visual and motor functioning after about 2-3 drinks in a one-hour period, depending upon individual body weight. This is the threshold employed by the National Transportation Safety Board. Commensurately, at that point, the BAC can be predicted to register at 0.08 percent, which is the legal limit, the level at which a driver is understood to be intoxicated in almost all states.

The Future of Marijuana Testing for Drivers

The reality is that even though measuring alcohol in a person's breath is much easier than measuring marijuana, even the widely utilized breathalyzer testing devices are not actually reliable in testing for alcohol consumption, because of multiple issues that have still not been remedied after nearly seven decades of improving the technology.

Nevertheless, companies are now endeavoring to develop a reliable technology to measure marijuana in a driver's body. A company in California is reportedly working to develop a combined alcohol *and* marijuana breathalyzer. But, the company admits that the technology under development is not intended for measuring the effects of marijuana, but only its presence in the driver's breath.

The only method of determining the THC *concentration* of marijuana in the body is expensive testing in a laboratory, which is not a feasible approach to processing for multitudes of individual marijuana cases.

At least one D.A. in the state of Texas, as just one example elsewhere in the country, is declining to pursue criminal charges unless a lab test confirms a THC concentration of over 0.3 percent. Numerous cases have been dismissed in that state due to the requirement for proof by lab testing that the THC concentration exceeds the legal limit.

Here in Utah, where only medical use of marijuana has so far been made legal, the challenges in making cases for impairment are no less difficult for police and prosecutors at this point.

As you can gather, law enforcement agents and prosecutors are confronted with a serious challenge in attempting to establish that a driver is actually impaired by marijuana. Of course, arrests can be expected to happen anyway, but until meaningful testing can be consistently performed, defendants in Utah do currently have some significant legal alternatives for avoiding a criminal conviction.

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If you're charged with driving while impaired by marijuana or one of the number of serious moving violations, you need the best lawyer for cases of reckless driving Utah has available to you.

If you are facing charges related to driving under the influence of marijuana, call Wasatch Defense Attorneys, Salt Lake City UT at (801) 980-9965, or use our online form for help scheduling your free case review.

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