Zero Tolerance and Per Se Driving Laws

Thirty-three states address driving under the influence of marijuana using the fairest, most sensible standard — an effects-based law. In these states, drivers are guilty if the cumulative evidence proves they were impaired. That evidence may include footage or testimony about how the person drove, field sobriety test results, and the results of a test for THC — the psychoactive ingredient in marijuana.

In contrast, 17[1] states have taken approaches that run counter to the AAA Foundation for Traffic Safety's guidance.[2] Those "*per se*" or "zero tolerance" laws criminalize some drivers many hours, days, or even weeks after they used marijuana — even if their driving ability was not impaired at all.

Zero tolerance laws criminalize driving with any THC and/or THC metabolites (compounds created as the body processes THC) in one's system.[3] However, THC is fat soluble, and it can stay in regular users' systems several days after they last used marijuana, and metabolites can remain in the body for weeks. *Per se* laws criminalize driving with a set amount of THC and/or metabolites in one's system. They, too, can criminalize driving long after impairment ends.[4] As the National Highway Traffic Safety Administration noted, "toxicology cannot produce *per se* proof of drug impairment. That is, the chemist can't analyze the blood or urine and come up with a number that 'proves' the person was or wasn't impaired."[5]

The below chart shows which states have misguided "zero tolerance," "*per se*," or "rebuttable presumption" laws.[6]

State	Zero Tolerance Law for THC	Zero Tolerance for Metabolites	*Per Se* THC Limit In Whole Blood	Exception for Patients
Arizona	Yes	Yes	N/A	Yes
Colorado	No	No	rebuttable presumption: 5 nanograms/milliliter	No
Delaware	Yes	Yes	N/A	Yes
Georgia	Yes, but see footnote[1]	Yes, but see footnote[1]	N/A	See footnote [1]
Illinois	No	No	5 nanograms/milliliter	Yes
Indiana	Yes	Yes	N/A	No
Iowa	Yes	Yes	N/A	No
Michigan	Yes	No	N/A	Yes
Montana	No	No	5 nanograms/milliliter	No
Nevada	No	No	2 nanograms/milliliter	No
Ohio	No	No	2 nanograms/milliliter	No
Oklahoma	Yes	Yes	N/A	No
Pennsylvania	No	No	1 nanogram/milliliter	No
Rhode Island	Yes	Yes	N/A	Yes
Utah	Yes	Yes	N/A	No
Washington	Yes, for those under 21	No	5 nanograms/milliliter	No
Wisconsin	Yes	No	N/A	No

[1] Georgia's statute has an exception to its *per se* standard for people who are "legally entitled to use" marijuana and other substances other than alcohol. In *Love vs. State*, 517 S.E.2d 53 (Georgia 1999), the Georgia Supreme Court overturned a conviction of someone who was not a legal marijuana user, finding the statute's distinction between legal and illegal users of marijuana violated Equal Protection.

[2] Barry Logan, Ph.D., et al., "An evaluation of data from drivers arrested for driving under the influence in relation to per se limits for cannabis," AAA Foundation for Traffic Safety, May 2016.

[3] Thanks to NORML, whose research on DUI laws has been a great resource. For more information, see Paul Armentano's "Should Per Se Limits Be Imposed For Cannabis? Equating Cannabinoid Blood Concentrations with Actual Driver Impairment: Practical Limitations and Concerns," *Humboldt Journal of Social Relation*s, Issue 35, 2013. Also of note is D.M. Anderson and D.I. Rees' "Per Se Drugged Driving Laws and Traffic Fatalities," IZA Paper No. 7048 (Nov. 2012), which found, "as currently implemented, making it illegal to operate a motor vehicle with drugs (or drug metabolites) in the system has no discernible impact on traffic fatalities."

[4] See: "THC blood test: Pot critic William Breathes nearly 3 times over proposed limit when sober," *Westword*, April 18, 2011.

[5] "The Drug Recognition Expert School Student Manual," National Highway Traffic Safety Administration 2011. Available at: http://www.maine.gov/dps/bhs/impaired-driving/law-enf-resources/dre/documents/7daystu1-10-11.pdf

[6] Colorado's rebuttable presumption law means drivers are guilty if they have a set amount of THC in their blood unless they prove they were not impaired.