



Marijuana Policy Project
2370 Champlain Street NW, Suite 12
Washington, DC 20009
p: (202)462-5747 • f: (202) 232-0442
info@mpp.org • www.mpp.org

"We change laws."

On October 1, 2013, Oklahoma implemented regressive and unscientific changes to its DUI laws by imposing a "zero tolerance" standard for the presence of THC in a person's bodily fluid. Unfortunately, these changes do not make Oklahoma's roads safer and instead are almost certain to result in safe, unimpaired drivers being arrested, charged, and convicted of driving under the influence of a drug. This law criminalizes some drivers who used marijuana weeks earlier.

A law refuted by science

This law makes it a crime for a person to drive when any amount of THC — the main psychoactive ingredient in marijuana — or its metabolites can be detected through blood, urine, or other tests. Most scientists working on the issue acknowledge the difficulty of pegging THC impairment to a number in a way similar to drunk driving laws.¹ Those who have recommended a standard recommend a limit of about five nanograms per milliliter of THC in whole blood, which is far higher than Oklahoma's new "zero tolerance" law.

Oklahoma now considers a person impaired if there is any detectible amount of THC present at levels that are far below any amount that actually suggests impairment. A study measuring driver "culpability" (i.e., who is at fault) in 3,400 crashes over a 10-year period indicates that drivers with THC concentrations of less than five nanograms per milliliter (ng/mL) in their blood have a crash risk no higher than that of drug-free users.² The crash risk begins to rise above the risk for sober drivers when THC concentrations in whole blood³ reach five to 10 ng/mL.

DUI laws should be about impairment, not a person's history

A person who drank a beer last week is not an impaired driver today, yet that is what the new law in Oklahoma does for marijuana consumers. Active THC can remain in a person's system long after impairment has worn off. In one controlled study, six of 25 participants tested positive for active levels of THC after a full seven days of abstention, with the highest concentration detected at three ng/mL of whole blood.⁴ In addition, the blood serum of heavy to moderate users — such as medical marijuana patients from other states who are driving

¹ National Highway Traffic Safety Administration, Drugs and Human Performance Fact Sheet, Cannabis/Marijuana (Δ^9 -Tetrahydrocannabinol, THC), <http://www.nhtsa.gov/people/injury/research/job185drugs/cannabis.htm>

² O.H. Drummer, et al. "The involvement of drugs in drivers of motor vehicles killed in Australian road traffic crashes," *Accident Analysis and Prevention*, 2004, 36, pp. 239-48.

³ "When reporting THC levels in blood or adopting legal limits one must always specify the reference fluid ... For THC, concentrations measured in whole blood are typically 1.6-2.2 times lower than those measured in blood or plasma. For example, 5 ng/mL of THC in whole blood correspond to about 10 ng/mL in serum or plasma." (F. Grotenhermen, et al. "Testing for Impairment by Cannabis," 2004.)

⁴ Erin L. Karschner et al. "Do Δ^9 -Tetrahydrocannabinol Concentrations Indicate Recent Use in Chronic Cannabis Users?," *Addiction*, 2009, 104(12), pp. 2041-2048.

through Oklahoma – may contain more than two ng/mL of THC at 24 or even 48 hours after smoking a single joint, a level that studies have shown does not produce impairment.⁵

Driver safety does not improve with this type of law

A DUI law that relies simply on a measurement of alcohol or other substance in the blood system is often referred to as a *per se* DUI law. A statistical analysis of states with *per se* DUI standards for THC impairment was conducted by two U.S. researchers, who demonstrated that these laws do not result in reduced fatalities.⁶ Aside from the fact that innocent people will be accused and convicted of driving while impaired, there is no reason to think it will actually help improve road safety, even at the expense of innocent drivers.

New Oklahoma DUI standards are unrelated to impairment

Not only does this law make it illegal for a person to have any amount of active THC in his or her system, it also is illegal to have any amount of metabolized THC present. Metabolized THC has no psychoactive properties, and its presence has nothing to do with a person's ability to safely operate a vehicle.⁷ In addition, metabolized THC can remain in a person's system for weeks after the person consumed marijuana, even for occasional users. Such a law is not about keeping Oklahoma's roads safe, but simply finding a new way for the state to punish individuals who consume marijuana long after the fact, a substance that is safer than alcohol and many prescription drugs.

DUI convictions are very serious

In Oklahoma, first-time DUI offenders face a mandatory jail sentence from 10 days up to a year.⁸ Convictions for multiple DUIs carry much stiffer penalties and result in a minimum of a year in jail and possibly much higher. Oklahoma's law has little to do with science and is designed simply to find people guilty for merely consuming marijuana. DUI laws should be designed to make driving safer for everyone, not simply more risky for unimpaired drivers.

⁵ G. Skopp, et al. "Serum cannabinoid levels 24 to 48 hours after cannabis smoking," *Archiv fur Kriminologie* [German publication], 2003, 212(3-4), pp. 83-95.

⁶ M. Anderson, D. Rees. "Per Se Drugged Driving Laws and Traffic Fatalities," *Forschungsinstitut zur Zukunft der Arbeit Institute for the Study of Labor*, November 2012.

⁷ National Highway Traffic Safety Administration, Drugs and Human Performance Fact Sheet, *Cannabis/Marijuana* (Δ^9 -Tetrahydrocannabinol, THC), <http://www.nhtsa.gov/people/injury/research/job185drugs/cannabis.htm>

⁸ 47 O.S. 2011, Section 11-902(C), <http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=439901>