



FY2011 RECOMMENDATION/FY11-D02 ESTABLISH A “PER SE” VIOLATION FOR DRIVING UNDER THE INFLUENCE

Status: Implementation Complete

Actions/Updates

2013 UPDATE

Although modified to be a permissible inference, rather than a per se law, action on this recommendation was completed with the passage of House Bill 13-1325.

This bill states that in any DUI prosecution, if at the time of driving or within a reasonable time thereafter, the driver's blood contains 5 nanograms or more of delta 9-tetrahydrocannabinol per milliliter in whole blood, as shown by analysis of the defendant's blood, such fact gives rise to a permissible inference that the defendant was under the influence of one or more drugs.

Under current law, in any prosecution for vehicular homicide or vehicular assault, if at the time of the commission of the alleged offense, or within a reasonable time thereafter, as shown by analysis of the defendant's blood or breath, there was 0.08 or more grams of alcohol per 100 milliliters of blood, or if there was at such time 0.08 or more grams of alcohol per 210 liters of breath, it is presumed that the defendant was under the influence of alcohol. The bill removes this presumption and states instead that such fact gives rise to a permissible inference that the defendant was under the influence of alcohol.

The bill removes instances of the term "habitual user" from the traffic code.

2012 ACTION/IMPLEMENTATION

This recommendation requires statutory change to be implemented.

Description

Establish a “per se” violation for driving under the influence of marijuana by establishing that it shall be an unclassified misdemeanor traffic offense for any person to drive a motor vehicle or vehicle when the person has a level of 5 nanograms of THC/mL whole blood or more at the time of driving or within two hours after driving.

Agencies Responsible

General Assembly

Discussion

Approximately 15 states have statutes that identify a specific limit for the amount of THC/ml at which point driving is considered (per se) to be impaired (see footnote). High levels of active THC may remain in the blood long after use, perhaps up to 24 hours, whereas impairment that would negatively affect driving occurs closer to the time the THC was consumed. While BAC (Blood Alcohol Content) can be accurately measured and correlated with driving impairment, this is more difficult with cannabis. Alcohol is water soluble whereas cannabis is stored in the fat and is metabolized differently, making a direct correlation with behavior difficult to measure. Science is clear that the use of cannabis leads to immediate behavioral impairment which can negatively affect driving. However, there is a lack of consensus among experts about the duration of impairment (approximately 2-4 hours for smoking, 8 hours for edibles). Expert opinions about “per se” limits related to driving impairment range from 1-2 ng/ml to 15 ng/ml. A low threshold may include individuals whose driving ability was not impaired because consumption occurred many hours prior to the blood test. Also, a low threshold may not necessarily imply driving impairment, especially for chronic users. However, a high threshold may make prosecution for nanogram levels below the designated number very difficult, possibly resulting in dismissed cases. The proportion of drivers, especially chronic users, whose behavior may not be impaired while testing positive at, for example, 5 ng/ml is unknown. In addition, the Commission finds that administrative sanctions (such as revocation of a driver’s license) for impaired driving due to active THC in the blood are a critical ingredient for a successful “per se” law but will likely result in a fiscal impact.

Footnotes

Note: The information contained in this discussion is from testimony provided by multiple experts to the Marijuana/DUID per se Working Group of the Drug Policy Task Force.