



**FY2011 RECOMMENDATION/FY11-D03 CLARIFY THE EXPRESS CONSENT STATUTE REGARDING BLOOD TESTING**

**Status:** Cannot Implement

**Actions/Updates**

**2014 ACTION TO DATE**

No action on this recommendation. Statute already addresses the submission to a blood test by a person suspected to be driving under the influence of a drug, which would also include marijuana.

No further action on this recommendation.

**2013 ACTION TO DATE**

No action on this recommendation.

**2012 ACTION TO DATE**

This recommendation requires statutory change to be implemented.

**Description**

Amend or clarify the express consent statute to clearly ascertain that in the event an officer establishes probable cause to believe that a person is driving under the influence of marijuana, the person shall submit to a blood test, if necessary.

**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.*