



**FY2013 RECOMMENDATION/FY13-DP07 ESTABLISH A VIOLATION FOR DRIVING UNDER THE INFLUENCE OF MARIJUANA.**

**Status:** Implementation Complete

**Actions/Updates**

**2013 UPDATE**

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

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 rebuttable presumption or permissible inference of intoxication 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 when the person has a level of 5 nanograms of Delta-9 THC/mL whole blood or more at the time of driving or within two hours after driving and to create this permissible inference for all allegations of DUID, vehicular assault and vehicular homicide.

**Agencies Responsible**

## **Discussion**

*The Colorado Department of Transportation reports an increase in the number of drivers involved in fatal vehicle accidents that tested positive for marijuana. The science is clear that use of cannabis leads to immediate behavioral impairment which can negatively affect driving abilities. Having a per se law sends a message that driving while impaired will not be tolerated. Experts agree that chronic use, such as that by medical marijuana patients, can lead to drug tolerance but impairment may still be present when chronic users consume THC and drive.*

*The controversy about establishing a defined intoxication level, similar to that used for alcohol, in large part involves the fact that, whereas Blood Alcohol Content (BAC) can be accurately measured and correlated with driving impairment, this is more difficult with cannabis. Alcohol is water soluble; cannabis is stored in the fat and is metabolized differently, making a direct correlation with behavior difficult to measure. High levels of active THC may remain in the blood long after use, perhaps up to 24 hours, whereas driving impairment that would negatively affect driving occurs closer to the time the THC was consumed. There is a lack of consensus among experts about the duration of impairment and the appropriate per se limit. A low threshold may include individuals whose driving ability was not impaired because consumption occurred many hours prior to the blood test and it may not necessarily imply driving impairment, especially for chronic users.*