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Marijuana and Driving: Factors that Cause Confusion.

One very important issue that has not been solved at the state or national level is how to attack the problem of marijuana impaired driving. While statistics in states where marijuana has been legalized medically or recreationally show an exceptional increase in the number of drivers testing positive for marijuana, proponents for marijuana point out that the presence of THC in the tests does not mean the driver was impaired by marijuana. This is true.

What we know is that the number of drivers involved in accidents and testing positive for marijuana is increasing as the culture of acceptance for marijuana increases. Where it is legalized, more people are finding themselves in legal trouble as a result. So why is it so much different than alcohol?

The National Highway Traffic Safety Administration (NHTSA) provided a report in 2017¹ and a study in 2018 that supported many of those findings. The fact is: Alcohol ingestion, absorption, elimination, and impairment is functionally different than marijuana in those same categories. Trying to quantify impairment in the same manner for both will pose significant contradiction.

Who am I? I am a law enforcement officer who has been and is currently certified as a DUI Detection and Apprehension Investigator for most of my 20-year career, through NHTSA as well as the Kansas Highway Patrol. I have investigated or assisted in investigating well over 100 DUI accidents and arrests. My DUI investigations that resulted in arrest have been prosecuted 100% of the time with 100% administrative and/or criminal conviction rate, including appeals up to the Kansas Supreme Court. Two cases were challenged on the technical tolerances of the instrument we use for breath alcohol measurement but were upheld on administrative appeal. Arrests were

for alcohol-only impairment from 0.080% BAC to combination drug and alcohol impairment, and drug-only impairment.

What is the confusion? The confusion comes from proving, through physical evidence, that an individual is impaired by a certain level of the psychoactive substance in marijuana found in the blood or urine versus a certain level of alcohol found in the breath, blood, or urine of impaired drivers. The lay person may think that a simple view of the dash camera and body camera would prove that a person is ‘acting’ in a way that shows impairment. This is hardly ever true. In fact, even if they are involved in an accident, they stagger about, fall down, use a vehicle to hold themselves up, smell of alcohol and/or marijuana, slur their speech, and ‘sound drunk’, the state still wants physical evidence in most cases, which is why we serve search warrants on nearly every refusal for breath, blood, or urine during a DUI investigation. So, what will this evidence show in the use of marijuana? Nothing. Just that it was present, but not that it was an “impaired level of presence”. There is no national standard of nanograms of THC found in the blood that prove it was the substance that caused impairment or even contributed², though 18 states have tried. Many proponents like to throw that in the face of legislators who are considering voting against the legalization. My position is that this should be a clue to you of the problem this legislation is about to create, just as it has in many other states who have legalized marijuana.

Even as the statistics show prominent increases for drivers testing positive for THC in those states who have legalized, the Marijuana Coalition wants you to ignore that and “prove” it is a problem. Common sense tells us that there is a problem and, while there may be a solution, no one has come up with it yet. Isn’t it interesting how many folks on the proponent side would say, “If it will save only one life, it’s worth it!” Unless, of course, we are talking about marijuana and the number one killer of kids and adults under the age of 21: motor vehicle accidents. This is nothing more than the first step to recreational use, time and time again.

¹Marijuana Impaired Driving <https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812440-marijuana-impaired-driving-report-to-congress.pdf> . *National Highway Traffic Safety Administration*

²Marijuana and Highway Safety (May 14, 2019) <https://fas.org/sgp/crs/misc/R45719.pdf> *Congressional Research Service*