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## Zero Tolerance and Per Se Driving Laws

Thirty-three states address driving under the influence of marijuana by using what MPP believes is the fairest, most sensible standard — by looking at the totality of the circumstances. In other words, a driver is guilty of driving under the influence of marijuana if the cumulative evidence proves the driver was impaired. That evidence may include footage or testimony about how the person drove, the results of a field sobriety test, and the results of a test for THC — the psychoactive ingredient in marijuana.

Meanwhile, 16<sup>1</sup> states have taken approaches that criminalize some drivers many hours, days, or even weeks after they last used marijuana — even if the person’s driving ability was not impaired in the slightest. The below chart shows which states have “zero tolerance” or “per se” laws.<sup>2</sup> Zero tolerance laws criminalize driving with *any* THC and/or THC metabolites (compounds created as the body processes THC) in a person’s system. THC is fat soluble, and it can stay in regular users’ systems several days after they last used marijuana. Metabolites can remain in a person’s system for weeks. Per se laws criminalize driving with a *set amount* of THC and/or metabolites in a person’s system. They, too, can criminalize driving many hours after impairment ends.<sup>3</sup> The final state — Colorado — enacted a permissible inference law, which means the jury can infer that a driver is guilty of DUI if he or she has a set amount of THC in his or her blood.

State	Zero Tolerance Law for THC	Zero Tolerance for Metabolites	Per Se THC Limit In Whole Blood	Exception for Patients
Arizona	Yes	Yes	N/A	Yes
Delaware	Yes	Yes	N/A	Yes
Georgia	Yes, but see footnote <sup>1</sup>	Yes, but see footnote <sup>1</sup>	N/A	See footnote <sup>1</sup>
Illinois	Yes	Yes	N/A	Yes
Indiana	Yes	Yes	N/A	No
Iowa	Yes	Yes	N/A	No
Michigan	Yes	No	N/A	Yes
Montana	No	No	5 nanograms/milliliter	No
Nevada	No	No	2 nanograms/milliliter	No
Ohio	No	No	2 nanograms/milliliter	No
Oklahoma	Yes	Yes	N/A	No
Pennsylvania	No	No	1 nanogram/milliliter	No
Rhode Island	Yes	Yes	N/A	Yes
Utah	Yes	Yes	N/A	No
Washington	Yes, for those under 21	No	5 nanograms/milliliter	No
Wisconsin	Yes	No	N/A	No

<sup>1</sup> Georgia’s statute provides an exception to the per se standard for people who are “legally entitled to use” marijuana and other substances other than alcohol. In *Love vs. State*, 517 S.E.2d 53 (Georgia 1999), the Georgia Supreme Court overturned a conviction of someone who was not a legal marijuana user, finding that the statute’s distinction between legal and illegal users of marijuana violated Equal Protection.

<sup>2</sup> Thanks to NORML, whose research on DUI laws has been a great resource. For more information, see Paul Armentano's "Should Per Se Limits Be Imposed For Cannabis? Equating Cannabinoid Blood Concentrations with Actual Driver Impairment: Practical Limitations and Concerns," *Humboldt Journal of Social Relations*, Issue 35, 2013. Also of note is D.M. Anderson and D.I. Rees’ "Per Se Drugged Driving Laws and Traffic Fatalities," IZA Paper No. 7048 (Nov. 2012), which found, “as currently implemented, making it illegal to operate a motor vehicle with drugs (or drug metabolites) in the system has no discernible impact on traffic fatalities.”

<sup>3</sup> See: “THC blood test: Pot critic William Breathes nearly 3 times over proposed limit when sober,” *Westword*, April 18, 2011.