

# Scientific basis for laws on marijuana, driving questioned

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In this April 2, 2016 file photo, a demonstrator waves a flag with marijuana leaves on it during a protest calling for the legalization of marijuana, outside of the White House in Washington. Six states that allow marijuana use have legal tests for driving while impaired by the drug that have no scientific basis, according to a study by the nation's largest automobile club that calls for scrapping those laws. ( AP Photo/Jose Luis Magana, File)

Motorists are being convicted of driving under the influence of marijuana based on arbitrary state standards that have no connection to whether the driver was actually impaired, says a study by the nation's largest auto club.

The problem is only growing as more states contemplate legalizing the drug. At least three, and possibly as many as 11 states, will vote this fall on ballot measures to legalize [marijuana](#) for medicinal or recreational use, or both. Legislation to legalize the drug has also been introduced in a half dozen states.

Currently, six states—Colorado, Montana, Nevada, Ohio, Pennsylvania and Washington—have set specific limits for THC, the chemical in marijuana that makes people high, in drivers' blood.

Marijuana use is legal in those states for either recreational or medicinal purposes, with the exception of Ohio. The laws presume a driver whose THC level exceeds the threshold is impaired. But the study by AAA's safety foundation says the limits have no scientific basis and can result in innocent drivers being convicted, and in guilty drivers being released.

"There is understandably a strong desire by both lawmakers and the public to create legal limits for marijuana impairment in the same manner we do alcohol," said Marshall Doney, AAA's president and CEO. "In the case of marijuana, this approach is flawed and not supported by scientific research."

Another nine states, including some that have legalized marijuana for medical use, have zero-tolerance laws for driving and marijuana that make not only any presence of THC in a driver's blood illegal, but also the presence of its metabolites, which can linger in a driver's bloodstream for weeks after any impairment has dissipated.

That makes no sense, said Mark A. R. Kleiman, a New York University professor specializing in issues involving drugs and criminal policy. "A law against driving with THC in your bloodstream is not a law you can know you are obeying except by never smoking marijuana or never driving," he said.

The problem is that determining whether someone is impaired by marijuana, as opposed to having merely used the drug, is far more complex than the simple and reliable tests that have been developed for alcohol impairment.

The degree to which a driver is impaired by marijuana use depends a lot on the individual, the foundation said. Drivers with relatively high levels of THC in their systems might not be impaired, especially if they are regular users, while others with relatively low levels may be unsafe behind the wheel.

Some drivers may be impaired when they are stopped by police, but by the time their blood is tested they have fallen below the legal threshold because active THC dissipates rapidly. The average time to collect blood from a suspected driver is often more than two hours because taking a blood sample typically requires a warrant and transport to a police station or hospital, the foundation said.

In addition, frequent marijuana users can exhibit persistent levels of the drug long after use, while THC levels can decline more rapidly among occasional users.

Colorado's 5-nanogram limit for THC in blood "was picked out of thin air by politicians," said Robert Corry, a Denver criminal defense attorney. "Innocent people are convicted of DUI because of this."

Melanie Brinegar, who uses marijuana every day to control back pain, was stopped by police two years ago for having an expired license plate. The officer smelled marijuana and Brinegar acknowledged she had used the drug earlier in the day. Her blood test showed a level of 19 nanograms, well over the state limit. She was arrested and charged with driving while impaired.

Brinegar, 30, who lives in Denver, said she spent the next 13 months working 80 to 90 hours a week to pay for a lawyer to help her fight the charge and eventually was acquitted. People like herself will always test positive for THC whether they are high or not because of their frequent use, she said.

"It took a good amount of my time and my life," she said. "There is still that worry if I get pulled over (again)."

Studies show that using marijuana and driving roughly doubles the risk of a crash, Kleiman said. By comparison, talking on a hands-free cellphone while driving—legal in all states—quadruples crash risk, he said. A [blood alcohol content](#) of .12, which is about the median amount in drunken driving cases, increases crash risk by about 15 times, he said.

Driving with "a noisy child in the back of the car" is about as dangerous as using marijuana and driving, Kleiman said.

The exception is when a driver has both been using marijuana and drinking alcohol because the two substances together greatly heighten impairment, he said.

**More information:** AAA Foundation for Traffic Safety [www.aaafoundation.org/impaired...driving-and-cannabis](http://www.aaafoundation.org/impaired...driving-and-cannabis)

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