

"Zero Tolerance" Laws Against Marijuana Metabolites; Violating Personal Freedom, Due Process, and Equal Protection

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It doesn't make sense how an American citizen can consume cannabis in Illinois, wake up the next day sober, drive through Iowa, and get arrested for Operating While Intoxicated.

Interstate travel and divergent state cannabis policies has created a constitutional quagmire. In Iowa, among other states, their Oper-

ating While Intoxicated (OWI) statute does not merely criminalize driving while impaired on marijuana (THC): it establishes a “zero tolerance” standard that punishes even the mere presence of marijuana metabolites in a person's system.¹ A marijuana metabolite is a chemical compound produced by the body as it breaks down (metabolizes) the active components of cannabis, specifically THC (delta-9-tetrahydrocannabinol). Such can remain in one's system for a few days to several weeks, depending on consumption behavior.

Under Iowa law, a driver can be convicted of an OWI under one of three prongs, each of which serves as an independent basis for guilt.

Prong A: Impairment OWI. This has nothing to do with chemical testing: rather, the officer observes signs of impairment, such as slurred speech or failed field sobriety tests, and makes the charge of OWI.

¹ Iowa Code § 321J.2(1)(c) (2024).

Prong B: Per se OWI. Here, chemical testing proves presence of intoxication beyond a legal threshold (with alcohol, we all know that as .08% Blood Alcohol Content, BAC). This is the most certain standard.

Most controversially, **Prong C is “zero tolerance.”** This means even the smallest trace amount of a controlled substance detected in a person’s blood or urine, warrants a conviction for OWI. Meaning someone may have non-psychoactive marijuana metabolites in their system, show no signs of impairment, and still be convicted. Example: an individual legally ingest cannabis in a neighboring state such as Illinois, drives through Iowa days later with no remaining psychoactive effects, yet faces the same potential criminal penalties as a driver who is significantly impaired by alcohol. This third prong potentially violates personal freedom, due process, and equal protection under constitutional law.

Prong C fails to require a nexus between the presence of a marijuana metabolite and actual impairment. In *State v. Newton* (Iowa, 2019), the defendant argued the statute failed to provide fair notice that “harmless past usage” could result in criminal liability.² The Court rejected this challenge under a *rational basis*³ review, citing the legislature’s goal of public safety. Still, the result remains an arbitrary and unfair presumption of guilt.⁴

By criminalizing non-impairing metabolites such as carboxy-THC, the state creates a *per se* crime based on history rather than current dangerous conduct.⁵ This distinction was central to *State v. Childs* (Iowa, 2017). The Court

2 *State v. Newton*, 929 N.W.2d 250, 255 (Iowa 2019).

3 Rational basis is a legal standard under which a court upholds a law or government action if it is *rationally related* to a *legitimate government interest*. Here, that interest would be public safety.

4 *Id.* at 258.

5 *State v. McGee*, 959 N.W.2d 432 (Iowa 2021).

reaffirmed that the legislature deliberately chose to include metabolites within the scope of § 321J.2(1)(c), regardless of the correlation with intoxication.⁶ “Any amount” or “zero tolerance” standards eliminates the prosecutor’s evidentiary burden of proving actual impairment. But simplification of a standard is not always the answer, because it ignores nuance and complexity: a person with THC metabolites in their system from prior use does not mean they are impaired on the spot, and we should not be “defaulting” to such lazy analysis. I especially don’t think we should be handing over “convenience” to the state.

Other states with these laws include Arizona, Delaware, Georgia, Indiana, Michigan, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Utah, and Wisconsin.⁷ Drivers originating from states where cannabis is legal are

6 *State v. Childs*, 898 N.W.2d 177, 184 (Iowa 2017).

7 Nat’l Conf. of State Legislatures, *Drugged Driving State Laws* (2023).

warned: entering these jurisdictions with any detectable metabolite in your system, even without any impairment, subjects you to the risk of an unfair OWI conviction and the severe consequences it entails.

Actions you should take to protect yourself: never consume marijuana and drive within eight to twelve hours depending; ensure your vehicle does not smell of marijuana or cannabis generally, as this creates probable cause to search you and charge you with OWI; and keep marijuana in a locked, smell-proof container, in the trunk away from driver or passenger reach.

Practically speaking, enforcement of zero-tolerance marijuana laws often hinge less on laboratory results alone and more on observable factors during a traffic stop. In situations where there is no detectable odor of cannabis, no visible signs of impairment, and the substance is not readily accessible to the driver, law enforcement encounters are far less likely to escalate into an OWI investigation. Conversely, the presence of a cannabis odor or observable indicators of intoxication can

quickly trigger further scrutiny, including searches and sobriety testing. Thus, from a real-world perspective, the risk of enforcement during interstate travel is influenced heavily by visibility, accessibility, and sensory cues rather than solely by chemical impairment. If you are accused of OWI without being impaired, and are offered a field sobriety test, it may actually be in your benefit to take the test. If you pass, it would help to assuage the officer that you are not impaired and that chemical testing is not needed. There's no guarantee that passing a field sobriety test would preclude chemical testing, but it is possible.

The financial and emotional toll of an OWI/DUI is staggering. \$400 for vehicle towing and impounding; a \$200 substance abuse evaluation; a \$200 drug education course; a \$200 drinking drivers course (even if the case is solely about marijuana, you still have to take this alcohol-centric course); court fines reaching \$1,500 or more; possible legal representation fees (see my blog-post article "Why You

Might Be Better Off Without Representation," July 9, 2026, eliakazanbooks.com). Additionally, a driver will be assessed "insurance surcharges" which could be \$1,000 per year for three years, and a license reinstatement fee (\$100). If it is an out-of-state conviction, you may also have to pay for additional evaluations and education programs in your own state. The rough total is approximately \$5,600 on the lower end.

Beyond financial, a defendant faces jail time (minimum 48 hours, maximum 12 months) and the suspension of one's driver license for six to twelve months. The latter wreaks havoc on one's ability to work and support themselves and/or family.

These penalties lead to a deep social stigma of being deemed a "criminal." While society agrees that impairment and per se OWI/DUIs are criminal behavior, many experts would agree that driving unimpaired yet with THC metabolites in one's system is not criminal behavior.

Criminalization of THC is particularly egregious when contrasted with the legality of alcohol and tobacco: these latter substances contribute to hundreds of thousands of deaths, and many more cancer diagnoses. Meanwhile, cannabis, when used responsibly, is largely medicinal. That doesn't mean a healthy person should consume cannabis: but a person experiencing ailments can certainly benefit from it, unlike with drinking alcohol or consuming tobacco.

The prohibition of marijuana is rooted in systemic racism; intention or not, it directly marginalized non-white cultures that historically used the plant for medicinal and social purposes.⁸ Contrary to "Reefer Madness" era myths, cannabis does not cause "criminality." Recent studies even indicate that certain can-

8 Michelle Alexander, *The New Jim Crow* 45-50 (2010).

nabinoids may correlate with increased cognitive flexibility and enhanced empathy.⁹

CONSTITUTIONAL CONSIDERATIONS

The Fifth Amendment states: "*No person shall ... be deprived of life, liberty, or property, without due process of law.*" This protects individuals from federal government overreach, ensuring that the federal government cannot strip you of your rights without adhering to established legal principles. This includes ensuring you are given notice, hearing, and the opportunity of trial if accused of a crime.

The Fourteenth Amendment (Section 1) states: "No State shall ... deprive any person of

9 See Sarah J.S. Wilker et al., "The Role of Cannabinoids in Empathy and Social Behavior", *Frontiers in Psychiatry*, art. 660580 at 1 (2021); see also Madeline H. Meier et al., "Associations Between Cannabis Use and Intelligence", 118 *Proc. Nat'l Acad. Sci.* 1 (2021) (noting that short-term increases in certain cognitive tasks are observed, though long-term effects vary).

life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The primary effect here is extending fundamental constitutional protections to the state level. It guarantees citizens the right to equal protection under the law, meaning that everyone, regardless of their identity, must be protected equally by the same laws.

It is important to note that both *procedural* and *substantive* due process are derived from the Due Process Clauses found in *both* the Fifth Amendment (applying to the federal government) and the Fourteenth Amendment (applying to the states). While the amendments apply to different levels of government, the judicial interpretation of "due process" is consistent for both federal and state.

Procedural due process guarantees that the government must follow fair, established procedures before depriving an individual of life, liberty, or property. In practical terms,

this requires that you are given notice, a hearing, and the opportunity for a trial.

Substantive due process acts as a check on the content of the law itself: it ensures that fundamental rights are not violated by arbitrary or irrational legislation. It asserts that some rights are so essential that no amount of procedure can justify their infringement by an unreasonable law. For example, a law prohibiting parents from enrolling their children in private schools would violate substantive due process because it arbitrarily infringes upon the fundamental right of parents to direct the upbringing and education of their children, regardless of how fairly the state administers that law.

The Equal Protection Clause of the Fourteenth Amendment requires that the government treat similarly situated individuals consistently, prohibiting state laws that classify people in ways that do not serve a significant or legitimate government interest. For example, a state law grants a tax exemption to

homeowners who have lived in a state for twenty years, but denies that same exemption to new residents. Because the law distinguishes between citizens based on the arbitrary factor of duration of residency, without a *compelling or legitimate government interest*, a court might find that it violates the Equal Protection Clause because it treats two otherwise "similarly situated" groups of property owners differently. A state might be able to justify such a tax distinction by arguing the legitimate interest is providing a reward for the financial stability and contributions long-time residents have provided to local public services over the decades. If the Supreme Court of the United States (SCOTUS) reviewed such law under "rational basis" review, where law is often upheld if it is merely related to a legitimate goal, they would likely find it constitutionally protected because it involves economic policy, which courts typically defer to, *unless* it clearly discriminates against a protected group (race, national origin, etc.) or restricts a fundamental right (the right to marry, the right to interstate

travel, etc.). If it was reviewed under "strict scrutiny" standard, they would likely strike it down because it simply fails to treat similarly situated citizens with the equality required by the Fourteenth Amendment.

When looking at "zero tolerance" policies, such laws:

- Infringe upon personal freedom by asserting state control over a citizen's body long after any potential impairment has faded
- They violate procedural due process by creating an irrebuttable presumption of guilt based on a chemical marker rather than actual behavior
- They offend substantive due process by arbitrarily criminalizing a past choice that lacks any rational connection to a present danger, and
- They violate the Equal Protection Clause by creating a discriminatory classification: all drivers who test positive for inactive marijuana metabolites are placed into the same

category as drivers who are actively and cognitively impaired by alcohol or drugs. This treats non-impaired drivers as if they were a public threat simply because they have historically consumed cannabis.

By criminalizing the presence of inactive marijuana metabolites, which bear no correlation to current cognitive impairment, the state effectively punishes citizens for a past choice rather than a present danger. This creates a legal fiction.¹⁰ Here, the fiction is that anyone with marijuana metabolites is a threat. In order for such law to invoke "public safety" as the "rational basis," there has to be a legitimate, observable threat: a person with mere metab-

10 A legal fiction is an assertion accepted as true by a court, despite being contrary to reality, in order to achieve a specific legal outcome or facilitate the operation of the law. For example, the doctrine of "corporate personhood" treats a business entity as a "person" capable of entering into contracts, owning property, and suing in court, even though a corporation has no physical body or biological life.

olites in their system, and no signs of impairment, does not meet that threshold.

THC can remain in the system for up to 30 days without causing impairment, thus penalizing its mere presence can be viewed as an arbitrary exercise of state power that lacks any scientific nexus to road safety.

Further, zero-tolerance statutes violate the Equal Protection Clause by treating similarly situated drivers differently: a driver using a legal prescription that causes impairment such as methadone or hydromorphone might be granted an affirmative defense¹¹, whereas a cannabis user is subjected to a strict liability Prong C conviction regardless of their legal access in other states. It doesn't make sense.

Supporters of zero-tolerance laws argue that they are essential for maintaining public safety and ensuring judicial efficiency. These laws are frequently defended as "a necessary deterrent" in the face of a "growing drugged-

11 *State v. Schories*, 827 N.W.2d 659 (Iowa 2013).

driving epidemic." Well, that's one way to put it, but anyone can frame things however they please.

Research published in *Forensic Science International* argues that "per se limits provide a predictable and efficient legal instrument for prosecution, bypassing the scientific complexities of proving behavioral impairment on a case-by-case basis."¹² I agree there is an undeniable public benefit to such strict standards when applied to certain controlled substances, particularly highly addictive or profoundly disorienting drugs: opioids, methamphetamine, or PCP, where any presence in the bloodstream still affects cognition and ability. However, marijuana *is* different. Unlike more dangerous narcotics, marijuana's non-impairing metabolites can linger long after use, and its effects do not fundamentally impair a seasoned user's

12 B.K. Logan & R.L. DuPont, "Toxicological Standards and the Prosecution of Drugged Driving", 5 *Forensic Science International: Reports*. 100 (2022).

ability to drive safely. Research published in *Psychopharmacology* (2025)¹³ and by the University of Colorado (2025)¹⁴ suggests that seasoned, daily cannabis users exhibit significant behavioral tolerance, often showing no objective driving impairment on simulators even when high-potency THC is present in their system.

In the study "Impact of naturalistic cannabis use on lateral control and speed: A driving simulator study", published by *Traffic Injury Prevention*, researchers found that daily users, particularly those using high-concentration

13 Kyle Mastropietro et al., "Short-term Residual Effects of Smoked Cannabis on Simulated Driving Performance", 242 *Psychopharmacology* 1450 (2025).

14 Univ. of Colo. Anschutz Med. Campus, "Simulated Driving Performance Among Daily and Occasional Cannabis Users: The Role of Tolerance", 26 *Traffic Injury Prevention*. 288 (2025).

concentrates, showed almost no decline in driving performance.¹⁵

Some experts argue that "per se" laws should mirror alcohol's BAC threshold by establishing a scientific "permissible inference" limit, such as 5 ng/mL. The concentration of tetrahydrocannabinol (THC) in the blood is measured in nanograms per milliliter (ng/mL). This is a unit of density that tracks active THC levels, and 5 ng/mL is a proposed threshold because it serves as a standardized, albeit imperfect, scientific marker intended to isolate recent consumption from long-term, non-im-

15 Ashley Brooks-Russell et al., "Impact of Naturalistic Cannabis Use on Lateral Control and Speed: A Driving Simulator Study," 26 *Traffic Injury Prevention*. S86 (Supp. 1 2025). In this study, "occasional" users were much more likely to exhibit weaving and lane departures while under the influence than daily users, even when the daily users consumed higher-potency products. While changes were statistically significant for some groups, the researchers noted that the absolute differences in driving performance were relatively small across all participant groups.

pairing metabolites that currently trigger unfair “zero tolerance” convictions.

Legislation should be amended to require proof of actual signs of impairment *plus* chemical testing beyond an agreed-upon threshold (e.g. 5 ng/mL). Sobriety tests must also be sure to account for physical differences that can negatively impact results: age, inner-ear issues, excess weight, pre-existing injuries, and fatigue all can skew results.

There is a significant difference between past use and present danger. Zero tolerance statutes are tools of oppression against personal freedom, rather than guardians of public safety.



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