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4 Remaining

Reader View: Don't regulate marijuana like alcohol

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By Barry K. Logan, Stephen K. Talpins and Edward C. Wood

As marijuana becomes more available and accepted, even proponents of legal marijuana concede that it can impair driving in the hours following use. Poor understanding of the differences between how the body processes alcohol and marijuana have led many lawmakers to adapt laws protecting us from alcohol-impaired drivers to marijuana-using drivers. These substances are not the same, and laws that regulate their use relative to driving should not be the same. Here's why.

A per se limit can be applied to alcohol because alcohol leaves the body at a relatively predictable rate; levels in the blood are similar to those in the brain; and most critically, different blood levels correspond to known ranges of impairment.

Marijuana differs from alcohol in all these important respects.

Concentrations of THC, the active substance in marijuana, fall dramatically after a person has smoked because the drug rapidly leaves the blood and enters the brain, where it exerts its effect. The THC level in a person's blood typically peaks right after smoking, but more than 90 percent is removed in the following one to two hours following use that it typically takes a police officer to investigate and to obtain a blood sample. Therefore, the THC level in a driver's blood sample is typically only a fraction of what it was when they were driving. Forensic toxicologists cannot reliably determine and testify in court how those levels change over that time period.

Two recent studies confirmed other research showing that because of this time lag, THC blood levels do not correlate well with or determine a person's degree of impairment. Drivers arrested for marijuana impairment who had any THC in their blood were more impaired than drivers who had not smoked. Critically, drivers with THC concentrations below 5 nanograms per milliliter (ng/ml) were no less likely to be impaired than drivers with concentrations above that threshold. This firmly underscores that there is no scientific basis for establishing a per se limit for THC as there is for alcohol.

Despite having no scientific basis, several states have adopted a 5 ng/ml THC limit. Proponents claim these laws have worked well in Colorado and Washington. What they're not telling anyone is that marijuana-impaired drivers escape prosecution simply because they test below the arbitrary 5 ng/ml limit.

Knowing these facts, the American Automobile Association and the National Safety Council recommend against setting an arbitrary "per se" limit for THC.

We believe that a much better alternative to choosing an arbitrary drug per se level above zero is the tandem per se approach, which requires a sequence of events to prove the crime of driving under the influence of drugs per se. Using this approach, a person would be guilty of driving under the influence of drugs per se if:

u The driver was arrested by an officer who had probable cause, based on the driver's demeanor, behavior and observable impairment to believe the driver was impaired; and

u The driver had any amount of an impairing substance in their blood, oral fluid or breath.

Tandem per se is consistent with AAA's recommendation to rely upon impairment observations from trained officers, corroborated by laboratory tests. Sensible evidence-based laws are needed that focus on finding and removing impaired drivers from our roads. A 5 ng/ml THC per se limit is neither sensible nor evidence-based.

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