

Establishing THC Blood Levels for the Purposes of DUI Law (Statement)

This Act states that if a driver's blood contains five nanograms or more of delta 9-tetrahydrocannabinol (THC) per milliliter in whole blood (5 ng/mL) at the time of the offense or within a reasonable time thereafter, this fact gives rise to a permissible inference that the defendant was under the influence of one or more drugs. THC is the primary psychoactive component of marijuana. DUI and DWAI are misdemeanors. Vehicular homicide is a class 3 felony if the driver was under the influence of alcohol, drugs, or both. Vehicular assault is a class 4 felony if the driver was under the influence of alcohol, drugs, or both.

In a trial for DUI or DWAI, a defendant's valid medical marijuana registry identification card may not be used as part of the prosecution's case in chief. In addition, in a traffic stop, the driver's possession of a valid medical marijuana registry identification card must not, in the absence of other contributing factors, constitute probable cause for a peace officer to require the analysis of the driver's blood.

The Act also clarifies state law to match current practice by stating that in cases of vehicular homicide or vehicular assault, if a driver's BAC was 0.08 or greater at the time of the offense or within a reasonable time thereafter, this fact gives rise to a permissible inference that the defendant was under the influence of alcohol, rather than stating that it is presumed that the defendant was under the influence of alcohol. Finally, the Act repeals the law specifying that it is a misdemeanor for a habitual user of any controlled substance to drive a motor vehicle or low-power scooter. Other references to charges of "habitual user" are also repealed.

A permissible inference allows a judge to instruct a jury that if it finds that a defendant's whole blood contained at least 5 ng/mL of THC while driving or shortly thereafter, then the jury may conclude that the defendant was driving under the influence. A permissible inference does not require a jury to conclude that a defendant was driving under the influence when a THC concentration level is met. In addition, the jury may consider all of the evidence in the case to evaluate whether the prosecution has proved the offense beyond a reasonable doubt.

Submitted as:

Colorado

[HB 1035](#)

Status: Signed into law on May 28, 2013.