

Operating While Intoxicated—Marijuana Investigation Checklist

Provided by Michigan's Traffic Safety Resource Prosecutors

In light of the passage of the Michigan Regulation and Taxation of Marijuana Act (MRTMA), it is anticipated that officers will have to establish impairment in all Operating While Intoxicated (OWI) investigations involving marijuana. To establish impairment in these cases, the law requires that officers show that because of the consumption of marijuana, a person's ability to operate a motor vehicle in a normal manner was substantially lessened.

We know from the science that THC disappears from the blood stream very quickly (90% gone within 90 minutes). The sooner a blood draw can occur, the better.

If possible, it is recommended that two officers (at least one should be ARIDE or DRE trained) get involved given how quickly THC dissipates from the blood.

- Once probable cause is established, one officer can secure the blood draw while the second officer searches for evidence from the scene or vehicle.

Potential evidence to look for that can be seized pursuant to an inventory search (make sure your inventory search policy is up to date):

- Any liquid that could contain THC
- Any edible substance that could contain THC
- Vaping devices that could contain THC
- Skin patches on the driver—could be THC—take a picture and secure it as evidence
- Any oil/shatter/wax
- Any article that could be used to smoke marijuana
- Any container that could be used to carry THC (note the label information or lack of)

Investigation

1. Vehicle in Motion
 - a. Look for normal signs of impairment (weaving, excess speed, slow driving, etc.)
2. Personal Contact
 - a. Indicators of impairment
 - i. Smell of marijuana (make sure this is not the only indicator)
 - ii. Blood shot eyes
 - iii. Other signs to document (see attached sheets)
 - iv. Poor perception of time and distance or location and direction of travel
 - v. Body tremors
 - vi. Eyelid tremors
 - vii. Disorientation
 - viii. Lack of concentration
 - ix. Increased pulse rate
 - x. Increased blood pressure
 - xi. Lack of convergence in the eyes (however, cannabis does not cause HGN/VGN)

- b. Statements by driver related to use
 - i. What did they use
 - ii. What form (smoking/vaping/eating)
 - iii. How much
 - iv. What time was their last use
 - v. Where did they use it

- 3. Pre-Arrest Screening
 - a. Standardized Field Sobriety Tests
 - i. Horizontal Gaze Nystagmus (HGN) Test
 - 1. According to the Drug Evaluation and Classification Program (DECP), cannabis alone usually does not cause HGN during this test.
 - ii. Walk and Turn
 - iii. One Leg Stand
 - b. Field Sobriety Tests
 - i. Lack of Convergence (LOC)
 - ii. Modified Romberg
 - iii. Other tests
 - c. Preliminary Breath Test (PBT)—should still be administered to rule out alcohol impairment

Your decision to arrest or not to arrest should always be based on the “totality of the circumstances.” In other words, it should always be based on all evidence gathered in all three of these detection phases of your OWI investigation—vehicle in motion, personal contact, and pre-arrest screening. If all the evidence taken together establishes probable cause to believe that a driver is impaired by marijuana while operating a vehicle, the subject should be arrested.