NTLC NATIONAL TRAFFIC LAW CENTER NDAA

BETWEEN THE LINES

Volume 34, Issue 11 | November 2026

UPCOMING TRAININGS & CONFERENCES

A full list of NDAA's virtual learning sessions is available at
➤ learn.ndaa.org

NDAA's Mastering Masking Digital Course/ On Demand Training (CLE Available)
➤ learn.ndaa.org/products/mastering-masking

NDAA's Human Trafficking and the Impact on Commercial Driver's Licenses/On Demand Training
➤ learn.ndaa.org/products/human-trafficking-and-the-impact-on-commercial-drivers-licenses

NDAA's Prosecuting DUI Cases Online Course/ On Demand Training (CLE Available)
➤ learn.ndaa.org/products/prosecuting-dui-cases

NDAA's Investigation and Prosecution of Drug-Impaired Driving Cases Online Course/On Demand Training (CLE Available)
➤ learn.ndaa.org/products/investigation-and-prosecution-of-drug-impaired-driving-cases

NDAA's 2026 Leadership Academy
December 1–3, 2026, Scottsdale, AZ ➤ WEBLINK

NDAA's 2027 Domestic Violence Conference
January 11–14, 2027, Charleston, SC ➤ WEBLINK

NDAA Trial Advocacy Lab: Throughline—Case Theory to Closing Argument
January 25–28, 2027, Charleston, SC ➤ WEBLINK

RESOURCES

Impaired Driving Resources
➤ www.ndaa.org/impaired-driving-and-other-traffic-safety-topics

CDL-Related Resources
➤ ndaa.org/cdl

NDAA STAFF

Executive Director Nelson O. Bunn, Jr.

THE NATIONAL TRAFFIC LAW CENTER

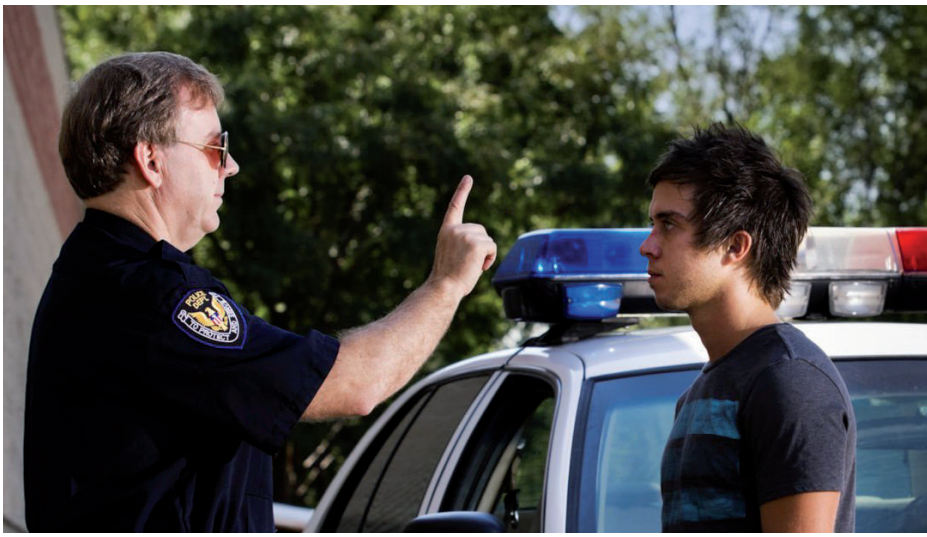
Director
Erin Inman einman@ndaajustice.org

Senior Attorneys
Jill Bennett jbennett@ndaajustice.org
Jim Camp jcamp@ndaajustice.org
Stacy Graczyk sgraczyk@ndaajustice.org
Bella Truong btruong@ndaajustice.org
Dennis Wygmans dwygmans@ndaajustice.org

Staff Attorney
Susan Glass sglass@ndaajustice.org

Coordinator
Hannah Garbee hgarbee@ndaajustice.org

The National Traffic Law Center is a division of the National District Attorneys Association. This document was prepared under a cooperative agreement from the U.S. Department of Transportation Federal Motor Carrier Safety Administration. Points of view or opinions in this document are those of the authors and do not necessarily represent the official positions or policies of the Department of Transportation or the National District Attorneys Association.



Cannabis DUI Prosecutions: From Investigation to Conviction

By Deena Ryerson, Traffic Safety Resource Prosecutor, Oregon Department of Justice

Introduction

Cannabis-impaired driving cases present unique challenges for both prosecutors and law enforcement. Although individuals have driven under the influence of cannabis for decades, legalization has changed the landscape in significant ways. Public perceptions regarding cannabis have shifted dramatically, and jurors are often more likely to view cannabis use as socially acceptable or relatively harmless. At the same time, unlike alcohol, there is no universally accepted numerical threshold that reliably establishes impairment. These realities can create obstacles in the courtroom, particularly when jurors look to the state to present a definitive "impairment number." Despite these challenges, successful prosecution remains possible. Cases built on a thorough investigation, effective

witness testimony, juror education, and a sustained focus on evidence demonstrating impairment can result in successful outcomes at trial.

In a perfect world, every cannabis DUI case would include a Drug Recognition Expert (DRE) who conducted a comprehensive 12-step evaluation and documented detailed clinical and physical signs of impairment. Jurors would then have the benefit of both that evidence and the DRE's expert opinion. In reality, many cannabis DUI investigations do not include a DRE evaluation. Too often, prosecutors are reluctant to pursue cannabis DUI cases when no DRE evaluation was conducted. That hesitation is misplaced. While a DRE evaluation can significantly strengthen a case, it is not a prerequisite to proving impairment and a case should never be declined on that basis alone. The focus on this article is on cases in which no DRE evaluation was conducted and provides strategies for successfully proving impairment without that additional evidence.

There Is No Reliable "Magic Number"

Long before cannabis legalization, prosecutors successfully tried cannabis-impaired driving cases by focusing on observable signs of impairment. Jurors generally did not expect the state to present a specific THC concentration as proof of impairment in the same way that a blood alcohol concentration (BAC) is used in alcohol-related cases. This was true not only for cannabis but for many impairing substances for which no scientifically established per se limit exists. Toxicology results showing the presence of cannabis certainly strengthened those cases by corroborating impairment, but they were rarely the sole basis for prosecution. Evidence such as a defendant's admissions of recent cannabis use, the presence of cannabis products in a vehicle, evidence of poor driving, and observations of psychomotor impairment made by law enforcement officers often provided compelling evidence that the defendant was impaired by cannabis.

This was true not only for cannabis but for many impairing substances for which no scientifically established per se limit exists.

As states began legalizing cannabis, there was an increased expectation for the state to provide a numerical measure of impairment or some kind of "magic bullet" that was analogous to a BAC in alcohol cases. Unlike a BAC, however, which generally rises and falls in a predictable relationship with impairment, THC concentrations in blood or oral fluid do not as easily correlate with an individual's level of impairment. A person may exhibit significant impairment at relatively low THC concentrations in the blood or, in the case of a novice user, have no THC in the blood but be visibly impaired. Studies have consistently found that the level of THC in the blood and the degree of impairment do not appear to be closely related.[1] For that reason, cannabis-impaired driving cases remain, as they always have been, cases that are ultimately proven through evidence of impairment where toxicology results are presented as one piece of evidence rather than the centerpiece of the case.

Challenges of Legalization and Modern Cannabis

In a cannabis DUI, it is important to establish that legality and impairment are entirely separate issues. Society already accepts this principle in other contexts. Alcohol and numerous prescription medications and over-the-counter drugs are legal to possess and use. There are still restrictions on their use, and individuals can still violate impaired-driving laws if those substances affect their ability to drive safely. The focus should remain on driving impairment not the legality of cannabis use itself.

Today's cannabis is no longer a single, easily understood product. Many people still associate cannabis with the low-potency marijuana of decades past. Modern cannabis markets, however, include high-potency flower, extracts, oils, cartridges, vape products, edibles, beverages, waxes, shatter, and numerous other forms of THC consumption. Not only do these products vary dramatically in potency, but they also differ in how quickly their effects begin, how long they last, and how they affect individual users. As a result, prosecutors cannot assume

[1] Compton, R. (2017, July). *Marijuana-Impaired Driving—A Report to Congress*. (DOT HS 812 440). Washington, DC: National Highway Traffic Safety Administration.

that jurors understand modern cannabis use or its impact on driving performance. Education must become a central theme of the case.

A prosecutor should introduce these concepts during jury selection by exploring prospective jurors' experiences with cannabis, their perceptions of impairment, and their understanding of how cannabis can affect driving. That education should continue throughout the trial, beginning with the investigating officer's testimony as discussed below.

Blueprint for Success

The following blueprint is intended to help law enforcement officers and prosecutors increase their success in cannabis-impaired driving cases. Success begins with a thorough investigation and continues through case screening, trial preparation, jury education, and effective presentation of the evidence. From the initial traffic stop to closing argument, everyone involved must do their part to ensure that the jury understands the ultimate issue: whether the defendant was impaired and unable to drive safely.

The Investigation

Field Sobriety Tests

As soon as cannabis impairment is suspected, it is crucial to gather evidence that points to cannabis impairment. Without a doubt, officers should conduct the three Standardized Field Sobriety Tests (SFSTs). During those tests, officers need to focus not only on the standardized clues but also clues that support cannabis impairment.

For example, while administering the HGN test, officers should document whether the defendant's eyes are bloodshot or watery and may ask the defendant to pull down their lower eyelids to obtain a better view. It is not unusual to see a lack of smooth pursuit in the eyes when cannabis is the only impairing substance.[2] An officer should focus on inability to follow and remember instructions and whether body or eyelid tremors are observed.

During the walk and turn and one leg stand tests, officers should note if there is any confusion about the instructions or whether the defendant asks for instructions to be repeated. Document if the person stops and/or forgets what they are supposed to do during the test and if they are slow to respond to corrective action. If the defendant must be reminded multiple times, officers should describe each instance rather than generalizing, as documenting every occurrence provides a clearer and more persuasive picture of cognitive impairment that is common with cannabis. Also, an officer should focus on whether body tremors are present, especially looking for leg tremors during the one leg stand. Officers may also note an impaired perception of time during the one leg stand.

In addition to the SFSTs, officers MUST routinely utilize additional tests that target clues of cannabis impairment. It is not difficult to conduct additional tests. The evidence gathered will likely make the difference in your case, especially when a DRE evaluation is not conducted. At minimum, officers should conduct the modified Rhomberg test, lack of convergence test,[3] an alphabet or counting test (or both), and even the finger to nose test. When a person is impaired by cannabis, officers can observe eyelid tremors during the modified Rhomberg and the finger to nose tests, and the person could exhibit an impaired perception of time during the Rhomberg test. Cannabis use is also known to cause an increase in a person's heart rate,[4] which can be a clue of impairment (in jurisdictions that allow officers to check a suspect's pulse at roadside).

---

[2] Declues K, Perez S, Figueroa, A. A 2-Year Study of Δ 9-tetrahydrocannabinol Concentrations in Drivers: Examining Driving and Field Sobriety Test Performance. *J Forensic Sci*. 2016;61:1664-1670. doi: 10.1111/1556-4029.13168.

[3] Lack of Convergence was noted in 86% of the subjects in the study cited in fn. 2.

[4] Limbacher SA, Godbole S, Wrobel J, Wang GS, Brooks-Russell A. Dose of Product or Product Concentration: A Comparison of Change in Heart Rate by THC Concentration for Participants Using Cannabis Daily and Occasionally. *Cannabis Cannabinoid Res.* 2025 Feb;10(1):53-59. doi: 10.1089/can.2024.0030.

Officers should not hesitate to identify other observed clues as being consistent with cannabis impairment when supported by their own training and experience. These clues should be thoroughly documented in their reports.

The Interview

Officers often neglect to ask enough questions during the interview portion of the investigation forgoing valuable evidence that could be gathered. In addition to traditional questions, consider repeating key questions at multiple points during the investigation to assess consistency. Also note delayed responses, difficulty answering questions, inability to maintain a coherent conversation, or confusion, as these may be indicators of impairment. Officers should ask detailed, open-ended questions about recent cannabis use, the type of product consumed, and the defendant's perceived level of impairment. The following questions can help develop evidence of impairment and provide context for the officer's observations:

1. Have you used any marijuana or cannabis products today?
2. How did you use (smoked, vaped, edible, concentrate, or something else)?
3. Was it flower, wax, oil, budder, shatter, dabs, or another product?
4. How much did you use, and when did you use it?
5. Was it a sativa, indica, or hybrid strain?
6. Why do you use cannabis (medicine/recreational)?
7. What was the name of the product or strain you used?
8. What type of cannabis product was it?
9. What do you like about that product?
10. Do you know its THC concentration or potency?
11. How do you typically feel after using it?
12. How do you feel right now?
13. On a scale of 1 to 10, with 1 being completely sober and 10 being as impaired as you have ever been from cannabis, where would you rate yourself right now?
14. Do you believe you are safe to drive?

Officers should not hesitate to identify other observed clues as being consistent with cannabis impairment when supported by their own training and experience.

If the person has a medical marijuana card, the officer can phrase questions as follows:

1. What conditions do you take cannabis for?
2. When did you get your card?
3. When is the last time you took your medicine?
4. How do you take your medicine?
5. How often do you take your medicine?
6. What does it do for you?

In addition to obtaining admissions of use, these questions may reveal the defendant's familiarity with cannabis, knowledge of potency, perceived effects, and self-assessment of impairment.

The Prosecution

It cannot be emphasized enough—prosecutors should not expect cannabis impairment to look like alcohol impairment. Many prosecutors decline to file charges simply because the person does not look "drunk." A prosecutor should never decline a DUI case, whether cannabis-related or otherwise, without first reviewing all available video evidence and speaking with the investigating officer.

Direct Examination of Officer

One of the most effective tools in a cannabis DUI trial is education. As discussed earlier in this article, direct examination of the investigating officer provides an excellent opportunity to educate the jury how cannabis has evolved over the years, especially since legalization, including the various cannabis products, potency, duration of effects along with the officer's experience seeing a person impaired by cannabis (not only during a DUI investigation). In addition, jurors often arrive with misconceptions regarding cannabis use, impairment, and driving ability. Some may believe that cannabis users drive more cautiously, while others may assume that legalization equates to safety.

In addition to clues of impairment that jurors may expect to see, it is critical to focus on indicators commonly associated with cannabis impairment during both driving and personal contact with a driver. During the direct examination of the officer discuss, and if relevant show through video evidence, examples of speeding,[5] inconsistent driving patterns, delayed reactions, and impaired perception of time and distance. During personal contact, establish through the officer additional indicators of impairment that may include difficulty maintaining attention, slowed responses to questions, poor divided-attention performance, the odor of cannabis (particularly when it continues to emanate from the driver outside the vehicle), lethargic or relaxed movements, body or eyelid tremors, lack of convergence, lack of smooth pursuit,[6] red or watery eyes, and dilated pupils.

> Prosecutors should not expect cannabis impairment to look like alcohol impairment. Many prosecutors decline to file charges simply because the person does not look "drunk."

Rather than simply identifying a clue, the officer should connect the observation to a driving-related impairment. For example: "I observed that the defendant was noticeably delayed in responding to my questions, as though it took him an extended period of time to process what I was asking. A delayed response like that can affect a person's ability to react appropriately to unexpected events while driving, such as a vehicle suddenly braking in front of them or a pedestrian entering the roadway." This testimony helps the jury understand not only what the officer observed, but why those observations are important for safe driving.

Using Toxicologists Effectively

In many cases, toxicology testimony is underutilized. Too often, a toxicologist simply testifies about laboratory procedures, identifies the substances detected, and leaves the jury with little understanding of why the evidence matters. A toxicologist can explain what THC is, how it moves in the body, why THC concentrations do not correlate neatly with impairment, why retrograde extrapolation is generally unreliable for cannabis impairment, and why observed behavioral evidence remains critical in evaluating impairment. The toxicologist can also educate jurors about the various cannabis products, potency and duration of effects as mentioned above, thereby corroborating the officer's testimony.

---

[5] Hartman RL, Richman JE, Hayes CE, Huestis MA. Drug Recognition Expert (DRE) examination characteristics of cannabis impairment. *Accident Analysis & Prevention*. 2016 Jul;92:219-229. doi: 10.1016/j.aap.2016.04.012.

[6] See fn. 2.

The toxicologist is also trained to explain the effects of cannabis on reaction time, attention, perception, and judgment, and explain how those are all crucial for safe driving. It is vital to discuss the toxicologist's anticipated testimony before trial so that the prosecutor and the toxicologist are aligned on the scientific issues and trial themes. A pretrial meeting allows the prosecutor to understand the strengths and limitations of the toxicology evidence, anticipate potential defense arguments, and ensure that the toxicologist can clearly explain how the findings relate to impairment. Effective preparation helps avoid misunderstandings at trial and allows the toxicologist's testimony to reinforce, rather than detract from, the overall theory of the case.

Connecting the Evidence to Your State's Impairment Standard

Prosecutors must always connect the evidence to their state's legal definition of impairment. From the beginning of the case, the prosecutor is responsible for educating jurors on exactly what the state must prove beyond a reasonable doubt. This can start during jury selection by explaining the law and asking prospective jurors whether they can follow it, regardless of their personal views about cannabis.

Although the legal standard varies by jurisdiction, the threshold for proving impairment is often lower than many jurors assume. In Oregon, for example, the state must prove that the defendant's mental or physical faculties were adversely affected by an intoxicant to a noticeable or perceptible degree. In other words, if the evidence establishes that even one mental or physical faculty was impaired to an observable extent, the defendant is under the influence for purposes of the DUI statute.

Whatever the law in your jurisdiction, the applicable standard should be a recurring theme throughout the case. Prosecutors should not wait until closing argument to discuss the law. Instead, prosecutors should tie the evidence to the legal definition of impairment through each witness. When an officer testifies about a particular clue of impairment, the officer should also explain its significance. For example, if a defendant repeatedly forgets instructions during field sobriety tests, ask what that observation indicated. An officer might explain: "The defendant was unable to track and remember the instructions I provided, which indicated to me that his mental faculties were impaired."

By consistently linking observed clues to the legal definition of impairment, prosecutors help jurors understand not only what the officer observed, but why those observations matter under the law.

By consistently linking observed clues to the legal definition of impairment, prosecutors help jurors understand not only what the officer observed, but why those observations matter under the law. Ultimately, the goal is to ensure that jurors evaluate the evidence through the lens of the applicable legal standard, rather than through their own assumptions about what impairment should look like.

Consult a Drug Recognition Expert

Although a prosecutor may not have the benefit of a DRE evaluation in a particular case, that does not mean a DRE cannot still be a valuable resource. From assisting with case review to identifying clues of impairment that may otherwise be overlooked, consulting with a DRE can strengthen case preparation and trial presentation. In some cases, a prosecutor may ask a DRE to conduct a post-incident review by examining the reports, toxicology results, and video evidence. When pursuing this approach, prosecutors should consult with an experienced DRE and ensure that the testimony focuses on the observed signs of impairment and how those observations are consistent with cannabis impairment rather than offering the DRE's opinion that the particular defendant was impaired. More information on post-incident reviews can be found here: DRE Post-Incident Review—Something to Consider in Cases Without a DRE.

Conclusion

Cannabis impaired driving cases require prosecutors to navigate scientific complexity, evolving social attitudes, and juror misconceptions. Legalization has changed public perceptions of cannabis, but it has not changed the fundamental issue in these cases—whether the defendant was impaired and unable to drive safely.

While the absence of a universally accepted THC threshold can create challenges, those challenges are not insurmountable. Successful prosecutions are built on thorough investigations, careful case evaluation, effective collaboration between law enforcement, toxicologists, and prosecutors, and the consistent education of jurors throughout the trial process.

The most persuasive cases focus on observable signs of impairment, connect those observations to the defendant's ability to operate a vehicle safely, and continually tie the evidence to the legal definition of being under the influence. When officers, experts, and prosecutors work together to explain not only what they observed but why those observations matter, the evidence becomes far more compelling, allowing jurors to confidently conclude that the defendant was under the influence.

More information on this topic can be found here: Investigation and Prosecution of Cannabis-Impaired Driving Cases.

About the Author



Deena Ryerson has been Oregon's Traffic Safety Resource Prosecutor with the Department of Justice since July of 2006. She has trained thousands of police officers, prosecutors, judges, and victim advocates during her tenure. She is often sought as a national presenter, noted for her expertise in drug and alcohol impairment.

