



CRIMINAL LAW MARIJUANA BENCH CARD¹



When marijuana is ingested into the system it has two basic parts—THC and metabolite.

- THC and metabolite are stored in the fatty tissues of the body.
- THC is the active psychoactive component of marijuana.
- Different testing yields different facts about use.
- Note: testing is not foolproof and someone who may have recently ingested marijuana may not test positive.

Blood tests: detects both THC and metabolites—measured in nanograms/milliliter (ng/ml).

- If marijuana has been smoked, the THC level peaks shortly after use and then decreases to single digits in the next 60+ minutes.
- If orally ingested, the peak takes 20-90 minutes and then dissipates over ensuing 60+ minutes.
- Some factors that influence length of time THC stays in system are potency (THC level) body mass or weight of individual, history of usage, etc.
- There is no current science establishing a “level of impairment.”
- The law does establish a “per se” level of impairment at 5 ng/ml. Law allows extrapolation to determine level at time of driving.
- Blood testing is the only way to measure for the “parent drug”/THC.

Urine: Marijuana metabolizes into metabolites and stays in fatty tissues of body for 10-13 days (again, may be affected by THC level of drug consumed, body type, usage history, or other factors).

- The presence of drug metabolite does not indicate recency, frequency, or amount of use or impairment---merely shows use.
- For cases where the court wants to see a baseline and decreasing use, it may be good to order urine testing. However, if more than several weeks have gone by, the level may be non-existent.

Hair follicle: Similar to urine, shows metabolite only but may be subject to outside contamination from second hand smoke.

¹ This Benchcard was created by Superior Court Judges’ Association Family and Juvenile Law Committee members Judge Richard Okrent, Commissioner Diana Kiesel, Commissioner Craig Adams, Commissioner Bart Vandegrift, and Judge Kitty-Ann van Doorninck, with the assistance of Ms. Cindy Bricker, AOC. Last edited August 18, 2014.

ADULTS in CRIMINAL SYSTEM:

CONDITION OF RELEASE: CrR 3.2 (court may impose "conditions of release"). See CrR 3.2(d)(3)("prohibit the accused from possessing or consuming any intoxicating liquors or drugs not prescribed to the accused."). MEDICAL MARIJUANA IS NOT A "PRESCRIBED DRUG" so may be able to prohibit as part of pretrial release order.

CONDITION OF SENTENCE: CrR 7.3 (prohibition of use unlikely unless one can show nexus between nature of crime and prohibition, see RCW 9.94A.505(8) which allows court to impose "affirmative conditions" and then RCW 9.94A.703(3)(e) which allows a court to impose prohibition on alcohol use but has no counterpart in marijuana. Would have to link criminal activity (drug abuse crime or other crime relating to marijuana use) to any prohibition on marijuana use, State v. Warnock, 299 P.3d (Div. 1, 4/29/13)(citing to RCW 9.94A.703(3)(c, d)).

JUVENILES IN CRIMINAL SYSTEM:

It is illegal for a juvenile to possess or make use of recreational marijuana (treat like alcohol possession or use). It is legal for juvenile to use medical marijuana, RCW 69.51A.040 (but may only use and not possess). Same conditions as for adult (drug of last choice, intractable illness, etc.)