



DEPENDENCY 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.

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.

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

Depending upon philosophy of the court or the judicial officer, the court may wish to relax strictures on parents so that parent may still seek assistance of the courts in things like ARY or CHINNS petitions.

1. It appears that most courts are treating legal and medical marijuana use in dependency courts the same as alcohol abuse.
2. There has to be a connection or nexus between the use of marijuana and parental deficiency or at the very least marijuana use must be a contributing factor to the parent's inability to provide adequate parenting. Findings will need to be made consistent with RCW 13.34 to establish connection between the use and the parenting problems. NOTE: RCW 13.34.141 allows out of home placement if substance abuse was a contributing factor to the abuse or neglect. Establish nexus.
3. Drug evaluations, UAs, and treatment may be used, RCW 13.34.174. Monitoring of use via UA's, hair follicle, and drug reports is still needed.
4. Requirement that parent demonstrates clear medical need and no other viable alternative is available. Pay particular attention to just use, RCW 69.51A.120.
5. Consider requirement that the parent smoke marijuana outside the presence of the children or not on the premises or in his car.
6. Consider requirement that the parent not discuss marijuana use with the children in a positive way.
7. Consider requirement that the parent smoke or consume marijuana alone and not invite others to join him or her on the premises.
8. Consider requirement that the parent not grow marijuana on the premises or work in a marijuana dispensary/collective garden.
9. Require spot random UAs or hair follicle tests to monitor the frequency of use.

At Risk Youth (ARY)

1. Treat it as alcohol and have zero tolerance. Is illegal as recreational use for anyone under age 21. Can order child to refrain from use, RCW 13.32A.196(3)(e).
2. If we accept a youth into the program whose parent or guardian or relative or any person living on the premises is using marijuana then consider order that the person must agree to: A. Not consume marijuana on the premises. This means in the dwelling and adjacent areas. B. Not to have drug paraphernalia in the home or on the premises. C. Not to speak about the use of marijuana in positive terms. D. Not to smoke marijuana in the presence of the youth.
3. Consider parents signing a contract agreeing to the terms in section 3 above.
4. Consider requiring the parent to not use at all. (Your choice: the pipe or the program). Your child will not be admitted into the program without you refraining from marijuana use.
5. Encourage the parent or guardian to give this up and get treatment.