



FAMILY 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.

Federal law still lists Marijuana as a Schedule I controlled substance 21 U.S.C.A. § 812ⁱ

- Can you ignore the federal law?
- In 2012 recreational use of marijuana is legalized under Chapter 69.50 RCW.
Limitations on use and possession under the law: A parent can legally possess marijuana in Washington if the parent is over age 21, and does not possess over one ounce at a time, 16 ounces of infused product, or 72 ounces of liquid product.ⁱⁱ

Marijuana comes in many forms:

- Food stuffs like ice cream, brownies, and candies
- Tincturesⁱⁱⁱ and oils.

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.

DISSOLUTION OF MARRIAGE OR PARTNERSHIP, LEGAL SEPARATION, OR PARENTAGE

All cases since legalization of marijuana as defined in Chapter 69.50 RCW will have to be reviewed under RCW 26.09.171(3)(g)(other factors or conduct adverse to best interest of child) or RCW 26.09.191(3)(c) "long term impairment."

Possible limiting factors under RCW 26.09.191(3)(g)(other factors or conduct adverse to best interest of the child) allowing court to limit any portion of the parenting plan:

- During use of marijuana parent neglects child's basic needs.
- Exposing the child to second hand smoke or "medibles"^{iv} that the child could eat.
- Using monies for marijuana instead of basic needs of child.
- Where is the marijuana purchased? Licensed store or black market?
- Does the parent drive after using marijuana?
- Frequency of use. If using UA as a testing mechanism, a baseline level is required to determine if the consumption level is constant, decreasing or increasing—order baseline drug test and repeated testing to determine if use decreases or increases.
- DUI history.
- Is use impacting ability to work (drug testing policy at work)?
- Does the parent travel with child(ren) to states where marijuana is not legal?
- Parent with other legal actions – verify use is not a violation of other court conditions.
- Is parent breastfeeding?
- Is parent putting child at some risk by situations of use, conditions of use, or other particulars of time, place, and manner of use?

Factors relating to "Long term impairment" under RCW 26.09.191(3)(c) would be similarly analyzed as long term impairment under case law when substance abuse (drugs or alcohol) evidence is present. ^v

Nonparental custody cases under RCW 26.10

To gain custody, the petitioner must prove that custody in a nonparent is in the best interests of the child (RCW 26.10.100) and that parental custody results in some actual detriment to the child.^{vi}

Medical marijuana under RCW 69.51A

Request medical documentation supporting diagnosis of terminal or debilitating illness required as well as alternative treatments used prior to obtaining the marijuana card^{vii}. Qualifying parent may not have his or her parental rights or residential time with a child restricted solely due to use of cannabis without written finds that as a result of the use a long-term impairment interferes with parenting functions. RCW 69.51A.120

Citations available upon request.