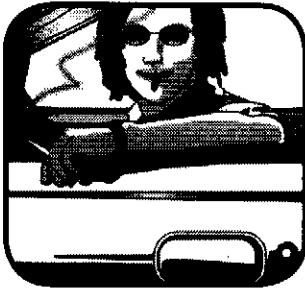


# DRIVING UNDER THE INFLUENCE (DUI) WHEN IMPAIRED

## California Vehicle Code 23152(a) - Misdemeanor



**LAW:** It is unlawful to drive while under the influence of marijuana if impaired to the degree that one is unable to operate a motor vehicle safely.

**PENALTY:** 1st offense: maximum 6 months in jail; fine of \$390-\$1,000; restricted license and 3 years probation, and, if under 21 years old, loss of license for 1 year, and DUI program. (Medical patients are not exempt from statutes prohibiting driving while impaired.)

Note from Bruce:

### **MARIJUANA DUI CASES ARE OFTEN DIFFICULT FOR THE PROSECUTION**

**TO PROVE:** Unlike the .08% blood alcohol level in drunk driving cases, which makes a defendant presumptively guilty, there is no legal standard amount of THC that presumptively establishes impairment, i.e. driving violation, field sobriety tests performance, walk a line, touch of nose, speech, admissions of effects. And note that claiming to be tired only adds to the possibility of impairment.

**ALCOHOL AND WEED DON'T MIX!** Studies show that using alcohol with marijuana radically increases chances of impairment and these types of cases are less defensible. DON'T DO IT!

**DUI SUSPECTS CAN REFUSE TO ANSWER QUESTIONS:** In the event of being pulled over by the police, suspects may refuse to answer any questions (other than identifying yourself) or take field sobriety tests. If you are arrested you are required to take a Breathalyzer, and /or blood or urine test if requested. OTHERWISE REFUSAL TO TAKE A CHEMICAL TEST AS REQUESTED WILL RESULT IN THE LOSS OF DRIVER'S LICENSE FOR A YEAR and may be seen as consciousness of guilt. Note from Bruce. Answering questions about use of marijuana, including when, can be very damaging to the defense, especially if within 4 hours!

### **CHOOSING A BREATH, BLOOD, OR URINE TEST: DUI, MARIJUANA:**

Experts advise to first choose a breath test, as it does not register THC. If it is requested that you submit to a blood or urine test and you haven't used marijuana for at least 3 days choose the blood test, as experts indicate that THC is usually detectable in the blood for up to 2 days, otherwise choose a urine test. Even though a urine test will probably show a positive marijuana metabolite result (up to 35 days or more), the presence of Marijuana metabolite alone does not establish impairment, which is required to prove DUI.

### **HOW TO SAVE YOUR DRIVER'S LICENSE:**

**CALIFORNIA LAW:** Persons under 21 convicted of D.U.I. or any marijuana offense will lose their California Driver's License for one year, even if not driving at the time. See page 9, Courtroom Strategy: How to Avoid Conviction For Less Than An Ounce (and save your driver's license).

Adults can obtain a Restricted License (1st offense only) but now must install car ignition interlock device per D.M.V.

Adults may also lose their license for up to 3 years when a motor vehicle is involved [CA Vehicle Code 13202] as the judge can suspend or order the DMV to revoke the driver's license for possession for sale, transportation, or sale to a minor. In many other states, anyone convicted of any offense involving any controlled substance, including marijuana, will lose their driver's license for 6 months or more, regardless of whether or not the offense is driving-related.

When the defendant can show a "critical need to drive," and to attempt to obtain only a restricted license (see VC 13202.5).

**YOUTHFUL OFFENDER ALTERNATIVE PROGRAMS:** For defendants under 21. For possession of marijuana in some California counties, prosecutors have established alternative programs to avoid suspension of driver's license, usually requiring the defendant to attend counseling, such as Mother's Against Drunk Driving. Typically, 90 days later, the defendant is allowed to plead to an alternative offense, such as "Disturbing the Peace." This avoids a controlled substance conviction and loss of license.