

# Philadelphia DAO Policy on Cannabis DUI



Effective Date: 12/3/2018

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An ADA may assume that a defendant whose blood tests positive for 5 ng/mls of psycho-active THC (Delta-9-THC) was driving while impaired. An ADA may not proceed on a case where a defendant's blood only contains inactive metabolite (11-Nor-9-Carboxy-Delta-9-THC) or 4 or fewer ng/mls of psycho-active THC.

Chronic users of cannabis or individuals with high BMIs will have inflated levels of psycho-active THC in their blood, because of the way the compound is stored in the fat cells in the body. Therefore, if the defense presents evidence that calls impairment into question, an ADA may consider dropping the charges against the defendant. In such cases, an ADA should consider the following factors, in this order:

- a. The level of psycho-active THC found in the blood
- b. Any evidence or scientific reports submitted by the defendant
- c. Whether or not the defendant drove in an unsafe manner
- d. The observations of the police officers

Where a defendant's blood shows the presence of 4 ng/ml of psycho-active THC or less and a blood alcohol level of .08 or more, a defendant should be charged under 75 Pa. C.S.A. § 3802(a) only.

Where a defendant's blood shows the presence of 4 ng/ml of psycho-active THC or less and a blood alcohol level of .07 or less, the ADA should analyze the case, and consider whether there is credible evidence of unsafe driving and/or police observation of impairment. Where an ADA believes that the defendant was in fact impaired at the time he was stopped, he or she may use his or her discretion and proceed either under 75 Pa. C.S.A. § 3802(a) or under 75 Pa. C.S.A. § 3802(d).

Where a defendant's blood test reveals the presence of psycho-active THC and another illegal drug, a defendant may be prosecuted under 75 Pa. C.S.A. § 3802(d).