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DUI URINE TESTS FOR MARIJUANA

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You asked a number of questions about the use of urine tests administered to drivers suspected of driving under the influence (DUI) of drugs, specifically marijuana. We answer your questions individually after providing some brief background on DUI stops. Some of the questions require a legal opinion, which the Office of Legislative Research is not authorized to issue. Therefore, these answers should not be considered as such.

DUI STOPS

State law prohibits anyone from driving a motor vehicle under the influence of alcohol or drugs. The state Appellate Court has interpreted this law as it applies to driving under the influence of alcohol. It held that “driving while under the influence of liquor means...that a driver has become so affected in his mental, physical, or nervous processes that he lacked to an appreciable degree the ability to function properly in relation to the operation of his vehicle” (*State v. Gordon*, 84 Conn. App. 519, (2004)).

Arrests made for driving under the influence, either of alcohol or drugs, are similar in most respects. In arresting someone for DUI, an officer typically pulls over a motorist who is driving erratically, straddling lane lines, or otherwise exhibiting signs of impaired driving. The officer talks to the driver, observes and assesses his or her behavior, and may

administer a field sobriety test. The officer may then arrest the driver and ask him or her to take a breath, blood, or urine test. Typically, the officer requests a breath test to determine if the driver's blood alcohol content (BAC) is elevated.

By law ([CGS § 14-227b\(a\)](#)), anyone who drives in Connecticut is deemed to have consented to submit to these chemical tests ("implied consent"). The officer must advise the driver that he or she may refuse to take the test and that a prosecutor may use evidence of the refusal in the criminal case against the driver.

A key difference in arresting someone for driving under the influence of alcohol, rather than drugs, is that the officer must advise motorists charged with driving under the influence of alcohol that the Department of Motor Vehicles (DMV) may suspend their license if they refuse to submit to a test or if the test shows an elevated BAC ("administrative suspension," [CGS § 14-227b\(b\)](#)). Under state law, drivers over age 21 have an elevated BAC if it is found to be .08% or more. Drivers operating a commercial motor vehicle (e.g., a large truck) have an elevated BAC if it is .04% or more. Under [CGS § 14-227g](#) people younger than age 21 have an elevated BAC if it is .02% or more.

By law, the officer must revoke, for 24 hours, the license of a driver who refuses to take a chemical test or whose test results indicate an elevated BAC. The officer must submit a report to DMV that includes any test results and the grounds the officer had for making the arrest. In the case of a test refusal, a third party who witnessed the refusal must sign the report ([CGS § 14-227b\(c\)](#)).

Although the law allows for the administrative suspension of the driver's license of a motorist who has an elevated BAC or refused to submit to a test ([CGS § 14-227b \(i\)](#)), it is silent on similarly suspending the license of a driver arrested for driving under the influence of drugs. Because of this, and because there is no statutory minimum threshold for drugs, DMV does not suspend the license of a driver charged with driving under the influence of drugs.

(While there is no administrative suspension of a driver charged with driving under the influence of drugs, the driver would have his or her license suspended if he or she was convicted of that offense in the same way as would someone convicted of driving under the influence of alcohol.)

We answer your questions individually below.

1. Under what conditions would a police officer order a urine test following a stop for suspected DUI?

According to the toxicology laboratory of the Department of Emergency Services and Public Protection (DESPP), this typically occurs when:

1. the device used to measure BAC is not working or is unavailable;
2. the suspect has taken a breath test and the result is not consistent with the degree of impairment the officer observed, and the officer switches from a breath test to a urine or blood test to screen for drugs;
3. the suspect is unable to give an adequate breath sample; or
4. the officer believes the suspect is under the influence of a substance other than alcohol.

2. How often is a urine test requested in DUI stops?

According to the DESPP toxicology laboratory, urine tests are conducted in approximately 20% to 30% of DUI arrests.

3. What is the time period in which a BAC test or urine sample can be obtained following an arrest?

The officer must administer two chemical tests, the first within two hours of the vehicle's operation, and the second, which usually is of the same type as the first, at least 10 minutes after the first test. But the officer, if he or she has reasonable cause, may administer a urine or blood test if the first test (typically a breath test) fails to find evidence of alcohol, or the officer suspects drug use ([CGS § § 14-227a \(b\)](#)).

4. Can a DUI suspect be forced to give a urine sample? What is the penalty (besides the possible administrative suspension by DMV) for refusing to provide one?

A driver charged with DUI cannot be forced to give a urine sample. Before asking a driver to take a chemical test, the officer must advise the driver of his or her constitutional rights ([CGS § 14-227b \(b\)](#)). In addition, [CGS § 14-227a \(b\) \(1\)](#) states that evidence of a drug in the defendant's

urine is only admissible if the arresting officer gave the defendant “a reasonable opportunity to telephone an attorney prior to the performance of the test and the defendant consented to the taking of the test” on which the analysis is based.

A refusal to take any type of test can be used as evidence in a prosecution for driving under the influence. There is no criminal penalty for refusing to take the test.

5. What happens if the urine test shows only traces of marijuana?

What happens depends on whether a prosecutor can show that the presence of marijuana in the defendant’s urine explains his or her impaired driving. While the presence of drugs in a urine sample does not allow a court to directly infer the driver’s impairment, it may provide an explanation of the impaired driving exhibited by the driver and observed by the arresting officer.

State law does not establish a minimum amount of any drug, including marijuana, that must be found in a urine test to prove a driver guilty. Any amount of a drug, when used to explain erratic driving behavior, may be sufficient to support the conviction of someone for driving under the influence of drugs.

“Unlike the situation in which a defendant is charged with operating a motor vehicle under the influence of alcohol and the state must prove the defendant’s blood alcohol content,” the state Appellate Court has ruled, “the state does not have to prove the quantity of drugs in the blood to obtain a conviction for operating a motor vehicle while under the influence of drugs” (*State v. Weisenberg*, 79 Conn. App. 657 (2003)).

6. Can someone be charged with driving under the influence of marijuana even though traces of the drug stay in a person’s system for 30 days and there is no marijuana odor in the car and no evidence of drug paraphernalia?

Yes. The state may use the presence of drugs in the urine sample to explain the behavior.

According to the National Institute on Drug Abuse, marijuana may remain in the system of a heavy marijuana user for weeks after use stops. However, according to the DESPP toxicology laboratory, in most cases urine tests can detect the presence of marijuana for only three to four days, and occasionally as much as seven days, after exposure.

8. Is there any difference in the prosecution of cases involving DUI for alcohol and DUI for drugs?

Yes. When prosecuting a case for DUI involving alcohol, a prosecutor can rely on both the defendant's behavior, as observed and documented by the arresting officer, and state law that sets a specific threshold (.08% in most cases) above which the law considers a driver to be driving under the influence of alcohol. Because there is no similar statutory minimum for drugs, a prosecutor bringing a DUI case involving drugs must rely on the driver's behavior in proving the state's case.

9. Can urine tests distinguish between marijuana ingested directly and that inhaled from second-hand smoke?

It would be unusual for second-hand smoke to cause a positive urine test. According to the DESPP toxicology laboratory, in most cases only direct ingestion of marijuana will leave enough marijuana in the system to show positive. According to this report, <http://www.dtic.mil/cgi-bin/GetTRDoc?Location=U2&doc=GetTRDoc.pdf&AD=ADA415766>, "passive inhalation of marijuana smoke can cause positive urinalysis results above the threshold limits [but] the experimental conditions that cause a positive result, lots of marijuana smoke in a small confined space, are unlikely to occur...unknowingly."

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