

[← Back to Original Article](#)

Stoned driving is uncharted territory

Experts say they don't know what level of marijuana impairs a driver, but statistics show that fatal crashes involving drugged drivers have jumped. Law enforcement puts much of the blame on the growth of medical marijuana use.

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It was his green tongue that helped give away Jimmy Candido Flores when police arrived at the fatal accident scene near Chico.

Flores had run off the road and killed a jogger, Carrie Jean Holliman, a 56-year-old Chico elementary school teacher. California Highway Patrol officers thought he might be impaired and conducted a sobriety examination. Flores' tongue had a green coat typical of heavy marijuana users and a later test showed he had pot, as well as other drugs, in his blood.

After pleading guilty to manslaughter, Flores, a medical marijuana user, was sentenced in February to 10 years and 8 months in prison.

Holliman's death and others like it across the nation hint at what experts say is an unrecognized crisis: stoned drivers.

The most recent assessment by the National Highway Traffic Safety Administration, based on random roadside checks, found that 16.3% of all drivers nationwide at night were on various legal and illegal impairing drugs, half them high on marijuana.

In California alone, nearly 1,000 deaths and injuries each year are blamed directly on drugged drivers, according to CHP data, and law enforcement puts much of the blame on the rapid growth of medical marijuana use in the last decade. Fatalities in crashes where drugs were the primary cause and alcohol was not involved jumped 55% over the 10 years ending in 2009.

"Marijuana is a significant and important contributing factor in a growing number of fatal accidents," said Gil Kerlikowske, director of National Drug Control Policy in the White House and former Seattle police chief. "There is no question, not only from the data but from what I have heard in my career as a law enforcement officer."

As the medical marijuana movement has gained speed — one-third of the states now allow such sales — federal officials are pursuing scientific research into the impairing effects of the drug.

The issue is compounded by the lack of a national standard on the amount of the drug that drivers should be allowed to have in their blood. While 13 states have adopted zero-tolerance laws, 35 states including California have no formal standard, and instead rely on the judgment of police to determine impairment.

Even the most cautious approach of zero tolerance is fraught with complex medical issues about whether residual low levels of marijuana can impair a driver days after the drug is smoked. Marijuana advocates say some state and federal officials are trying to make it impossible for individuals to use marijuana and drive legally for days or weeks afterward.

Marijuana is not nearly as well understood as alcohol, which has been the subject of statistical and medical research for decades.

"A lot of effort has gone into the study of drugged driving and marijuana, because that is the most prevalent drug, but we are not nearly to the point where we are with alcohol," said Jeffrey P. Michael, the National Highway Traffic Safety Administration's impaired-driving director. "We don't know what level of marijuana impairs a driver."

A \$6-million study in Virginia Beach, Va., is attempting to remove any doubt that users of pot and other drugs are more likely to crash. Teams of federal researchers go to accident scenes and ask drivers to voluntarily provide samples of their blood. They later return to the same location, at the same time and on the same day of the week, asking two random motorists not involved in crashes for a blood sample.

The project aims to collect 7,500 blood samples to show whether drivers with specific blood levels of drugs are more likely to crash than those without the drugs, said John Lacey, a researcher at the nonprofit Pacific Institute for Research and Evaluation.

In other projects, test subjects are being given marijuana to smoke and then examined under high-powered scanners or put in advanced driving simulators to gauge how it affects their brains and their ability to drive.

Federal scientists envision a day when police could quickly swab saliva from drivers' mouths and determine whether they have an illegal level of marijuana, but that will require years of research. Until then, police are in the same position they were with drunk driving in the 1950s, basing arrests on their professional judgment of each driver's behavior and vital signs.

If police suspect a driver is stoned, they now administer a lengthy 12-point examination. The driver must walk a straight line and stand on one leg, estimate the passage of 30 seconds and have pupils, blood pressure and pulse checked.

Chuck Hayes, national coordinator for the International Assn. of Chiefs of Police based in Washington, D.C., says the system works well to identify impaired drivers, and any future legal limit or medical test would be just another tool rather than a revolutionary change.

"We are not concerned about levels or limits. We are concerned with impairment," Hayes said.

Indeed, even among law enforcement experts, the need for a standard is debated. Many support tried-and-true policing methods that can ferret out stoned drivers.

"Everybody wants a magic number, because that makes it easy," said Sarah Kerrigan, a toxicologist at Sam Houston State University in Texas and an expert witness in numerous trials. "To have a law that says above a certain level you are impaired is not scientifically supportable. I don't think police need the tool, but my opinion may be in the minority."

But federal officials and local prosecutors argue that the lack of a standard makes convictions harder to obtain.

In October, a San Diego jury acquitted Terry Barraclough, a 60-year-old technical writer and medical marijuana user, on manslaughter charges in a fatal crash that occurred shortly after he had smoked marijuana.

A blood test showed he had high levels of active marijuana ingredients in his blood, but the jury heard conflicting expert testimony from toxicologists about the possible effects.

Martin Doyle, the deputy district attorney who prosecuted Barraclough, said the acquittal showed that the lack of a formal legal limit on marijuana intoxication makes such prosecutions tough.

"We don't have a limit in California and that made my prosecution very difficult," Doyle said. "We have a lapse in the law."

But defense attorney Michael Cindrich said the failed prosecution shows that the San Diego district attorney was targeting medical marijuana users and that any legal limit would be unfair to the people who rely on the drug to treat their problems.

Indeed, Anthony Cardoza, an attorney who represented Flores in the Chico accident, said his client was not impaired and that allegations about his green tongue were ridiculous. Flores' guilty plea was prompted by other legal issues, including a prior conviction for a drunk driving accident that caused an injury.

Marilyn Huestis, a toxicologist and one of the nation's top experts on marijuana at the National Institute on Drug Abuse who is directing several research programs, said she believed there is no amount of marijuana that a person can consume and drive safely immediately afterward.

Supporters of marijuana legalization agree that the drug can impair a driver, but argue that the effects wear off in a few hours. Huestis, however, said research was showing that the effects of marijuana can linger.

Marijuana's main ingredient — delta-9 THC — stays in the blood for an hour or more and then breaks down into metabolites that are both psychoactive and inert. But the impairing effects can linger, even after the THC is no longer in the blood, Huestis said. Because it can be absorbed into body tissue and slowly released for days, Huestis believes that heavy chronic daily users may be impaired in ways that are not yet understood.

A complicating factor is the tendency of many marijuana users to also use alcohol, which can sharply amplify impairment. Very little research has been conducted to determine whether it is possible to set limits on a combination of such substances.

Paul Armentano, deputy director for the National Organization for the Reform of Marijuana Laws, said some states had laws that can punish users even when they are not high, pointing to a tough Arizona statute that allows conviction for impaired driving when an inert metabolite is detected in the blood.

Arizona officials said they wrote the law because there was no scientific agreement on how long marijuana impairs a driver. But proponents see something more sinister: an effort to put marijuana users in constant legal jeopardy.

"We are not setting a standard based on impairment, but one similar to saying that if you have one sip of alcohol you are too drunk to drive for the next week," Armentano said.

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