Roadside Cannabis Testing in Jersey: Evidence Briefing

Purpose

To support effective road safety enforcement **without criminalising unimpaired drivers**, including patients lawfully prescribed medical cannabis.

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1. What is being proposed

- Introduction of **roadside drug testing for cannabis**.
- Use of **per-se THC blood limits** (reported as **5 µg/L for most drivers** and **2 µg/L for professional drivers**).
- Current position (per Ministerial comments): **no distinction between prescribed and non-prescribed cannabis** once the numerical limit is exceeded.

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2. The core scientific issue

THC blood concentration is not a reliable indicator of driving impairment.

Unlike alcohol, THC behaves differently in the body:

- THC is **fat-soluble**, rapidly redistributed, and can remain detectable **long after impairment has resolved**.
- Regular or medical users may exceed per-se limits **while unimpaired**.

Key authorities

- **US National Highway Traffic Safety Administration (NHTSA)**
  States that *"it is difficult to establish a relationship between a person's THC blood or plasma concentration and performance impairing effects"* and that **per-se limits are not scientifically supported in the same way as alcohol**.
- **Marcotte et al. (randomised driving studies)**
  Found **no consistent relationship between blood THC levels and driving performance**, particularly in frequent users.
- **US National Institute of Justice (NIJ)**
  Concluded that THC levels in blood or oral fluid are **poor predictors of impairment**.

Bottom line: a numerical THC limit measures **presence**, not **impairment**.

3. Why this matters legally and ethically

- A per-se THC limit risks **false positives for impairment**, particularly among:
  - Medical cannabis patients
  - Chronic users with residual THC
- This undermines:
  - **Fairness** (punishing lawful behaviour)
  - **Credibility** of enforcement
  - **Public confidence** in road-safety policy

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4. Comparison with other prescribed medicines

Many prescribed medicines can impair driving (e.g. **opioids, benzodiazepines, sedating antidepressants**), yet:

- The regulatory approach is **impairment-based**, not numeric.
- Patients are instructed: **"Do not drive if you feel impaired."**

UK precedent (relevant and practical)

The UK introduced per-se drug limits **with an explicit statutory medical defence**:

- Drivers are **not guilty** if:
  - the drug was **prescribed**,
  - taken **as directed**, and
  - the driver was **not impaired**.

This preserves road safety **without criminalising patients**.

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5. A workable alternative for Jersey

Road safety can be strengthened without weak science.

Recommended approach:

1. **Retain roadside testing powers** as a screening tool.
2. **Anchor enforcement on impairment**, using:
   - observed driving behaviour,
   - officer observations,
   - field impairment tests / DRE where appropriate.

3. **Include a statutory medical defence** for prescribed cannabis (modelled on the UK), while preserving full powers to prosecute impaired driving.

This approach:

- Targets **actual risk** (impaired driving),
- Aligns with international evidence,
- Protects legitimate patients,
- Is legally robust and politically defensible.

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6. Key takeaway for policymakers

Road safety policy should punish impairment, not body chemistry.
A number that does not reliably measure impairment should not be the sole basis for criminal liability.

Primary references

1. **US National Highway Traffic Safety Administration (NHTSA)**
   Marijuana-Impaired Driving: A Report to Congress
   Federal review concluding that blood THC concentration does **not reliably correlate with driving impairment**, and that per-se limits are not comparable to alcohol.
   Link: https://www.nhtsa.gov/sites/nhtsa.gov/files/documents/812440-marijuana-impaired-driving-report-to-congress.pdf
2. **Marcotte et al. – Randomised driving performance studies**
   Peer-reviewed research demonstrating **no consistent relationship between blood THC levels and driving performance**, particularly among frequent users.
   Link: https://pubmed.ncbi.nlm.nih.gov/PMC8792796/
3. **US National Institute of Justice (NIJ)**
   Field Sobriety Tests and THC Levels Are Unreliable Indicators of Marijuana Intoxication
   Summary of evidence showing THC concentrations in blood or oral fluid are **poor predictors of impairment**.
   Link: https://nij.ojp.gov/topics/articles/field-sobriety-tests-and-thc-levels-unreliable-indicators-marijuana-intoxication
4. **UK Government – Drug Driving Regulations**
   Official guidance explaining per-se drug limits **and the statutory medical defence** for prescribed medicines taken as directed, provided the driver is not impaired.
   Link: https://www.gov.uk/government/collections/drug-driving