

# IMPACTS OF MARIJUANA LEGALIZATION

Marijuana and CMV Drivers in Nevada



# Current Nevada DUI Law CMV

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- NRS 484C.120 Unlawful acts relating to operation of commercial motor vehicle; affirmative defense; additional penalty for violation committed in work zone or pedestrian safety zone. [Effective until the date of the repeal of the federal law requiring each state to make it unlawful for a person to operate a motor vehicle with a blood alcohol concentration of 0.08 percent or greater as a condition to receiving federal funding for the construction of highways in this State.]
  - 1. It is unlawful for any person who:
    - (a) Is under the influence of intoxicating liquor;
    - (b) Has a concentration of alcohol of 0.04 or more but less than 0.08 in his or her blood or breath; or
    - (c) Is found by measurement within 2 hours after driving or being in actual physical control of a commercial motor vehicle to have a concentration of alcohol of 0.04 or more but less than 0.08 in his or her blood or breath,
  - to drive or be in actual physical control of a commercial motor vehicle on a highway or on premises to which the public has access.
  - 2. It is unlawful for any person who:
    - (a) Is under the influence of a controlled substance;
    - (b) Is under the combined influence of intoxicating liquor and a controlled substance; or
    - (c) Inhales, ingests, applies or otherwise uses any chemical, poison or organic solvent, or any compound or combination of any of these, to a degree which renders the person incapable of safely driving or exercising actual physical control of a commercial motor vehicle,
  - to drive or be in actual physical control of a commercial motor vehicle on a highway or on premises to which the public has access. The fact that any person charged with a violation of this subsection is or has been entitled to use that drug under the laws of this State is not a defense against any charge of violating this subsection.

3. It is unlawful for any person to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access with an amount of any of the following prohibited substances in his or her blood or urine that is equal to or greater than:

Prohibited substance	Urine Nanograms per milliliter	Blood Nanograms per milliliter
(a) Amphetamine	500	100
(b) Cocaine	150	50
(c) Cocaine metabolite	150	50
(d) Heroin	2,000	50
(e) Heroin metabolite:		
(1) Morphine	2,000	50
(2) 6-monoacetyl morphine	10	10
(f) Lysergic acid diethylamide	25	10
(g) Methamphetamine	500	100
(h) Phencyclidine	25	10

4. It is unlawful for any person to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access with an amount of any of the following prohibited substances in his or her blood that is equal to or greater than:

Prohibited substance	Blood Nanograms per milliliter
(a) Marijuana (delta-9-tetrahydrocannabinol)	2
(b) Marijuana metabolite (11-OH-tetrahydrocannabinol)	5

# Proposed Law Amendment

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3. It is unlawful for any person to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access with an amount of any of the following prohibited substances in his or her blood or urine that is equal to or greater than:

Prohibited substance	Urine Nanograms per milliliter	Blood Nanograms per milliliter
(a) Amphetamine	500	100
(b) Cocaine	150	50
(c) Cocaine metabolite	150	50
(d) Heroin	2,000	50
(e) Heroin metabolite:		
(1) Morphine	2,000	50
(2) 6-monoacetyl morphine	10	10
(f) Lysergic acid diethylamide	25	10
(g) Methamphetamine	500	100
(h) Phencyclidine	25	10

4. It is unlawful for any person to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access with an amount of any of the following prohibited substances in his or her blood that is equal to or greater than:

Prohibited substance	Blood Nanograms per milliliter
<del>(a) Marijuana (delta-9 tetrahydrocannabinol)</del>	<del>2</del>
<del>(b) Marijuana metabolite (11-OH tetrahydrocannabinol)</del>	<del>5</del>

# Concerns related to proposed amendment

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- Would create a gap between a driver being under the influence in violation of law or being impaired to the point they could not operate a motor vehicle safely.
- Creates a false perception for CDL Holders that they can legally operate a CMV with marijuana in their system.
- Could affect MCSAP grant funding and/or DMV for State Highway Funding.
- Safety of the motoring public.

## Immediate response by NHP and DMV

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1. Testified in State Assembly Hearing in a neutral position but discussed 392.4 prohibitions.
2. Stressed the fact that marijuana remains as Schedule 1 substance at the federal level and CDL holders who fall under the federal regulations must be held to that standard.
3. Discussed potential impacts to grant funding.

# Challenges

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- Convince members of other agencies and legislators that CDL/CMV operators must be held to a higher standard.
- Assemblyman would not consider leaving current law intact for CMV operators.
- Creating a friendly proposal which would ensure public safety and create a zero tolerance for CDL holders operating a CMV.
- Ensure compliance with federal regulations and consistent with current state laws/codes.
- Review how other states laws are configured and how they have maintained their compatibility despite legalization.

# Considerations for proposed amendment to Legislature

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- Laws related to minors who are under the influence of alcohol or drugs. Depending on the circumstance(s) minors are only typically subjected to licensing sanctions.
- Drivers at a .04 BAC will likely not exhibit enough clues (if any) to indicate an impairment to the degree of not being able to operate a CMV safely.
- Drug and Alcohol Clearinghouse data. Shows a concerning trend as it relates to marijuana.
- Review intent and purpose of Federal Regulations.





VIOLATIONS REPORTED TO CLEARINGHOUSE CONTINUED

Positive drug tests account for **81%** of the total violations reported.

See chart to the right for a breakdown of results reported to the Clearinghouse by year since January 6, 2020 of the number of times a driver tested positive for each substance.

The graph below shows total results reported to the Clearinghouse since January 6, 2020 of the number of times a driver tested positive for each substance.

SUBSTANCES IDENTIFIED IN POSITIVE DRUG TESTS

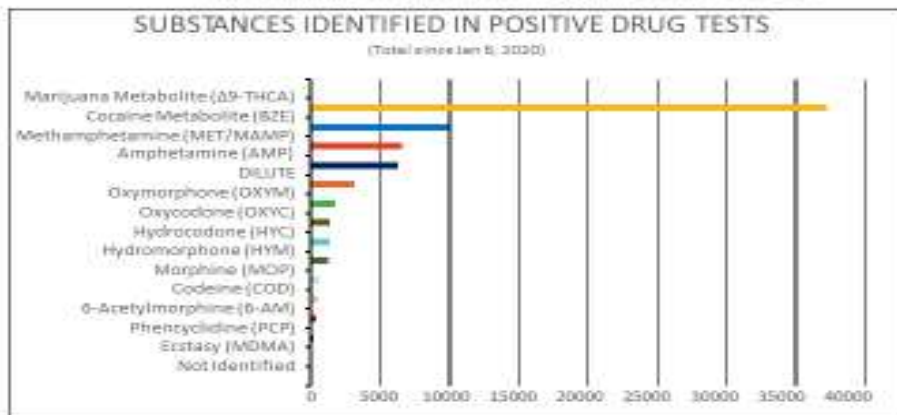
(as of 4/1/2021)

Substance	2020	2021	# Tests Identified (Total since Jan 6, 2020)
Marijuana Metabolite ( $\Delta^9$ -THCA)	29,511	7,750	37,261
Cocaine Metabolite (BZE)	7,940	1,908	9,848
Methamphetamine (MET/MAMP)	5,187	1,323	6,510
Amphetamine (AMP)	4,953	1,311	6,264
DELU	2,398	687	3,085
Oxycodone (OXYM)	1,372	322	1,694
Oxycodone (OXYC)	1,106	264	1,370
Hydrocodone (HYC)	1,082	241	1,323
Hydromorphone (HYM)	1,000	225	1,225
Morphine (MOP)	443	80	523
Codeine (COD)	386	85	471
6-Acetylmorphine (6-AM)	302	47	349
Phencyclidine (PCP)	137	36	173
Ecstasy (MDMA)	65	14	79
Not Identified	43	0	43
Methylenedioxyamphetamine (MDA)	30	10	40
<b>All substances</b>	<b>55,955</b>	<b>14,303</b>	<b>64,273</b>

Note: More than one substance can appear in a positive drug test

SUBSTANCES IDENTIFIED IN POSITIVE DRUG TESTS

(Total since Jan 6, 2020)



Positive drug tests reported as of 4/1/2021

## CFR 392.4 Drugs and other substances

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(a) No driver shall be on duty and possess, be under the influence of, or use, any of the following drugs or other substances:

(1) Any 21 CFR 1308.11 Schedule I substance;

(2) An amphetamine or any formulation thereof (including, but not limited, to “pep pills,” and “bennies”);

(3) A narcotic drug or any derivative thereof; or

(4) Any other substance, to a degree which renders the driver incapable of safely operating a motor vehicle.

## CFR 384. 203 Driving while under the influence

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- (a) The State must have in effect and enforce through **licensing sanctions** the disqualifications prescribed in §383.51(b) of this subchapter for driving a CMV with a 0.04 alcohol concentration.
- (b) Nothing in this section shall be construed to require a State to apply its criminal or other sanctions for driving under the influence to a person found to have operated a CMV with an alcohol concentration of 0.04, **except licensing** sanctions including suspension, revocation, or cancellation.
- (c) A State that enacts and enforces through licensing sanctions the disqualifications prescribed in §383.51(b) of this subchapter for driving a CMV with a 0.04 alcohol concentration and gives full faith and credit to the disqualification of CMV drivers by other **States shall be deemed in substantial compliance** with section 12009(a)(3) of the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31311(a))

## CFR Part 383.5 Definitions

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**Conviction** means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a **court of original jurisdiction** or by an authorized **administrative tribunal**, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

# CFR 383.51 Disqualification of drivers.

If a driver operates a motor vehicle and is convicted of:	For a first conviction or refusal to be tested while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a first conviction or refusal to be tested while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a first conviction or refusal to be tested while operating a CMV transporting hazardous materials as defined in §383.5, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV for * * *
(1) Being under the influence of alcohol as prescribed by State law * * *	1 year	1 year	3 years	Life	Life
(2) Being under the influence of a controlled substance * * *	1 year	1 year	3 years	Life	Life
(3) Having an alcohol concentration of 0.04 or greater while operating a CMV * * *	1 year	Not applicable	3 years	Life	Not applicable
(4) Refusing to take an alcohol test as required by a State or jurisdiction under its implied consent laws or regulations as defined in §383.72 of this part * * *	1 year	1 year	3 years	Life	Life

# Proposal to Assemblyman

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- Adopt a zero-tolerance standard for CDL holders operating a CMV. Insert language from CFR 392.4 into current law.
- Remove all per se limits in order to support the zero-tolerance standard.
- Allow law enforcement to request drivers to submit to testing if they are suspected of using or being under the influence of a controlled substance to any degree.
- Allow DMV to take licensing sanctions in accordance with CFR 383.51 following an administrative hearing/conviction.

# Legislative Amendment for Senate Consideration

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- ***Intent:*** to clarify that drivers of commercial motor vehicles cannot be under the influence of alcohol or have any detectable amount of a federally defined schedule 1 controlled substance in their blood while operating a commercial motor vehicle. As such, the per se limits for the illegal substances in subsection 3 of Section 2 can be struck. Further, make it clear the DMV can take an administrative licensing sanction against the driver of a commercial motor vehicle for having an amount of alcohol of 0.04 or more but less than 0.08 or any detectable amount of a federally defined schedule 1 controlled substance in their blood while operating a commercial motor vehicle. The licensing sanction shall be consistent with federal regulations defined under 49 C.F.R. § 383.51.

**Sec. 2. NRS 484C.120** is hereby amended to read as follows:

484C.120 1. It is unlawful for any person who:

(a) Is under the influence of intoxicating liquor;

(b) Has a concentration of alcohol of 0.04 or more but less than 0.08 in his or her blood or breath;

or

(c) Is found by measurement within 2 hours after driving or being in actual physical control of a commercial motor vehicle to have a concentration of alcohol of 0.04 or more but less than 0.08 in his or her blood or breath,

⇒ to drive or be in actual physical control of a commercial motor vehicle on a highway or on premises to which the public has access.

2. It is unlawful for any person who:

(a) ~~[Is under the influence of a controlled substance]~~ ***Has any detectable amount of any substance listed in schedule 1 of 21 CFR 1308.11 in his blood or urine;***

(b) Is under the combined influence of intoxicating liquor and a controlled substance; or

(c) Inhales, ingests, applies or otherwise uses any chemical, poison or organic solvent, or any compound or combination of any of these, to a degree which renders the person incapable of safely driving or exercising actual physical control of a commercial motor vehicle,

⇒ to drive or be in actual physical control of a commercial motor vehicle on a highway or on premises to which the public has access. The fact that any person charged with a violation of this subsection is or has been entitled to use that drug under the laws of this State is not a defense against any charge of violating this subsection.



**3.** If consumption is proven by a preponderance of the evidence, it is an affirmative defense under paragraph (c) of subsection 1 that the defendant consumed a sufficient quantity of alcohol after driving or being in actual physical control of the commercial motor vehicle, and before his or her blood or breath was tested, to cause the defendant to have a concentration of alcohol of 0.04 or more in his or her blood or breath. A defendant who intends to offer this defense at a trial or preliminary hearing must, not less than 14 days before the trial or hearing or at such other time as the court may direct, file and serve on the prosecuting attorney a written notice of that intent.

**4.** A person who violates any provision of this section may be subject to any additional penalty set forth in NRS 484B.130 or 484B.135 *and NRS 483.939*.

**5.** As used in this section:

(a) “Commercial motor vehicle” means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(1) Has a gross combination weight rating of 26,001 or more pounds which includes a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(2) Has a gross vehicle weight rating of 26,001 or more pounds;

(3) Is designed to transport 16 or more passengers, including the driver; or

(4) Regardless of size, is used in the transportation of materials which are considered to be hazardous for the purposes of the federal Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101 et seq., and for which the display of identifying placards is required pursuant to 49 C.F.R. Part 172, Subpart F.

(b) The phrase “concentration of alcohol of 0.04 or more but less than 0.08 in his or her blood or breath” means 0.04 gram or more but less than 0.08 gram of alcohol per 100 milliliters of the blood of a person or per 210 liters of his or her breath.

*NRS 483.9xx Mandatory administrative suspension of a commercial driver's license or commercial learner's permit of person if test shows concentration of alcohol of 0.04 or more in blood or breath; prohibition of controlled substances and mandatory suspension of a commercial driver's license or commercial learner's permit.*

*1. If the result of a test given pursuant to NRS 484C.150 484C.160 or shows that a person 18 years of age or older had a concentration of alcohol of 0.04 or greater in his or her blood or breath or any detectable amount of any 21 CFR 1308.11 schedule 1 substance in his or her blood at the time of the test, the person's commercial driver's license, commercial learner's permit or privilege to drive a commercial motor vehicle must be suspended for a period of 1 year.*

*2. This section does not preclude:*

*(a) The prosecution of a person for a violation of any other provision of law; or*

*(b) The suspension or revocation of a person's license, permit or privilege to drive a commercial motor vehicle pursuant to any other provision of law.*

## Next Steps for future Legislative Session

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- Explore expanding definition to include CMV's and drivers who operate between 10,001 and 26,000 pounds.
- December 10<sup>th</sup> crash in Search Light.

# Questions

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- How does this compare to your state laws and procedures?
- Do you see anything Nevada may have missed or any concerns with the new law proposal?