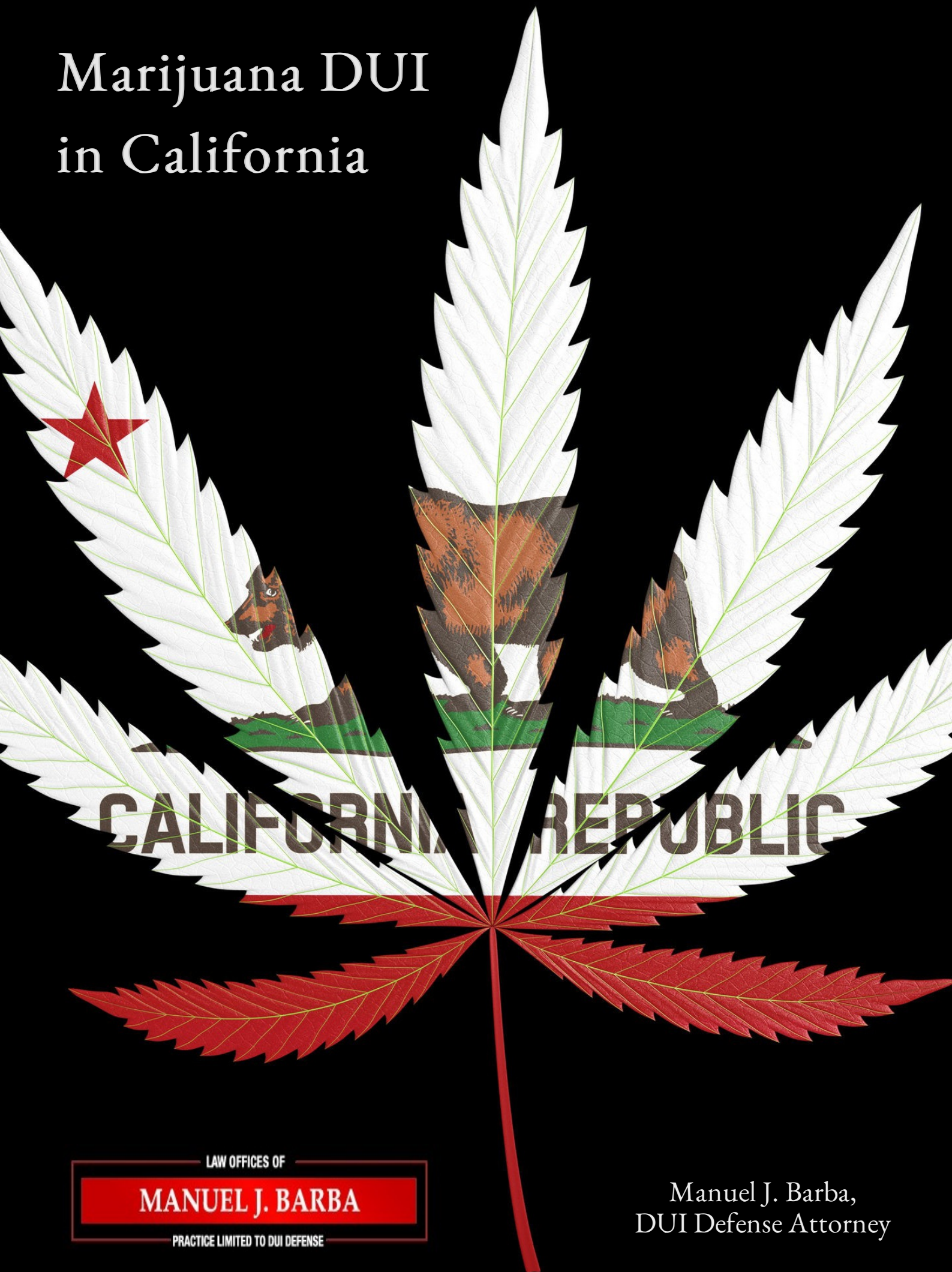


Marijuana DUI in California



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PRACTICE LIMITED TO DUI DEFENSE

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Recreational use of marijuana became legal under California law on January 1, 2018. However driving "under the influence" of marijuana is still illegal ([Vehicle Code 23152\(f\)](#)).

With the passage of Assembly Bill 64 (Prop 64), adults in California can now buy marijuana legally for recreational purposes. Law enforcement believes that "stoned driving" is going to become more of a problem on California roadways because of the legalization of recreational marijuana. Accordingly, law enforcement is very likely to devote even more resources and energy to enforcing California's marijuana DUI laws.

Marijuana is a lot like alcohol in the sense that, although they are both legal to use, you can't drive while "under the influence" of either. You may be found guilty of a marijuana DUI if you drive a motor vehicle while your "*mental abilities*" are impaired by marijuana to the extent that you are unable to drive with the caution of a sober person using ordinary care.

Vehicle Code 23152(f) states: "It is unlawful for a person who is under the influence of any drug to drive a vehicle." The vague term "drug" includes marijuana as well as prescription medications.

Vehicle Code 23152(f) is similar to Vehicle Code [23152\(a\)](#) which states: "*It is unlawful for a person who is under the influence of any alcoholic beverage to drive a vehicle.*" Both sub-sections (a) and (f) require that the driver be "*under the influence*" of the substance to be found guilty of DUI. The legal definition for being under the influence is found in CALCRIM jury instruction 2110:

"A person is under the influence if, as a result of taking a drug [i.e., marijuana], his or her mental or physical abilities are so impaired that he or she is no longer able to drive a vehicle with the caution of a sober person, using ordinary care, under similar circumstances." (emphasis added)

Now, that's an incredibly broad definition. The jury instruction states "*so impaired*". Not just impaired, or a little impaired, but "*so impaired*." You have to ask yourself why did the legislature add the word "so" to modify the word "impaired"? And that's why I do so many DUI trials, because being "*under the influence*" can be incredibly subjective. Everything turns on what evidence is presented at trial, how the evidence is presented, and how it is argued.

Marijuana vs. Alcohol

The main difference between an alcohol DUI and a marijuana DUI, is that with alcohol, a person can be convicted of DUI simply for having a specific minimum alcohol concentration level in their blood at the time of driving. Vehicle Code 23152(b) states:

"It is unlawful for a person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle." This is known as the "per se" statute.

Thus, with an alcohol DUI, the government can convict a driver of DUI if:

- The driver is under the influence of alcohol at the time of driving, and/or
- The driver has a blood alcohol concentration of .08% or more at the time of driving.

With a marijuana DUI, there is NO "specific level" minimum limitation (i.e. THC level) or "per se" statute. A driver must be found to be "*under the influence*" of marijuana at the time of driving in order to be found guilty of DUI.

Combined Influence

A marijuana DUI can also be charged under the combined influence statute (Vehicle Code 23152(g)), which states:

"It is unlawful for a person who is under the combined influence of any alcoholic beverage and drug to drive a vehicle."

This means that if a driver has both alcohol and marijuana (or any drug) in their blood at the time of driving, the driver can be charged with DUI.

For example: let's say that a person drinks two regular 12-ounce Bud Light beers within an hour, and also smokes some weed. Soon thereafter the person drives a car, and is then stopped by the police. The driver's blood alcohol concentration maybe .03% to .05%, and a blood test could show active marijuana metabolites. Under this scenario, the driver could be charged with DUI even if the driver's blood alcohol concentration is less than .08%, *if there is evidence that the driver is under the influence at the time of driving* (VC23152(g)).

Penalties for marijuana DUI

The penalties for a marijuana DUI are the same as the penalties for an alcohol DUI, which can include probation, jail, fines, chemical abuse classes, and a driver license suspension.

In addition, as with any form of DUI, the penalties will increase with each DUI conviction within a 10-year period. Also, if you are under the age of 21 and are convicted of a marijuana DUI, you will lose your driver's license for 1 year.

Moreover, if a driver is under the influence of marijuana and causes an automobile accident, and as a result another person is seriously injured or killed, the driver will be charged with a felony. If a driver is convicted of a felony DUI charge, the driver can be sentenced to serve time in the state prison system.

Legal defenses to marijuana DUI

In many ways, it is easier to defend a marijuana DUI charge than an alcohol DUI. The defenses to a marijuana DUI charge are essentially:

- You were not driving.
- You did not use marijuana.
- You used marijuana in the past, but you were not under the influence at the time of driving.

Whether a driver was *under the influence* at the time of driving is an issue of fact. As with any DUI case, if you are accused of driving under the influence of marijuana you have a right to a jury trial. In other words, you have the right to have a jury of 12 people decide if you were indeed *under the influence* at the time of driving.

Other Driving Issues and Marijuana

You cannot have an “open container” of marijuana while driving: California Vehicle Code 23222 is the “open container” law. You cannot drive with an open container of alcohol, and the law has been recently amended to include marijuana (VC23222(b)). So now you cannot drive a vehicle with an open container of cannabis or *cannabis product*. And of course you cannot drink alcohol and/or smoke marijuana while driving. A violation of the open container law is only an infraction (traffic ticket), not a misdemeanor. You can click on the link to read [Vehicle Code 23222](#) in its entirety.

Your rights as they relate to marijuana, drug, and alcohol DUIs:

1. Even if a police officer asks you directly, you do NOT have to tell a police officer that you smoked marijuana (or that you've taken any kind of drug, or drank any kind of alcohol).

The bottom line is, you don't have to answer any questions that an officer asks. Always remain silent, as it is your right to do so. Who cares if the officer says that he smells marijuana in your car or on your person? Did you know that it is ok for a cop to lie to you to get you to say things? Cops are not your friend; they are looking to make a DUI bust. Anything that you say will be used against you, so remain silent.

2. Keeping with the spirit of number 1 above, again, you do NOT have to answer any questions at all. Usually the questions that cops will ask you are things like: where are you coming from, where are you going, do you feel any affects from the alcohol that you drank, or the weed that you smoked. Remember to always remain silent and politely choose not to answer any of the officer's questions. **BECAUSE YOU DON'T HAVE TO.** The only thing that the law requires that you do is show the officer your driver license (or ID), your car's registration, and proof of insurance if the officer asks for it. **But you absolutely have no obligation to answer questions, or make statements that the officer will use to arrest you and the prosecutor will use to convict you.**

3. You do NOT have to perform any field sobriety tests. This includes letting the officer check your eyes, any balance tests or walking test, breath tests, or any mouth swab or breath tests for marijuana (Yes, they are coming).

Agreeing to perform field sobriety tests for an officer is a big mistake. Some officers will tell you that if you agree to do the tests and you pass the officer will let you go home. That is very unlikely, as your idea of passing a test and the officer's idea of passing are two completely different things.

Note: If you are under age 21, you must blow into an alcohol breath machine if the officer requests that you do; if you refuse the DMV will likely take your license for a year.

Also note that if you are on probation for a previous DUI conviction, a term of your probation requires that you submit to the Preliminary Alcohol Screen Breath Test (PAS). If you refuse, the DMV may suspend your driver's license. Be sure to review your terms of probation if you are on probation for a previous DUI conviction and consult a DUI defense attorney.

4. If you are arrested for suspicion of a marijuana DUI, most officer's will require that you submit to a blood test. Some officer's will offer you a urine test instead of a blood test. If they do, take the urine test as it is rarely accurate.

Keep in mind that if you refuse to submit to a blood test, the officer will very likely get a warrant from an on-duty judge and force you to give your blood. If the DMV can prove a valid refusal, they will suspend your license for at least one year.

Even with a blood test, an [expert DUI defense attorney](#) will have the opportunity to review the documentation relating to the drawing of the blood sample, the transportation and storage of the blood sample before it was analyzed, and the actual analysis of the blood sample, to determine if any problems exist that could affect the accuracy and reliability of the blood test results. There are many factors that can affect the accuracy and reliability of the blood test results.

It is important that you take only one test! Some officers will talk the arrested person into taking a breath and a blood test. That's like having two smoking guns. Take one test only, and take a blood test. Blow into nothing.

5. Remember, having a doctor's prescription or a medical marijuana card is not a legal defense to driving under the influence. It may be helpful, but don't assume that a prosecutor is going to dismiss a DUI case just because you have a valid prescription or marijuana card.



About the Author: DUI Defense Attorney Manuel J. Barba has been awarded the prestigious [Forensic Lawyer-Scientist designation](#) by the Chemistry and Law division of the American Chemical Society (ACS-CHAL), and is the ONLY DUI Defense Attorney in the Los Angeles, Orange, San Bernardino, Riverside, and Imperial County areas with this designation, which gives him the necessary knowledge and expertise to defend you or someone you may know. For more information about the Law Offices of Manuel J. Barba, you can visit their [website](#) or call 866-442-2722 for a free consultation