March 25, 2013

Sen. Loni Hancock, Chair
Senate Public Safety Committee
State Capitol
Sacramento CA 95814

Dear Sen. Hancock:

We wish to state our opposition to SB 289 (Correa), which would criminalize driving with detectable traces of marijuana or other controlled substances in one's blood regardless of actual impairment.

The science is clear that driving impairment cannot be determined by the presence of marijuana in the blood. As a result, SB 289 will wrongly criminalize many non-impaired drivers as DUI. Unlike alcohol, the blood level of marijuana's major active constituent, THC, has no direct relation to the actual dosage consumed or active in the body. Instead, it reflects recency of use, spiking to high levels immediately after smoking then declining quickly to lower levels within an hour or so regardless of dosage. Like alcohol, for which non-zero blood levels are permitted under California law, THC can occur at low concentrations with no adverse impact on driving. Unlike alcohol, THC can remain detectable in the blood for 8-12 hours in occasional users and six days or more in regular users, even though measurable impairment lasts only 2.5 - 4 hours. Regular users tend to develop tolerance to THC impairment, allowing them to drive safely. Some medical users have even shown improved driving under the influence of cannabis.

Numerous studies have found no higher accident risks in drivers with THC in blood; some have even reported lower risks, perhaps because marijuana induces more cautious driving. Studies of driving accidents have
generally found that marijuana poses a significantly lesser hazard than alcohol and other drugs, such as prescription narcotics. Other studies have variously estimated that THC-positive drivers have a 1.2 - 2.3 times higher average statistical risk for accidents. However, these risks are uneven for different drivers and are significantly less than for alcohol (4.5 - 8.5 times) and other drugs. Thus, SB 289 irrationally punishes marijuana more harshly than other, more dangerous drugs including alcohol.

**Government experts agree that there is no clear, per se threshold for driving impairment.** According to the U.S National Highway Traffic Safety Administration it is "inadvisable to try and predict effects based on blood THC concentrations alone," as "concentrations of parent drug and metabolite are very dependent on pattern of use as well as dose."

**SB 289 does not protect medical marijuana patients** because marijuana is not "prescribed," but "recommended or approved" under state law. Insofar as most seriously ill patients are regular users, who habitually show low levels of THC in their blood, SB 289 will effectively make it illegal for seriously ill Prop 215 patients to drive, no matter how safely, while illogically exempting misuse of other, legally prescribed drugs that pose a worse safety hazard.

**SB 289 is unclear as to whether it would also outlaw the presence of the non-psychoactive marijuana metabolite THC-COOH in blood.** Although THC-COOH has no effect on driving skills, it remains in the system longer than THC and is routinely detectable for days after use. If THC-COOH is included, SB 289 would criminalize even more innocent, unimpaired drivers as DUI.

**There is no drug DUI crisis in California.** California ranks among the top states in the nation with regards to highway safety. Even while the availability of medical marijuana has expanded, California's highway fatality rate has declined to record lows in recent years. At the same time, DUI arrests have declined, falling 15% from 2008 to 2011. California prosecutors currently enjoy a 79% conviction rate for DUI, up substantially from 64% since 1989.

**California's present DUI law is sound.** The law properly allows drug tests to be considered along with other relevant evidence in determining whether a driver is DUI. A study of states that have adopted per se drugged driving laws found "no evidence that they reduce driving fatalities." If California is interested in better detection of drug-impaired driving, it should consider performance tests that measure actual impairment, rather than chemical residues in the system.

In sum, SB 289 will wrongly criminalize thousands of unimpaired drivers, including many seriously ill medical cannabis patients; significantly increase the cost of DUI enforcement; put innocent drivers at risk of blood testing; and do
nothing to improve highway safety.
    We strongly urge the legislature to reject SB 289.

    Sincerely,

    Dale Gieringer, Ph.D.
    Director, California NORML
    2261 Market St. #278A, San Francisco 94114
    (510) 540-1066 - dale@canorml.org
REFERENCES


Sewell et al., op. cit.
12 NHTSA- FARS Data: http://www-nrd.nhtsa.dot.gov/Pubs/811399.pdf
13 California Center for Criminal Justice Statistics: http://.oag.ca.gov/crime/cjsc/stats/arrests