

# Official Statement: State Police Halts THC Toxicology Testing and Takes Steps to Ensure Transparency, Accuracy After Technical Issue with CBD

## Statement by Col. Joe Gasper, Director

The Michigan State Police Forensic Science Division (MSP/FSD) is committed to providing the highest standard of forensic services to the criminal justice community. The MSP/FSD is accredited in toxicology and analyzes approximately 20,000 samples annually for the presence of alcohol and/or drugs pursuant to a forensic examination request. The men and women who work in the MSP/FSD strive to provide laboratory testing services that are timely, transparent, and scientifically accurate.

The MSP/FSD has halted all THC toxicology testing due to a technical issue in which samples containing Cannabidiol, commonly known as CBD, may be converted to Tetrahydrocannabinol, commonly known as THC, during the testing process, leading to potentially inaccurate test results.

CBD, which is structurally similar to THC, was illegal in Michigan until March 28, 2019. Since that date, however, CBD, which is reported to have no psychoactive properties, has been legal under Michigan law.

When the issue first came to our attention on August 19, 2022, the MSP/FSD immediately launched a significant evaluation of our testing process. The

evaluation found the laboratory confirmatory method in use may cause 1) THC to be identified when the sample contains THC, 2) THC to be identified when the sample contains a combination of THC and CBD, or 3) THC to be identified when the sample contains CBD alone.

Upon this discovery, the MSP/FSD immediately halted the processing of samples using the current THC confirmation test. Notification was also made to the Prosecuting Attorneys Association of Michigan on August 25, 2022, for dissemination to prosecutors statewide to prevent these reports from being used in any current or pending court cases.

After further review, we now believe this discrepancy may impact cases that occurred on or after March 28, 2019, where the alleged violation is based on the finding of THC alone and there is insufficient evidence of impairment, intoxication, or recent use of marijuana to otherwise support the charged offense.

Laboratory data indicates there are approximately 3,250 laboratory reports that may be impacted. These are reports in which there was a THC-confirmed result without other drugs present or alcohol detected above the 0.08% blood alcohol content legal threshold. These individual cases are being identified and will be shared with the prosecuting attorney of record for further investigation as to any potential impact to the individual involved.

In addition to temporarily halting testing of THC samples and disclosing the issue to prosecutors, the MSP/FSD has taken the following action steps:

- Reported the issue to our accrediting body, ANSI National Accreditation Board (ANAB), and requested they conduct an independent review.
- Temporarily halted the disposal of blood samples to preserve this evidence should re-analysis be required.

- Started validating a new cannabinoid confirmatory method that will be able to distinguish CBD from THC. This method will be validated before being put into use to ensure similar issues with drug interference will not happen in the future.
- Started the process to establish a contract with a private, accredited laboratory for processing THC samples in the interim before the new method is validated.

The MSP/FSD remains committed to providing the highest standard of forensic services to the criminal justice community. We have demonstrated this commitment through accreditation to ISO/IEC 17025 International Standards and voluntarily incorporating forensic standards from the National Institute of Standards and Technology (NIST) Organization of Scientific Area Committees (OSAC) into our laboratory management system, among other efforts. The MSP/FSD continues to strive to be timely, transparent and ethical in our response to this emerging technical issue.