



charge.

At the outset, the Court notes that at the hearing, neither side presented evidence on the effects of THC metabolite on the human body, except for the toxicology report referenced above. The City apparently concedes, for purposes of this motion, the conclusions stated in the toxicology report that THC metabolite “has no pharmacological activity” and can be detected in blood and urine “for several days or weeks” after use. Accordingly, the Court analyzes the Statute’s constitutionality with that in mind.<sup>2</sup>

### Standard

“[L]egislative enactments are presumed to be constitutional.” *State v. MacGuire*, 2004 UT 4, ¶ 8 (citations omitted). A party challenging the constitutionality of a statute “bear[s] a heavy burden of demonstrating its unconstitutionality.” *Id.* (quotations and citations omitted). The Court may not second-guess the “wisdom of the legislative enactment” but, instead, must concentrate on “whether any applicable constitutional provision has been infringed.” *Baker v. Matheson*, 607 P.2d 233, 236 (Utah 1979).

### Analysis

Under the Statute, “a person may not operate or be in actual physical control of a motor vehicle within this state if the person has any measurable controlled substance *or metabolite of a*

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<sup>2</sup> After oral argument, Defendant filed a series of “Supplemental Authority” with the Court including, among other items, an About.com article written by “Buddy T” and a Wikipedia entry entitled “Tetrahydrocannabinol.” Because Defendant did not obtain leave of the Court to file his “Supplemental Authority” pursuant to Rule 7(c)(1) of the Utah Rules of Civil Procedure and because the documents lack any foundation, the Court is not required to consider them. In any event, as the Court assumes that the metabolite had no pharmacological activity upon the defendant at the time of his arrest, it need not rely on those materials.

*controlled substance* in the person's body." Utah Code Ann. § 41-6a-517(2) (emphasis added). Violation of the Statute is punishable as a Class B Misdemeanor. Utah Code Ann. § 41-6a-517(4)(a).

Defendant argues that the Statute is unconstitutional because it violates the following constitutional provisions: (1) the Eighth Amendment of the United States Constitution and Article I, Section 9 of the Utah Constitution; (2) the Due Process Clause of the United States Constitution and Article I, Section 7 of the Utah Constitution; and (3) the Equal Protection Clause of the United States Constitution and the Uniform Operation of Laws Provision of the Utah Constitution. The Court considers Defendant's arguments in turn.

### **1. Cruel and Unusual Punishment**

The Eighth Amendment to the U.S. Constitution and Article I, Section 9 of the Utah Constitution prohibit the infliction of "cruel and unusual punishments."

Under the Eighth Amendment, "[a] criminal punishment may be cruel and unusual when it is barbaric, excessive, or disproportional to the offense committed." *State v. Mace*, 921 P.2d 1372, 1377 (Utah 1996) (footnote omitted). Similarly, under article I, section 9 of the Utah Constitution, a criminal punishment is cruel and unusual if the punishment is so disproportionate to the offense committed that it "shock[s] the moral sense of all reasonable men as to what is right and proper under the circumstances." *State v. Gardner*, 947 P.2d 630, 633 (Utah 1997) (quotes omitted); see also *State v. Copeland*, 765 P.2d 1266, 1270 (Utah 1988) (same standard).

*State v. Herrera*, 1999 UT 64, ¶ 33, 993 P.2d 854.

Defendant argues that the Statute inflicts cruel and unusual punishment by criminalizing a person's "status" of having previously ingested a controlled substance.<sup>3</sup> In support of his argument, Defendant relies on *Robinson v. California*, 370 U.S. 660 (1962), and *State v. Robinson*, 2011 UT 30.

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<sup>3</sup>Defendant focuses entirely on the Eighth Amendment and provides no separate analysis under the Utah Constitution.

In *Robinson v. California*, the United States Supreme Court determined that laws making narcotic addiction a criminal offense violate the Eighth Amendment. The court reasoned that the statute at issue

is not one which punishes a person for the use of narcotics, for their purchase, sale or possession, or for antisocial or disorderly behavior resulting from their administration. It is not a law which even purports to provide or require medical treatment. Rather, we deal with a statute which makes the 'status' of narcotic addiction a criminal offense, for which the offender may be prosecuted 'at any time before he reforms.'

*Id.* at 666. The Court concluded that "a state law which imprisons a person thus afflicted as a criminal, even though he has never touched any narcotic drug within the State or been guilty of any irregular behavior there, inflicts a cruel and unusual punishment [under the U.S. Constitution]." *Id.* at 667.

In *State v. Robinson*, the Utah Supreme Court upheld a state law that made it illegal for any person to "knowingly and intentionally" have "any measurable amount of a controlled substance in a person's body." *Robinson* 2011 UT 30, ¶ 8. The court reasoned that the statute did not violate the "status" rule announced in *Robinson v. California* because "being under the influence of a drug is ... an active state, voluntarily induced and laden with a present capacity for further injury to society." *Id.* at ¶ 32 (quoting *State v. Margo*, 40 N.J. 188, 191 A.2d 43, 45 (1963) (per curiam)). But the court included the following language that Defendant relies on in the case at bar:

Our conclusion is reinforced by the fact that the measurable amount provision does not make it a crime for a person to have "the metabolite of a controlled substance" in his body. A metabolite of a controlled substance is a byproduct created when the controlled substance is metabolized by the body; thus, having the metabolite of a controlled substance in the body only indicates that the controlled substance was ingested at some prior point in time. In other words, simply having the metabolite of a controlled substance in the body is similar to a "status" of having previously ingested the controlled substance. Thus, if Utah's measurable amount provision

criminalized the presence of metabolites in a person's body, Mr. Robinson's argument might have merit. But the measurable amount provision clearly precludes prosecution based on the presence of such metabolites.

*Id.* at ¶ 31. Thus, the court suggested, albeit in dicta, that a statute that criminalizes merely having the metabolite of a controlled substance in a person's body may run afoul of the Eighth Amendment.

Here, the Statute does not criminalize the mere "status" of having ingested drugs in the past. Importantly, the Statute applies only to those who operate or are in physical control of a motor vehicle – an affirmative act. And, it expressly does not apply where the controlled substance was "involuntarily ingested," "prescribed by a practitioner for use by the accused," or "otherwise legally ingested." Utah Code Ann. § 41-6a-517(3). Thus, only those who illegally ingest a controlled substance and then drive a motor vehicle are subject to prosecution under the Statute. Unlike the hypothetical in *State v. Robinson*, the Statute requires an overt act; it does not punish a person's "status" or "something beyond a person's ability to control." *State v. Robinson*, 2011 UT 30, ¶ 34. Nothing in *Robinson v. California* or *State v. Robinson* render the Statute unconstitutional under the Eighth Amendment.

## 2. Due Process

The Due Process Clause of the U.S. Constitution and Article I, Section 7 of the Utah Constitution provide that no person shall be "deprived of life, liberty or property without due process of law." The due process guarantees of the Utah and federal constitutions are substantially the same. *State v. Angilau*, 2011 UT 3, ¶ 13. "When undertaking a substantive due process analysis under both [the Utah and federal constitutions], this court applies a rational basis test unless the governmental action implicates a fundamental right or interest." *State v. Candedo*, 2010 UT 32, ¶ 16. Under rational basis review, "a statute will not violate substantive due process if it is rationally related to

a legitimate state interest.” *Angilau*, 2011 UT 3, ¶ 10 (quoting *Candedo*, 2010 UT 32, ¶ 19).

Here, the Statute is rationally related to multiple legitimate state interests. Perhaps most obvious is the State’s interest in preventing illegal drug use. *See State v. Robinson*, 2011 UT 30, ¶ 32 (recognizing the State’s “legitimate interest in preventing illegal drug use”). By making it unlawful to operate a motor vehicle after illegally consuming drugs, the Statute has a deterrent effect on would-be drug users. Any person who would like to enjoy the privilege of driving will be less likely to consume illegal drugs with the Statute in place. Thus, the Statute has “a reasonable relation to a proper legislative purpose, and [is] neither arbitrary nor discriminatory.” *Candedo*, 2010 UT 32, ¶ 24 (citation omitted) (alteration in original).

In addition to its interest in preventing illegal drug use, the State also has a legitimate interest in preserving public safety. *State v. Harmon*, 910 P.2d 1196 (Utah 1995). As noted by the City, several other jurisdictions have considered similar statutes under a rational basis review and concluded that they were rationally related to public safety. For example, in *State v. Hammonds*, 968 P.2d 601 (Ariz. Ct. App. 1998), the Arizona Court of Appeals determined that it was “entirely rational” to ban driving with the metabolite of a controlled substance in the body because “the legislature could have reasonably concluded that no level of illicit drug use could be acceptably combined with driving a vehicle.” *Id.* at 604.

Similarly, in *State v. Smet*, 709 N.W.2d 474 (Wisc. Ct. App. 2005), the Wisconsin Court of Appeals rejected a due process challenge to a similar statute. The court reasoned

The legislature also reasonably and rationally could have concluded that the proscribed substances range widely in purity and potency and thus may be unpredictable in their duration and effect, *see State v. Phillips*, 178 Ariz. 368, 873 P.2d 706, 708 (1994), or that, because no reliable measure of illicit drug impairment exists, the more prudent course is to ban any measure of marijuana metabolites in a

driver's system. *See State v. Comried*, 693 N.W.2d 773, 776 (Iowa 2005). The legislature therefore could have concluded that maintenance of "absolute sobriety" in terms of these restricted controlled substances is reasonably and rationally related to public safety. Cf. Wis. Stat. § 346.63(2m) (prohibiting a person under the legal drinking age from operating a motor vehicle if he or she has a blood alcohol concentration greater than 0.0).

*Id.* at 480.

The Court agrees with the holdings and reasoning of the cases cited above. In an effort to improve public safety on the roadways, it is not unreasonable for the legislature to impose a zero tolerance policy on the illegal consumption of controlled substances.

Accordingly, the Court concludes that the Statute is rationally related to the State's legitimate interest in deterring illegal drug use and preserving public safety and, therefore, not in violation of the Due Process Clause of the U.S. Constitution and Article I, Section 7 of the Utah Constitution.

### **3. Equal Protection/Uniform Operation of Laws**

The Equal Protection Clause of the U.S. Constitution and the uniform operation of laws provision of the Utah Constitution provide substantially similar protection. *Blue Cross & Blue Shield v. State*, 779 P.2d 634 (Utah 1989). If a statute "can withstand scrutiny under [the uniform operation of laws provision of the Utah Constitution it] will not be found to violate the federal equal protection clause." *Id.* at 637.

When considering a challenge under the uniform operation of laws provision, courts conduct a three-step inquiry: "(1) whether the statute creates any classifications; (2) whether the classifications impose any disparate treatment on persons similarly situated; and (3) if there is disparate treatment, whether "the legislature had any reasonable objective that warrants the disparity.'" *State v. Robinson*, 2011 UT 30, ¶ 17 (citation omitted).

Assuming that the Statute creates the classifications advanced by Defendant (i.e. unimpaired drivers with and without the metabolite of a controlled substance in their bodies) and that such classifications impose a disparate treatment, then the third step “involves a subsidiary three-part inquiry: (1) whether the classification is reasonable, (2) whether the objectives of the legislative action are legitimate, and (3) whether there is a reasonable relationship between the classification and the legislative purpose.” *Id.* at ¶ 22.

**a. Reasonableness of the classification**

“Broad deference is given to the legislature when assessing ‘the reasonableness of its classifications and their relationship to legitimate legislative purposes.’” *Angilau*, 2011 UT 3, ¶ 28 (quoting *ABCO Enters. V. Utah State Tax Comm’n*, 2009 UT 36, ¶ 17).

Here, the legislature has decided to treat illegal drug users differently than other unimpaired drivers. Given the State’s strong interest in deterring illegal drug use and preserving public safety, the Court cannot say that such classification is unreasonable. Moreover, the classification is reasonable “because it applies equally and predictably to all members within the class.” *Id.* at ¶ 28 (citing *State v. Schofield*, 2002 UT 132).

**b. Objectives of the legislative action**

“In determining whether legislative objectives are legitimate, ‘we are not limited to considering those purposes that can be plainly shown to have been held by some or all legislators. We will sustain a classification if we can reasonably conceive of facts which would justify the distinctions.... [I]t is enough that they may be reasonably imputed to the legislative body.’” *Id.* at ¶ 29 (quoting *Blue Cross & Blue Shield*, 779 P.2d at 641).

Here, conceivable objectives for the Statute include preserving public safety and deterring illegal drug use. There may be others, but “these purposes are clearly within the bounds of legitimate governmental concern.” *Id.* at ¶ 30.

**c. Relationship between the classification and the legislative purpose**

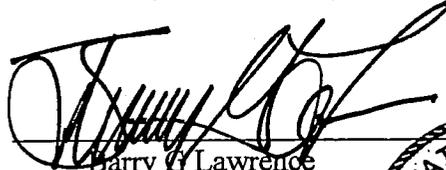
“In the last step of the three-part inquiry, we determine whether the legislature’s classification is reasonably related to its legitimate objectives.” *Id.* at ¶ 31 (quoting *Merrill v. Utah Labor Comm’n*, 2009 UT 26, ¶ 22); *see also Blue Cross & Blue Shield*, 779 P.2d at 641 (“The third and most critical question is whether the legislature chose a permissible means to achieve its legitimate ends.”).

As discussed more fully above, the Court determines that the Statute is rationally related to preserving public safety and deterring illegal drug use. That the legislature could have chosen a different – or even a better – way to achieve its objectives is immaterial because “there is no requirement that an otherwise permissible classification be the best of all alternatives.” *Id.* at ¶ 32. The Statute “clearly applies equally to all persons within the classes it creates and the disparate treatment given the statutory classes is based on differences that have a reasonable tendency to further the objectives of the statute. It is therefore uniform both on its face and in operation.” *Id.* at ¶ 32 (quoting *Schofield*, 2002 UT 132, ¶ 18). Accordingly, the Court concludes that the Statute does not violate the uniform operation of laws provision of the Utah Constitution. Because it survives scrutiny under the Utah Constitution, it necessarily complies with the federal constitution’s Equal Protection Clause. *See Blue Cross & Blue Shield*, 779 P.2d at 637.

**Conclusion**

Defendant has failed to demonstrate that the Statute is unconstitutional. Accordingly, Defendant's motion to dismiss is hereby DENIED. No additional order is necessary.

Dated this 15<sup>th</sup> day of November, 2013



Barry G. Lawrence  
District Court Judge

