



McHENRY COUNTY STATE'S ATTORNEY

New Cannabis Laws in Illinois:
Enforcement and Prosecution

Updated 6/12/2020

Topics to Cover

- Cannabis Laws (**NEW – 2020**)
 - Cannabis Tax and Regulation Act
 - Juveniles <18
 - Adults >18 - <21
 - Adults >21
 - IDs
 - Location of the Cannabis Possession
 - Location of the Cannabis Use
 - Cannabis Paraphernalia
 - Possession
 - Delivery
- Cannabis Laws for DUIs (**NEW – 2020**)
 - Cannabis in a Vehicle
 - Cannabis K9 Sniff
 - Driver's License Suspensions
 - Standardized Field Sobriety Tests (SFSTs)
 - Do You Need to be an Expert?
 - Statutory Summary Suspensions
 - A Cannabis DUI Stop - Procedure
- What Do I Charge for This?
- Cannabis and Cannabis DUI Prosecution



McHENRY COUNTY STATE'S ATTORNEY

The Law

- 410 ILCS 705/1-1: Cannabis Regulation and Tax Act
- 625 ILCS 5/6-206: Cannabis Discretionary DL Suspensions
- 625 ILCS 5/11-501: Cannabis DUIs
- 625 ILCS 5/11-501.2: Cannabis SFSTs
- 625 ILCS 5/11-501.9: Cannabis Statutory Summary Suspensions
- 625 ILCS 5/11-502.15: Cannabis in Vehicles
- 720 ILCS 550/4: Cannabis Possession
- 720 ILCS 550/5: Cannabis Delivery
- 720 ILCS 600/3.5: Cannabis Paraphernalia
- 705 ILCS 405/5-401: Juvenile Cannabis Arrests



The Law

410 ILCS 705/1-5 - Findings

- (a) In the interest of allowing law enforcement to focus on violent and property crimes, generating revenue for education, substance abuse prevention and treatment, freeing public resources to invest in communities and other public purposes, and individual freedom, the General Assembly finds and declares that the use of cannabis should be legal for persons 21 years of age or older and should be taxed in a manner similar to alcohol.
- (b) In the interest of the health and public safety of the residents of Illinois, the General Assembly further finds and declares that cannabis should be regulated in a manner similar to alcohol so that:
 - (1) persons will have to show proof of age before purchasing cannabis;
 - (2) selling, distributing, or transferring cannabis to minors and other persons under 21 years of age shall remain illegal;
 - (3) driving under the influence of cannabis, operating a watercraft under the influence of cannabis, and operating a snowmobile under the influence of cannabis shall remain illegal;
 - (4) legitimate, taxpaying business people, and not criminal actors, will conduct sales of cannabis;
 - (5) cannabis sold in this State will be tested, labeled, and subject to additional regulation to ensure that purchasers are informed and protected; and
 - (6) purchasers will be informed of any known health risks associated with the use of cannabis, as concluded by evidence-based, peer reviewed research.
- (c) The General Assembly further finds and declares that it is necessary to ensure consistency and fairness in the application of this Act throughout the State and that, therefore, the matters addressed by this Act are, except as specified in this Act, matters of statewide concern.
- (d) The General Assembly further finds and declares that this Act shall not diminish the State's duties and commitment to seriously ill patients registered under the Compassionate Use of Medical Cannabis Program Act [410 ILCS 130/1 et seq.], nor alter the protections granted to them.
- (e) The General Assembly supports and encourages labor neutrality in the cannabis industry and further finds and declares that employee workplace safety shall not be diminished and employer workplace policies shall be interpreted broadly to protect employee safety



The Law

410 ILCS 705/10-5 - Personal use of cannabis; restrictions on cultivation; penalties

- (a) Beginning January 1, 2020, notwithstanding any other provision of law, and except as otherwise provided in this Act, the following acts are not a violation of this Act and shall not be a criminal or civil offense under State law or the ordinances of any unit of local government of this State or be a basis for seizure or forfeiture of assets under State law for persons other than natural individuals under 21 years of age:
 - (1) possession, consumption, use, purchase, obtaining, or transporting cannabis paraphernalia or an amount of cannabis for personal use that does not exceed the possession limit under Section 10-10 [[410 ILCS 705/10-10](#)] or otherwise in accordance with the requirements of this Act;
 - (2) cultivation of cannabis for personal use in accordance with the requirements of this Act; and
 - (3) controlling property if actions that are authorized by this Act occur on the property in accordance with this Act



The Law

410 ILCS 705/10-10 - Possession limit

- (a) Except if otherwise authorized by this Act, for a person who is 21 years of age or older and a resident of this State, the possession limit is as follows:
 - (1) 30 grams of cannabis flower;
 - (2) no more than 500 milligrams of THC contained in cannabis-infused product;
 - (3) 5 grams of cannabis concentrate; and
 - (4) for registered qualifying patients, any cannabis produced by cannabis plants grown under subsection (b) of Section 10-5 [410 ILCS 705/10-5], provided any amount of cannabis produced in excess of 30 grams of raw cannabis or its equivalent must remain secured within the residence or residential property in which it was grown.
- (b) For a person who is 21 years of age or older and who is not a resident of this State, the possession limit is:
 - (1) 15 grams of cannabis flower;
 - (2) 2.5 grams of cannabis concentrate; and
 - (3) 250 milligrams of THC contained in a cannabis-infused product.
- (c) The possession limits found in subsections (a) and (b) of this Section are to be considered cumulative.
- (d) No person shall knowingly obtain, seek to obtain, or possess an amount of cannabis from a dispensing organization or craft grower that would cause him or her to exceed the possession limit under this Section, including cannabis that is cultivated by a person under this Act or obtained under the Compassionate Use of Medical Cannabis Program Act [410 ILCS 130/1 et seq.].
- (e) Cannabis and cannabis-derived substances regulated under the Industrial Hemp Act [505 ILCS 89/1] are not covered by this Act.



The Law – Juvenile Possession (<18)

410 ILCS 705/1-5 - Findings

- (a) In the interest of allowing law enforcement to focus on violent and property crimes, generating revenue for education, substance abuse prevention and treatment, freeing public resources to invest in communities and other public purposes, and individual freedom, the General Assembly finds and declares that the use of cannabis should be legal for persons 21 years of age or older and should be taxed in a manner similar to alcohol.
- (b) In the interest of the health and public safety of the residents of Illinois, the General Assembly further finds and declares that cannabis should be regulated in a manner similar to alcohol so that:
 - (1) persons will have to show proof of age before purchasing cannabis;
 - (2) **selling, distributing, or transferring cannabis to minors and other persons under 21 years of age shall remain illegal;**
 - (3) **driving under the influence of cannabis, operating a watercraft under the influence of cannabis, and operating a snowmobile under the influence of cannabis shall remain illegal;**
 - (4) ...
 - (5) ...
 - (6) ...



The Law – Juvenile Possession (<18)

705 ILCS 405/5-401 - Arrest and taking into custody of a minor

- (1) A law enforcement officer may, without a warrant,
 - (a) arrest a minor whom the officer with probable cause believes to be a delinquent minor; or
 - (b) take into custody a minor who has been adjudged a ward of the court and has escaped from any commitment ordered by the court under this Act; or
 - (c) take into custody a minor whom the officer reasonably believes has violated the conditions of probation or supervision ordered by the court.
- (2) Whenever a petition has been filed under Section 5-520 [[705 ILCS 405/5-520](#)] and the court finds that the conduct and behavior of the minor may endanger the health, person, welfare, or property of the minor or others or that the circumstances of his or her home environment may endanger his or her health, person, welfare or property, a warrant may be issued immediately to take the minor into custody.
- (3) Except for minors accused of violation of an order of the court, any minor accused of any act under federal or State law, or a municipal or county ordinance that would not be illegal if committed by an adult, cannot be placed in a jail, municipal lockup, detention center, or secure correctional facility. Juveniles accused with underage consumption and underage possession of alcohol or cannabis cannot be placed in a jail, municipal lockup, detention center, or correctional facility

- Citations and referrals for juvenile petitions ONLY



The Law – Possession (<21)

410 ILCS 705/1-5 - Findings

- (a) In the interest of allowing law enforcement to focus on violent and property crimes, generating revenue for education, substance abuse prevention and treatment, freeing public resources to invest in communities and other public purposes, and individual freedom, the General Assembly finds and declares that the use of cannabis should be legal for persons 21 years of age or older and should be taxed in a manner similar to alcohol.
- (b) In the interest of the health and public safety of the residents of Illinois, the General Assembly further finds and declares that cannabis should be regulated in a manner similar to alcohol so that:
 - (1) persons will have to show proof of age before purchasing cannabis;
 - (2) **selling, distributing, or transferring cannabis to minors and other persons under 21 years of age shall remain illegal;**
 - (3) **driving under the influence of cannabis, operating a watercraft under the influence of cannabis, and operating a snowmobile under the influence of cannabis shall remain illegal;**
 - (4) ...
 - (5) ...
 - (6) ...



The Law- Possession (<21)

410 ILCS 705/10-15 - Persons under 21 years of age

- (a) Nothing in this Act is intended to permit the transfer of cannabis, with or without remuneration, to a person under 21 years of age, or to allow a person under 21 years of age to purchase, possess, use, process, transport, grow, or consume cannabis except where authorized by the Compassionate Use of Medical Cannabis Program Act [[410 ILCS 130/1](#) et seq.] or by the Community College Cannabis Vocational Pilot Program.
- (b) Notwithstanding any other provisions of law authorizing the possession of medical cannabis, nothing in this Act authorizes a person who is under 21 years of age to possess cannabis.
 - **A person under 21 years of age with cannabis in his or her possession is guilty of a civil law violation as outlined in paragraph (a) of Section 4 of the Cannabis Control Act** [[720 ILCS 550/4](#)].
 - You can ONLY give a civil law citation for possession of cannabis for a defendant <21
- (c) **If the person under the age of 21 was in a motor vehicle at the time of the offense, the Secretary of State may suspend or revoke the driving privileges of any person for a violation of this Section** under Section 6-206 of the Illinois Vehicle Code [[625 ILCS 5/6-206](#)] and the rules adopted under it.



The Law- Possession (<21)

410 ILCS 705/10-15 - Persons under 21 years of age

- (d) It is unlawful for any parent or guardian to knowingly permit his or her residence, any other private property under his or her control, or any vehicle, conveyance, or watercraft under his or her control to be used by an invitee of the parent's child or the guardian's ward, if the invitee is under the age of 21, in a manner that constitutes a violation of this Section.
 - A parent or guardian is deemed to have knowingly permitted his or her residence, any other private property under his or her control, or any vehicle, conveyance, or watercraft under his or her control to be used in violation of this Section if he or she **knowingly authorizes or permits consumption of cannabis by underage invitees.**
 - Any person who violates this subsection (d) is guilty of a Class A misdemeanor and the person's sentence shall include, but shall not be limited to, a fine of not less than \$500.
 - If a violation of this subsection (d) directly or indirectly results in great bodily harm or death to any person, the person violating this subsection is guilty of a Class 4 felony.
 - In this subsection (d), where the residence or other property has an owner and a tenant or lessee, the trier of fact may infer that the residence or other property is occupied only by the tenant or lessee.



The Law - IDs

410 ILCS 705/10-20 - Identification; false identification; penalty

- (a) To protect personal privacy, the Department of Financial and Professional Regulation shall not require a purchaser to provide a dispensing organization with personal information other than government-issued identification to determine the purchaser's age, and a dispensing organization shall not obtain and record personal information about a purchaser without the purchaser's consent.
- (b) A person who is under 21 years of age may not present or offer to a cannabis business establishment or the cannabis business establishment's principal or employee any written or oral evidence of age that is false, fraudulent, or not actually the person's own, for the purpose of:
 - (1) purchasing, attempting to purchase, or otherwise obtaining or attempting to obtain cannabis or any cannabis product; or
 - (2) gaining access to a cannabis business establishment.
- (c) A violation of this Section is a Class A misdemeanor consistent with Section 6-20 of the Liquor Control Act of 1934 [[235 ILCS 5/6-20](#)].
- (d) The Secretary of State may suspend or revoke the driving privileges of any person for a violation of this Section under Section 6-206 of the Illinois Vehicle Code [[625 ILCS 5/6-206](#)] and the rules adopted under it.
- (e) No agent or employee of the licensee shall be disciplined or discharged for selling or furnishing cannabis or cannabis products to a person under 21 years of age if the agent or employee demanded and was shown, before furnishing cannabis or cannabis products to a person under 21 years of age, adequate written evidence of age and identity of the person. This subsection (e) does not apply if the agent or employee accepted the written evidence knowing it to be false or fraudulent.



The Law – Location of Cannabis Possession

410 ILCS 705/10-35 - Limitations and penalties

- (a) This Act does not permit any person to engage in, and does not prevent the imposition of any civil, criminal, or other penalties for engaging in, any of the following conduct:
 - (1) undertaking any task under the influence of cannabis when doing so would constitute negligence, professional malpractice, or professional misconduct;
 - (2) possessing cannabis:
 - (A) in a school bus, unless permitted for a qualifying patient or caregiver pursuant to the Compassionate Use of Medical Cannabis Program Act [[410 ILCS 130/1](#) et seq.];
 - (B) on the grounds of any preschool or primary or secondary school, unless permitted for a qualifying patient or caregiver pursuant to the Compassionate Use of Medical Cannabis Program Act;
 - (C) in any correctional facility;
 - (D) in a vehicle not open to the public unless the cannabis is in a reasonably secured, sealed container and reasonably inaccessible while the vehicle is moving; or
 - (E) in a private residence that is used at any time to provide licensed child care or other similar social service care on the premises;



The Law – Location of Cannabis Use

410 ILCS 705/10-35 - Limitations and penalties (cont'd)

- (3) using cannabis:
 - (A) in a school bus, unless permitted for a qualifying patient or caregiver pursuant to the Compassionate Use of Medical Cannabis Program Act;
 - (B) on the grounds of any preschool or primary or secondary school, unless permitted for a qualifying patient or caregiver pursuant to the Compassionate Use of Medical Cannabis Program Act;
 - (C) in any correctional facility;
 - (D) in any motor vehicle;
 - (E) in a private residence that is used at any time to provide licensed child care or other similar social service care on the premises;
 - (F) **in any public place**; or
 - (G) knowingly in close physical proximity to anyone under 21 years of age who is not a registered medical cannabis patient under the Compassionate Use of Medical Cannabis Program Act;
- As used in this Section, **“public place” means any place where a person could reasonably be expected to be observed by others.”**
 - “Public place” includes all parts of buildings owned in whole or in part, or leased, by the State or a unit of local government. “Public place” includes all areas in a park, recreation area, wildlife area, or playground owned in whole or in part, leased, or managed by the State or a unit of local government. “Public place” does not include a private residence unless the private residence is used to provide licensed child care, foster care, or other similar social service care on the premises.



The Law – Cannabis Paraphernalia

720 ILCS 600/2 - Definitions

- (d) “**Drug paraphernalia**” means all equipment, products and materials of any kind, **other than** methamphetamine manufacturing materials as defined in Section 10 of the Methamphetamine Control and Community Protection Act [[720 ILCS 646/10](#)] and **cannabis paraphernalia as defined in Section 1-10 of the Cannabis Regulation and Tax Act** [[720 ILCS 550/1-10](#)], which are intended to be used unlawfully in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of the Illinois Controlled Substances Act [[720 ILCS 570/100](#) et seq.] or the Methamphetamine Control and Community Protection Act [[720 ILCS 646/1](#) et seq.] or a synthetic drug product or misbranded drug in violation of the Illinois Food, Drug and Cosmetic Act [[410 ILCS 620/1](#) et seq.]. It includes, but is not limited to:

720 ILCS 600/3.5 - Possession of drug paraphernalia

- (a) A person who knowingly possesses an item of drug paraphernalia with the intent to use it in ingesting, inhaling, or otherwise introducing a **controlled substance** into the human body, or in **preparing a controlled substance** for that use, is guilty of a Class A misdemeanor for which the court shall impose a minimum fine of \$750 in addition to any other penalty prescribed for a Class A misdemeanor. This subsection (a) does not apply to a person who is legally authorized to possess hypodermic syringes or needles under the Hypodermic Syringes and Needles Act [[720 ILCS 635/0.01](#) et seq.].
- **Cannabis is no longer listed – therefore, cannabis paraphernalia is not an offense**



The Law - Possession

2019

- It is unlawful for any person knowingly to possess cannabis. Any person who violates this Section with respect to:
 - (a) <10 grams of any substance containing cannabis
 - Civil law violation punishable by a minimum fine of \$100 and a maximum fine of \$200.
 - (b) 10 – 30 grams
 - Class B misdemeanor;
 - (c) 30 -100 grams
 - Class A misdemeanor
 - Subsequent Offense - Class 4 felony;
 - (d) 100 - 500 grams
 - Class 4 felony;
 - Subsequent Offense - Class 3 felony;
 - (e) 500 - 2,000 grams
 - Class 3 felony;
 - (f) 2,000 - 5,000 grams Class 2 felony;
 - (g) >5,000
 - Class 1 felony.



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The Law - Possession

New for 2020

Added to 720 ILCS 5/550-4:

Except as otherwise provided in the Cannabis Regulation and Tax Act [[410 ILCS 705/1-1](#) et seq.] and the Industrial Hemp Act [[505 ILCS 89/1](#) et seq.], it is unlawful for any person knowingly to possess cannabis.



The Law - Possession

2020 – Nothing Changed

- It is unlawful for any person knowingly to possess cannabis. Any person who violates this Section with respect to:
 - (a) <10 grams of any substance containing cannabis
 - Civil law violation punishable by a minimum fine of \$100 and a maximum fine of \$200.
 - (b) 10 – 30 grams
 - Class B misdemeanor;
 - (c) 30 -100 grams
 - Class A misdemeanor
 - Subsequent Offense - Class 4 felony;
 - (d) 100 - 500 grams
 - Class 4 felony;
 - Subsequent Offense - Class 3 felony;
 - (e) 500 - 2,000 grams
 - Class 3 felony;
 - (f) 2,000 - 5,000 grams Class 2 felony;
 - (g) >5,000
 - Class 1 felony.



The Law - Possession

Except as otherwise provided in the Cannabis Regulation and Tax Act [[410 ILCS 705/1-1](#) et seq.] and the Industrial Hemp Act [[505 ILCS 89/1](#) et seq.], it is unlawful for any person knowingly to possess cannabis.

- We are to take this to mean that if, ALL of the conditions of the Tax and Regulation Act are not followed, the normal Possession statute remains the same
 - Cannabis does not come from an approved dispensary
 - Cannabis meets one of the criminal amounts or packaged for delivery



The Law - Delivery

720 ILCS 550/5 - Manufacture, delivery, or possession with intent to deliver

- Except as otherwise provided in the Cannabis Regulation and Tax Act [[410 ILCS 705/1-1](#) et seq.] and the Industrial Hemp Act [[505 ILCS 89/1](#) et seq.], it is unlawful for any person knowingly to manufacture, deliver, or possess with intent to deliver, or manufacture, cannabis.



The Law - Delivery

720 ILCS 550/5 - Manufacture, delivery, or possession with intent to deliver

- Any person who violates this Section with respect to:
 - (a) <2.5 grams of any substance containing cannabis
 - Class B misdemeanor;
 - (b) 2.5 - 10 grams
 - Class A misdemeanor;
 - (c) 10 - 30 grams
 - Class 4 felony;
 - (d) 30 - 500 grams
 - Class 3 felony for which a fine not to exceed \$50,000 may be imposed;
 - (e) 500 - 2,000 grams
 - Class 2 felony for which a fine not to exceed \$100,000 may be imposed;
 - (f) 2,000 - 5,000 grams
 - Class 1 felony for which a fine not to exceed \$150,000 may be imposed;
 - (g) >5,000 grams
 - Class X felony for which a fine not to exceed \$200,000 may be imposed



Cannabis Laws for DUIs – Cannabis in Vehicle

625 ILCS 5/11-502.15 - Possession of adult use cannabis in a motor vehicle

- (a) No **driver** may use cannabis within the passenger area of any motor vehicle upon a highway in this State.
- (b) No **driver** may possess cannabis within any area of any motor vehicle upon a highway in this State except in a sealed, odor-proof, child-resistant cannabis container.
- (c) No **passenger** may possess cannabis within any passenger area of any motor vehicle upon a highway in this State except in a sealed, odor-proof, child-resistant cannabis container.
- (d) Any person who knowingly violates subsection (a), (b), or (c) of this Section commits a **Class A misdemeanor**.



Cannabis Laws for DUIs – Canine Sniff

Will cannabis dogs still be useful?

- If a dog can hit on the odor of cannabis in a vehicle, then the cannabis is not in an “odor proof” container as prescribed by the law
 - We will have to see how the courts rule on this
- A “sniff” is not a “search”
 - This used to be true, but we will have to see how the new laws impact this



Cannabis Laws for DUIs – DL Suspension

625 ILCS 5/6-206 - Discretionary authority to suspend / revoke license or permit

(a) The Secretary of State is authorized to suspend or revoke the driving privileges of any person without preliminary hearing upon a showing of the person's records or other sufficient evidence that the person:

- **28)** Has been convicted for a first time of the illegal possession, while operating or in actual physical control, as a driver, of a motor vehicle, of any controlled substance prohibited under the Illinois Controlled Substances Act [720 ILCS 550/1 et seq.], any cannabis prohibited under the Cannabis Control Act [720 ILCS 570/100 et seq.], or any methamphetamine prohibited under the Methamphetamine Control and Community Protection Act [720 ILCS 646/1 et seq.], in which case the person's driving privileges shall be suspended for one year.
 - **Any defendant found guilty of this offense while operating a motor vehicle, shall have an entry made in the court record by the presiding judge that this offense did occur while the defendant was operating a motor vehicle and order the clerk of the court to report the violation to the Secretary of State;**
- **31)** Has refused to submit to a test as required by Section 11-501.6 of this Code [625 ILCS 5/11-501.6] or Section 5-16c of the Boat Registration and Safety Act [625 ILCS 45/5-16c] or has submitted to a test resulting in an alcohol concentration of 0.08 or more or any amount of a drug, substance, or compound resulting from the unlawful use or consumption of cannabis as listed in the Cannabis Control Act, a controlled substance as listed in the Illinois Controlled Substances Act, an intoxicating compound as listed in the Use of Intoxicating Compounds Act [720 ILCS 690/0.01], or methamphetamine as listed in the Methamphetamine Control and Community Protection Act, in which case the penalty shall be as prescribed in Section 6-208.1 [625 ILCS 5/6-208.1];
 - **625 ILCS 5/11-501.6 - Driver involvement in personal injury or fatal motor vehicle accident; chemical test**
- **36)** Is under the age of 21 years at the time of arrest and has been convicted of not less than 2 offenses against traffic regulations governing the movement of vehicles committed within any 24 month period. No revocation or suspension shall be entered more than 6 months after the date of last conviction
- **44)** Is under the age of 21 years at the time of arrest and has been convicted of an offense against traffic regulations governing the movement of vehicles after having previously had his or her driving privileges suspended or revoked pursuant to subparagraph 36 of this Section;



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Cannabis Laws for DUIs - SFSTs

625 ILCS 5/11-501.2 (a-5)

- Law enforcement officials may use validated roadside chemical tests or standardized field sobriety tests approved by the National Highway Traffic Safety Administration when conducting investigations of a violation of Section 11-501 or similar local ordinance by drivers suspected of driving under the influence of cannabis. The General Assembly finds that (i) validated roadside chemical tests are effective means to determine if a person is under the influence of cannabis and (ii) standardized field sobriety tests approved by the National Highway Traffic Safety Administration are divided attention tasks that are intended to determine if a person is under the influence of cannabis. **The purpose of these tests is to determine the effect of the use of cannabis on a person's capacity to think and act with ordinary care and therefore operate a motor vehicle safely.** Therefore, the results of these validated roadside chemical tests and standardized field sobriety tests, appropriately administered, shall be admissible in the trial of any civil or criminal action or proceeding arising out of an arrest for a cannabis-related offense as defined in Section 11-501 [625 ILCS 5/11-501] or a similar local ordinance or proceedings under Section 2-118.1 or 2-118.2 [625 ILCS 5/2-118.2]. Where a test is made the following provisions shall apply:
 - 1. ...
 - 2. ...
 - 3. At the trial of any civil or criminal action or proceeding arising out of an arrest for an offense as defined in Section 11-501 or a similar local ordinance or proceedings under Section 2-118.1 or 2-118.2 in which the results of these validated roadside chemical tests or standardized field sobriety tests are admitted, the person may present and the trier of fact may consider evidence that the person lacked the physical capacity to perform the validated roadside chemical tests or standardized field sobriety tests.



Cannabis Laws for DUIs– Are You an Expert?

- You **DO NOT** need to be a DRE to do SFST for cannabis

People v. Gocmen – 115 N.E.3d 153 (2018)

- Illinois Supreme Court Case

- **HOLDING:** The trial and appellate courts erred by holding that a police officer could not opine as to whether a motorist was under the influence of drugs without being qualified as an expert witness, and the totality of the circumstances supported the officer's conclusion that defendant had been driving under the influence of drugs, as the semiconscious defendant showed signs of recent intravenous injection, he possessed a used syringe, and the only injectable substance present was an opiate.
- Expert testimony is not required in every case for an officer to testify to his opinion that a motorist was under the influence of drugs based on his inference from the totality of the circumstances.
 - **When the totality of circumstances at the time of the arrest is sufficient to lead a reasonably cautious person to believe that an individual was driving under the influence of drugs, probable cause exists.**



Cannabis Laws for DUIs – Summary Suspensions

625 ILCS 5/11-501.9 - Suspension of driver's license; failure or refusal of validated roadside chemical tests; failure or refusal of field sobriety tests; implied consent

- (a) A person who drives or is in actual physical control of a motor vehicle upon the public highways of this State shall be deemed to have given consent to:
 - (i) validated roadside chemical tests or
 - (ii) standardized field sobriety tests approved by the National Highway Traffic Safety Administration, under subsection (a-5) of Section 11-501.2 of this Code [[625 ILCS 5/11-501.2](#)], if detained by a law enforcement officer who has a reasonable suspicion that the person is driving or is in actual physical control of a motor vehicle while impaired by the use of cannabis.
- The law enforcement officer must have an independent, cannabis-related factual basis giving reasonable suspicion that the person is driving or in actual physical control of a motor vehicle while impaired by the use of cannabis for conducting validated roadside chemical tests or standardized field sobriety tests, which shall be included with the results of the validated roadside chemical tests and field sobriety tests in any report made by the law enforcement officer who requests the test.
 - The person's possession of a registry identification card issued under the Compassionate Use of Medical Cannabis Program Act alone is not a sufficient basis for reasonable suspicion
- (b) A person who is **unconscious**, or otherwise in a condition rendering the person incapable of refusal, shall be deemed to have withdrawn the consent provided by subsection (a) of this Section.
- (c) A person requested to submit to validated roadside chemical tests or field sobriety tests, as provided in this Section, **shall be warned...**



Cannabis Laws for DUIs – Summary Suspensions

625 ILCS 5/11-501.9 - Suspension of driver's license; failure or refusal of validated roadside chemical tests; failure or refusal of field sobriety tests; implied consent

- (e) If the person
 - **Refuses:**
 - 1) validated roadside chemical tests or
 - 2) field sobriety tests or
 - **Submits to:**
 - 1) validated roadside chemical tests or
 - 2) field sobriety tests that disclose the person is impaired by the use of cannabis
- **The law enforcement officer shall immediately submit a sworn report ... (How Immediately?)**
- The sworn report must include the law enforcement officer's factual basis for reasonable suspicion that the person was impaired by the use of cannabis.



Cannabis Laws for DUIs – Procedure

Hypothetical Steps on a Cannabis DUI Stop:

- **Pull Vehicle Over**
 - Based on some IVC violation or bad driving
- **Interact with Driver**
 - Do you have reasonable suspicion to believe driver is operating while impaired by cannabis?
 - “**Independent, cannabis-related factual basis**” and “**Specific and articulable facts**”
 - Cannabis in plain view, mental difficulty, disoriented, very relaxed, slow reactions, odor, admissions, bloodshot eyes, divided attention
 - Drivers under influence show more *mental* impairment rather than alcohol’s *physical* impairment (**divided attention tests**)
 - If **BOTH** suspected – still do the cannabis WTM and SFST as long as you believe cannabis is contributing to the impairment
 - If not, you may choose to do a “normal DUI” investigation which may result in SFSTs and arrest for DUI with probable cause - then a WTM before chemical tests
- **Request Cannabis SFST Based on Your Reasonable Suspicion**
- **Warning to Motorist (Cannabis) Given – Pre Arrest / Roadside (Complete Cannabis Sworn Report Later)**
 - Driver Completes SFST
 - Do you now have probable cause for DUI?
 - Driver Refuses SFST
 - Do you now have probable cause for DUI?
 - Add “consciousness of guilt”
 - Alphabet Test or Counting Test
- **Arrest for DUI**
 - DO NOT do SFSTs a 2nd Time for Alcohol
 - You SHOULD do a WTM and request a chemical sample back at the station like a “normal DUI” in ALL situations
 - Cannabis tests need to be within 2 hours of driving
 - Get a chemical test anyway, even if beyond the 2 hour mark
 - Consider a blood warrant (E-Warrant available) as soon as you make the arrest and driver refuses chemical test (within 2 hours)



Cannabis Laws for DUIs – Procedure

Cannabis Effect:

- **Peak: 0-30 minutes after smoked / 1-3 hours after eaten**
- **High Experience: 2-3 hours after smoked / 4-8 hours after eaten**

Important Observations:

- Poor Driving (Most Often Multiple Violations)
 - **In order:** 1) Speeding, 2) Weaving, 3) Equipment Violations, 4) Crash, 5) Improper Turn, 6) Traffic Device Violation, 6) Fail to Yield
- Odor of Cannabis
 - Burnt vs. Raw
 - Important to distinguish for possession vs. use charges
- Mental Capacity Diminished
 - Document Driver's Memory Problems
- Anxious
- Cannabis in Plain View
- Disoriented or Very Relaxed Slow Reactions or Altered Time Perception
- Admissions
- Bloodshot Eyes or Dry Mouth
- Divided Attention



What Can I Charge for This?

****All Cannabis Possession for <21 Year Olds is ILLEGAL****

	Possession: <15 Grams	Possession: <30 Grams	Possession: >30 Grams	Possession / Use: Public Place or Vehicle	DUI Cannabis	Improper Container in Vehicle (Driver/Passenger)	Fake ID to Buy Cannabis	Possession of Cannabis Paraphernalia	Facilitating Juvenile Use or Social Hosting	Delivery: Any Amount
Juvenile <18 <u>CANNOT ARREST</u> <u>or DETAIN</u>	Possession 720 ILCS 550/4 OR Civil Law Citation (Petty)*** if <10 grams 410 ILCS 705/10-15(b)	Possession 720 ILCS 550/4 OR Civil Law Citation (Petty)*** if <10 grams 410 ILCS 705/10-15(b)	720 ILCS 550/4	Possession 720 ILCS 550/4 OR Civil Law Citation (Petty)*** if <10 grams 410 ILCS 705/10-15(b)	Class A Misdemeanor 625 ILCS 5/11-501 New Cannabis SSS	Class A Misdemeanor 625 ILCS 5/11-502.15 DL Suspension 625 ILCS 5/6-206	Class A Misdemeanor 410 ILCS 705/10-20 DL Suspension 625 ILCS 5/6-206	LEGAL	Not an Available Charge	720 ILCS 550/5
Adult <21	Possession 720 ILCS 550/4 OR Civil Law Citation (Petty)*** if <10 grams 410 ILCS 705/10-15(b)	Possession 720 ILCS 550/4 OR Civil Law Citation (Petty)*** if <10 grams 410 ILCS 705/10-15(b)	720 ILCS 550/4	Possession 720 ILCS 550/4 OR Civil Law Citation (Petty)*** if <10 grams 410 ILCS 705/10-15(b)	Class A Misdemeanor 625 ILCS 5/11-501 New Cannabis SSS	Class A Misdemeanor 625 ILCS 5/11-502.15 DL Suspension 625 ILCS 5/6-206	Class A Misdemeanor 410 ILCS 705/10-20 DL Suspension 625 ILCS 5/6-206	LEGAL	Not an Available Charge	720 ILCS 550/5
Adult >21 Illinois Resident	LEGAL	LEGAL	720 ILCS 550/4	410 ILCS 705/10-35 Follow 720 ILCS 550/4	Class A Misdemeanor 625 ILCS 5/11-501 New Cannabis SSS	Class A Misdemeanor 625 ILCS 5/11-502.15 (b) Driver (c) Passenger	Not an Available Charge	LEGAL	Class A Misdemeanor 410 ILCS 705/10-15	720 ILCS 550/5
Adult >21 Non-Illinois Resident	LEGAL	720 ILCS 550/4	720 ILCS 550/4	410 ILCS 705/10-35 Follow 720 ILCS 550/4	Class A Misdemeanor 625 ILCS 5/11-501 New Cannabis SSS	Class A Misdemeanor 625 ILCS 5/11-502.15 (b) Driver (c) Passenger	Not an Available Charge	LEGAL	Class A Misdemeanor 410 ILCS 705/10-15	720 ILCS 550/5

***For suspects <21, there is contradicting language in the statutes regarding penalty. 410 ILCS 705/10-15(b) states that any possession for someone <21 results in a Civil Law violation “as outlined in 720 ILCS 550/4(a),” without any amount levels outlined. However, 720 ILCS 550/4(a) pertains to cannabis possession <10 grams. Therefore, a suspect <21 can be charged with a Civil Law violation if less possessing <10 grams of cannabis under 720 ILCS 550/4(a) and a misdemeanor or felony if possessing an amount >10 grams pursuant to 720 ILCS 550/4 (b) - (g). Officers may use charge misdemeanors or felonies when appropriate. A suspect <21 can always be charged with Delivery of Cannabis. Further research is being done by the SAO for these types of cases.

***Nothing prohibits arresting agency from charging multiple offenses for possession (ie. Possession, Possession in a Vehicle, DUI Cannabis)



Cannabis & Cannabis DUI Prosecution

- **We will have to wait to see the appeals**
- **The courts will have to set the tone for these cases**
- **The McHenry County SAO will HAPPILY prosecute cannabis cases**



Questions

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