

# Illinois Forensic Science Commission- Public Policy Subcommittee

## Meeting Minutes

July 19, 2024, 11:30 a.m. meeting

### I. Call to order

John Hanlon, chairperson of the subcommittee, called the meeting to order. The meeting was held via WebEx.

### II. Roll-call

The following people were present:

1. John Hanlon, FS Commission Member, subcommittee chairperson
2. Jillian Baker, FS Commission Member, subcommittee member
3. Claire Dragovich, FS Commission Member, subcommittee member
4. Cris Hughes, FS Commission Member, subcommittee member
5. Amy Watroba, Executive Director-Forensic Science Commission
6. Sabra Jones, Regional Toxicology Liaison-NHTSA Region 5
7. Lindsay Simpson, Toxicologist at NIRCL
8. Sarah Ware, Kane County
9. Jennifer Cifaldi, Illinois Traffic Safety Resource Prosecutor (TSRP)

### III. Review/Adoption of the Minutes

1. The Meeting Minutes of 6/7/24 were adopted by unanimous vote.

### IV. Presentation from Jennifer Cifaldi (Illinois Traffic Safety Resource Prosecutor or "TSRP") on issues related to cannabis impaired driving in Illinois.

1. TSRPs: Ms. Cifaldi introduced herself and explained that her position as Illinois's TSRP is funded by an IDOT grant through the University of Illinois-Springfield and that her job is to be a lead subject matter expert on traffic safety with a specific focus on impaired driving. Ms. Cifaldi explained that every state has a TSRP. As part of her job, Ms. Cifaldi serves on the Illinois Impaired Driving Task Force Committee and teaches with the Drug Recognition Experts (DREs).
2. Oral Fluid Testing: Ms. Cifaldi first addressed where Illinois stands on oral fluid testing. Oral fluid testing could be contemplated by language in the DUI statute referring to "other bodily substances." Two law enforcement agencies

conducted pilot programs for roadside (non-lab) oral fluid testing. Carol Stream Police Department conducted their pilot program in approximately 2018-2019. ISP conducted a pilot program in approximately 2021-2023. Based on the limited information that Ms. Cifaldi was able to obtain from these agencies, she explained that the pilot programs were not successful. Ms. Cifaldi explained that they also tried oral fluid devices at DRE schools using subjects that were known to be impaired and that they did not receive positive results for substances on the tests. Ms. Cifaldi stated that other states (Alabama, Michigan, Wisconsin) use oral fluid tests and that perhaps once we see what lessons are learned in those states and how the technology improves Illinois could consider using them. Ms. Cifaldi clarified that police departments are free to use oral fluid testing devices if they choose to, but she would suggest to any agencies that use them that they conduct a pilot program and only use the tests post-arrest so that the test results cannot be used as a basis for probable cause determinations for DUI arrests. Ms. Dragovich asked if Carol Stream PD and ISP piloted roadside tests or oral fluid collection kits that were then sent to labs for testing. Ms. Cifaldi said she believed Carol Stream PD may have piloted both kinds of tests, but directed the subcommittee to contact Carol Stream PD for more information about the types of tests that were part of the pilot program and whether they compared any oral fluid results to subsequent blood testing as part of the pilot program.

3. Blood Collection- Issues, challenges and possible solutions: Ms. Cifaldi explained that the main challenge to law enforcement and prosecutors involved in DUI prosecutions is blood collection time. The longer time gap that exists between the time of driving and the time of a blood draw makes it easier for defense attorneys to challenge DUI cases. The other main issue affecting collection time is manpower. Blood is the best evidence to show impairment, but it is difficult to get a subject to a hospital and to get the hospital to draw the subject's blood within a short time period especially in rural jurisdictions.
4. Law enforcement phlebotomy program: Illinois started its Law Enforcement Phlebotomy program in 2019. It took two years (2017-2019) to get it fully operational. Illinois's program is modeled after Arizona's program, which is the gold standard for DUI prosecutions. Arizona police officers have drawn blood from subjects for over 30 years and have not had a single defense attack to that program. Ms. Cifaldi explained how Illinois's program was started and what is required of police departments to have an officer trained through the program. Currently, the program runs out of Decatur and approximately 30 officers have been trained to conduct blood draws. Other states with similar law enforcement phlebotomy programs include Arizona, Idaho, Utah, Maine,

Georgia, Washington State, Missouri, and Indiana. Ms. Cifaldi said that the number one question they get from police departments is on the topic of liability insurance but noted that insurance is not required because the DUI statute includes an immunity clause (625 ILCS 5/11-500.1). Ms. Cifaldi identified advantages that the LE Phlebotomy Program provides: shorter collection time, elimination of need to take a subject to a hospital for a blood draw, protect chain of custody, and a standardized protocol. She indicated that there have been no challenges in court to Illinois's program.

5. Search warrants for noncompliant subjects: Search warrants can be obtained to collect blood samples when law enforcement requests a sample and the subject refuses. One issue that arises is whether police will use force to obtain the sample if the subject refuses to comply with the search warrant. Prior to *People v. Hutt*, officers could charge subjects with obstructing justice if a subject refused to provide a blood sample pursuant to a warrant. Ms. Cifaldi is working with the Illinois Impaired Driving Task Force Committee and Alliance Against Impaired Motorists (AIM) on possible suggested amendments to the obstruction statute in light of *Hutt*. Ms. Cifaldi explained that legally officers can use force to obtain a sample pursuant to a warrant under Illinois and US Supreme Court caselaw, however many departments and officers are uncomfortable doing so. In short, it is a department-by-department policy decision on how to handle such situations.
  
6. 2-hour language in 625 ILCS 5/11-501(a)(7): Ms. Cifaldi outlined the seven different subsections in the DUI statute. She explained that DUI-cannabis used to fall under subsection (a)(6) but then in 2016 the legislature added subsection (a)(7) which is a per se section for DUI cannabis. Subsection (a)(7) is the only subsection of the DUI statute that requires that a blood draw take place within 2 hours of driving. However, there has been confusion in Illinois courts because some courts have interpreted the language to mean that samples must be collected within two hours under the other subsection of the DUI statute under which DUI-cannabis can be prosecuted (subsection (a)(4)). Ms. Cifaldi explained that prosecutors can still charge an (a)(4) violation when blood is drawn after 2 hours, but a prosecutor would much rather go forward on a per se provision for DUI-cannabis, just like they would rather go forward on a per se violation for DUI-alcohol for someone who is above 0.08 BAC. If a prosecutor proceeds under subsection (a)(4), they must convince the judge or jury that the driver was impaired. There are two related issues: 1) do we have enough officers trained to know what cannabis impairment looks like; and 2) do judges and juries understand that driving under the influence of cannabis is dangerous? Illinois is working on training more officers on cannabis impairment and on changing public perception regarding the dangerousness

of driving under the influence of cannabis. Officers are being trained to better detect impairment and to collect a sample regardless of how much time has passed between driving and the blood draw. Officers are also being educated on the option of using blood drawn at the hospital for treatment purposes in cases where the suspected impaired driver is injured. Police officers can put in a preservation request so that hospital does not destroy its samples and then the police can collect the remaining blood sample from the hospital and send it to a forensic testing lab. The DUI statute also requires hospital staff to provide the results of treatment-related blood testing to law enforcement upon request in certain situations and HIPAA is not implicated (625 ILCS 501.4-1).

7. Possible Solutions: The Impaired Driving Task Force Committee is considering proposing changes to the DUI statute intended to address confusion related to the applicability of the 2-hour provision in subsection (a)(7). One possible route is to create statutory presumptions for different amounts of Delta-9 THC identified in a person's blood or other bodily substances even if collection took place more than 2 hours after driving. The group is also promoting more training to bridge the communication gap between toxicologists and prosecutors and trying for an increase in funding and resources.
8. Questions: Ms. Dragovich suggested that Ms. Cifaldi reach out to ISP regarding hospital blood draws to clarify whether ISP will conduct toxicological testing on those samples. Ms. Baker observed that, whether or not there is a legislative change to the 2-hour collection window, it sounds like the difficulty law enforcement has with getting blood samples within a short time frame will remain unchanged. She inquired whether there might be a way to statutorily require hospitals to collect law enforcement samples in injury/fatality cases. Ms. Cifaldi responded that such a legislative change would likely be difficult to achieve. Ms. Watroba noted that law enforcement can never charge under subsection (a)(7) initially, since such a charge requires the results of lab testing. Ms. Cifaldi responded that the issue of subsection (a)(7) charges versus (a)(4) charges is more of an issue downstream for prosecutors and their ability to succeed in proving a case in court. Ms. Cifaldi also explained that preservation requests for hospitals are crucial because, without such a request, hospitals generally keep treatment blood samples for only 24-48 hours. Mr. Hanlon asked about the time it takes to complete an average DUI stop and process the offender. Ms. Cifaldi responded that she often hears from officers that they cannot get a blood sample within 2 hours if they have to go a hospital for a blood draw. She suggested that expansion of the law enforcement phlebotomy program is one solution to this challenge. Mr. Hanlon also asked if Ms. Cifaldi was aware of any case law holding that a DUI

prosecution cannot move forward if the blood is not drawn within 2 hours. Ms. Cifaldi responded that she is aware of several cases at the trial court level where a former toxicologist at a lab which is now closed testified regarding lab results from blood draws that were taken outside the 2-hour window in subsection (a)(7) prosecutions. Mr. Hanlon also asked if there is any information about the genesis for the 2-hour window in subsection (a)(7). Ms. Cifaldi discussed the possibility of the Commission weighing in on suggestions for legislative changes that might be offered by the Task Force in the future.

V. Old Business

None presented.

VI. New Business

Discussion topics for next meeting and possible speakers for future meetings were discussed.

VII. Public Comment

No public comment.

VIII. Meeting Schedule

The next meeting will be scheduled via email.

IX. Adjournment

Subcommittee chairperson John Hanlon adjourned the meeting at approximately 1:10 p.m.