

Illinois Forensic Science Commission- Public Policy Subcommittee

Meeting Minutes

August 21, 2024, 10:00 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. Dr. Ponni Arunkumar, FS Commission member, subcommittee member
2. John Hanlon, FS Commission Member, subcommittee chairperson
3. Jillian Baker, FS Commission Member, subcommittee member
4. Claire Dragovich, FS Commission Member, subcommittee member
5. Cris Hughes, FS Commission Member, subcommittee member
6. Carrie Ward, FS Commission Member, subcommittee member
7. Amy Watroba, Executive Director-Forensic Science Commission
8. Gina Havlik, NIRCL
9. Lindsay Simpson, NIRCL
10. Timothy Ruppel, Kane County
11. Sarah Ware, Kane County

III. Review/Adoption of the Minutes

1. The Meeting Minutes of 7/19/24 were adopted by unanimous vote.

IV. Discussion: DUI-Cannabis Impairment

1. The subcommittee members discussed observations and takeaways from the numerous presentations and invited guests who have joined meetings over the past several months. Ms. Baker and Ms. Dragovich observed that no scientific data supports the position that a 2-hour collection window for the DUI-cannabis per se provision is unrealistic or that a change to the statutory collection time would be warranted from a scientific standpoint. The members discussed the lack of scientific evidence that Delta-9 THC would be detected in a blood sample drawn more than 2 hours after cannabis use and the lack of knowledge in the field of toxicology about the correlation between cannabis consumption and impairment. The limited publications mentioned

in meetings indicate that the majority of Delta-9 THC would be metabolized within 2 hours of use, which is consistent with studies conducted showing that active THC in blood is typically metabolized within 2 hours.

2. Members noted that many presenters discussed non-scientific reasons why expanding the 2-hour collection window in subsection (a)(7) of the DUI statute would benefit law enforcement, but that those reasons raise issues of policy, not science. It was noted that both NIRCL and ISP Labs test samples from DUI collection kits regardless of the amount of time between driving and sample collection. When law enforcement and prosecutors get results from the labs it is for LEA and prosecutors to decide whether and how to prosecute cases, considering the results of laboratory analysis of collected samples. The concept of unintended consequences of statutory changes was discussed, specifically the fact that an expanded collection time could lead to samples being collected later which would likely lead to more negative results for samples tested by labs.
3. Members discussed how they have not heard anything from a scientific standpoint that would lead the subcommittee to make a recommendation to expand the per se window for cannabis to, for example, three hours. They then discussed whether they should recommend that the Commission issue a statement to that effect now or wait until legislation related to the 2-hour collection window is introduced in the future. Ms. Dragovich feels that there would be value in the Commission issuing a statement highlighting the importance of prompt sample collection by explaining scientific facts about THC testing in DUI samples such as: how THC is metabolized, that THC is different from alcohol, and that no current scientific literature supports the idea that back extrapolation is possible for THC or the idea that labs can determine how much THC someone consumed or smoked. Mr. Hanlon feels it is important for the Commission as a scientific commission to comment on what science supports and where there is still work to be done, perhaps via some sort of position paper. Ms. Watroba noted that the Commission is not limited to only making recommendations on legislation and that the Commission can issue any type of publication or statement on a topic. She stated that either a position statement or a summary of the current status of scientific literature on a topic could be drafted. She suggested that the subcommittee may want to consider including references to particular studies to support any statements included in a summary document. Ms. Watroba further suggested that there may be value in creating and posting such a statement before changes in legislation are proposed because the Commission's statement could then be considered by those drafting and considering any legislative amendments.
4. Members discussed the current state of scientific testing capabilities related to DUI cannabis and the fact that a sample was collected more than 2 hours

after driving only become an issue “after the fact” if the subsequent lab test results show the presence of Delta-9 THC in a blood sample. Ms. Dragovich observed that labs frequently perform tests on items of evidence that may not ultimately result in criminal charges or prosecutions. Dr. Arunkumar explained the fact that back extrapolation is not possible with drugs. Thus, even if a blood test result is “negative” for a drug, it does not mean that a person did not use/consume a drug. A “positive” result for a drug in a blood test shows the presence and amount for the time the sample was collected but that cannot be correlated to other time frames. Confusion may result from end users being used to the way that back extrapolation can be performed in some DUI-alcohol cases. Ms. Simpson explained that, as a toxicologist, she does not know and cannot testify in court about how much of a drug a person consumed, how they consumed it, or what type of product they consumed. She can only say that at the time of the blood draw, a certain amount of a drug like THC was present in the person’s blood. In DUI cannabis cases that are prosecuted under a theory of impairment (versus a per se (a)(7) theory) the blood results are still valuable information. Ms. Watroba explained how the blood results and testimony of a toxicologist in an impairment theory case would be approached by a prosecutor. The prosecutor would present the toxicology evidence and other evidence such as the officer’s observations of the person at the time of the traffic stop, any admission of use by the person, and the person’s lack of use from time of stop to time of blood draw, to argue that the prosecution met its burden through all the evidence, including the circumstantial evidence. The members discussed how non-scientific information presented to the subcommittee suggests that there is confusion regarding prosecution and collection issues that would need to be addressed on the law enforcement side (by for example expanding DRE and Law Enforcement Phlebotomy programs).

5. Members discussed what the subcommittee was asked to do related to the 2-hour collection window following the DUI Cannabis Task Force’s report in 2022 and whether a non-recommendation type of statement is consistent with that charge. Discussion ensued about how a statement could address what the Commission was tasked with from a scientific standpoint and avoid addressing any aspects that are legal or policy in nature. Dr. Arunkumar suggested that the document could address the issue of the metabolization of Delta-9 THC without directly commenting on the 2-hour per se collection window. Dr. Hughes noted that the document could also address the threshold amounts (5 ng/mL for whole blood) by addressing the current state of scientific research regarding the lack of correlation between Delta-9 THC concentration and impairment. Ms. Dragovich noted that the document could also address how cannabis impairment differs from alcohol impairment (that concentration in blood does not correlate with impairment in the same way).

Discussion was held on whether the subcommittee should hear additional evidence on the topic of the threshold amounts and how concentration correlates to impairment before including any comments related to that issue in a statement.

6. Mr. Hanlon inquired about any status updates on Senator Morrison's plans with respect to proposed legislation to amend the DUI statute. Ms. Watroba responded that we do not know if she plans to reintroduce legislation during the Fall veto session and noted that TSRP Ms. Cifaldi suggested that other groups may be working on draft legislative amendments to introduce in the next General Assembly. Ms. Watroba noted that, although Ms. Cifaldi could not share any drafts, she indicated that the topic of presumptions was being considered. Ms. Watroba clarified that any presumption changes would likely only impact impairment prosecutions, not per se prosecutions, due to the case law surrounding mandatory presumptions and due process. Thus, any such proposed changes may clarify confusion regarding whether a DUI cannabis case can be prosecuted using lab results from a blood draw taken more than 2 hours after driving, but it should not change the legal landscape for DUI cannabis per se prosecutions.
7. The subcommittee reviewed the DUI Cannabis Task Force's 2022 report and discussed how to draft a statement that is consistent with the Commission's charge in that document. Ms. Watroba will start drafting language and a framework for the document discussed related to DUI cannabis.

V. Old Business

Ms. Watroba shared that she took the substance of the Commission's recommendation regarding a legislative change clarifying the meaning of "Delta-9 THC" in the DUI statute and created a written recommendation that could be posted on the Commission's webpage. The subcommittee agreed to recommend to the full Commission that the written recommendation be posted on the Commission's webpage at the next quarterly Commission meeting. Ms. Ward shared the scheduled dates for the Fall veto session of the Illinois Legislature and discussion took place regarding whether Senator Morrison's previous bill or new legislation related to the DUI statute might be brought up in the Fall veto session or the next General Assembly.

VI. New Business

Ms. Watroba shared that she will attend the Toxicology Stakeholder Summit in Springfield on September 24th. Ms. Simpson is involved in that program and explained that it is a meeting of approximately 30 people from various stakeholder groups and will include small group discussions. The goal is for participants to leave the program with ideas for how different groups can work

together towards solutions to assist the entire state with traffic safety. Ms. Watroba indicated that she will report back to the subcommittee about the Summit at the next meeting.

VII. Public Comment
No public comment.

VIII. Meeting Schedule
The next meeting was scheduled for Monday, September 30, 2024, at 11:30 a.m. via Web Ex.

IX. Adjournment
Subcommittee chairperson John Hanlon adjourned the meeting at approximately 11:00 a.m.