

Illinois Forensic Science Commission- Public Policy Subcommittee

Meeting Minutes

April 26, 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. Dr. Ponni Arunkumar, Commission Member, subcommittee member
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. Sabra Jones, Regional Toxicology Liaison-NHTSA Region 5
9. Larry Shelton, ISP, Toxicology Training Coordinator
10. Lindsay Simpson, NIRCL, Forensic Toxicologist

III. Review/Adoption of the Minutes

1. The Meeting Minutes of 3/8/24 were adopted by unanimous vote.

IV. Cannabis Impairment- Presentations and Discussion

1. Amy Watroba gave a presentation on the legislative history of the DUI-cannabis statute (625 ILCS 5/11-501(a)(7)) and related statutes in the Illinois Vehicle Code.
2. Discussion took place regarding topics discussed during the 2015-2016 legislative debates of the 99th General Assembly related to the DUI-cannabis legislation. In response to questions, Ms. Watroba clarified that the original bill, which proposed per se amounts of Delta-9 THC of 15 ng/mL in whole blood and 25 ng/mL in other bodily substances did not pass. Illinois went from a zero-tolerance law for DUI-cannabis to having the current section in the DUI statute for a per se prosecution of DUI cannabis (Section 11-501(a)(7) of the Illinois Vehicle Code). The current threshold amounts are found in 625 ILCS

5/11-501.2(a)(6) and they are 5 ng/mL of Delta-9 THC in whole blood or 10 ng/mL of Delta-9 THC in other bodily substances.

11. Sabra Jones, Regional Toxicology Liaison-NHTSA Region 5, gave a presentation summarizing what some other states, including states surrounding Illinois, are doing related to testing blood, urine, and oral fluid for impaired driving and the science underlying the toxicological testing of samples in impaired driving cases.
 - i. Ms. Jones first provided background information regarding the different ways samples are collected for drug testing for blood, urine, and oral fluid samples. Ms. Jones explained that blood testing and the testing of oral fluid samples reflect recent use. In contrast, test results from urine samples do not reflect recent use. Ms. Jones provided data from other states on three issues: 1) what bodily substances are tested in the state roadside during traffic stops and/or at the lab.; 2) whether the state has a per se provision, legal presumption, and/or collection time limit in their DUI statutes; and 3) whether the state has a law enforcement phlebotomy program.
 - ii. Ms. Jones also discussed studies related to different classes of drugs, including cannabinoids, on the topic of timing and the relationship between concentration of different drugs in blood/plasma and impairing effects. Ms. Jones discussed the possible difference in absorption time depending on whether someone inhales THC (smokes cannabis) or ingests THC (oral administration/edibles).
 - iii. Ms. Jones also discussed ANSI/ASB Standard 120 (Standard for the Analytical Scope and Sensitivity of Forensic Toxicological Testing of Blood in Impaired Driving Investigations) and ANSI/ASB Best Practice Recommendation 037 (Guidelines for Opinions and Testimony in Forensic Toxicology) and provided a list of additional references in her presentation.
3. Discussion took place about whether there might be confusion in the Illinois law enforcement community regarding what the 2-hour provision in Section 11-501(a)(7) practically means for prosecutions for DUI-cannabis. Two scenarios where confusion may exist were mentioned: 1) prosecutions for DUI-cannabis where blood is collected outside the 2-hour window and testing of the blood shows the presence of 5 ng/mL or more of Delta-9 THC; and 2) prosecutions for DUI-cannabis where blood is collected within the 2-hour window but the results later show the presence of less than 5 ng/mL of Delta-9 THC in the driver's blood.
4. In response to a question from Ms. Dragovich, Ms. Jones noted that the likelihood of detecting Delta-9 THC in blood drops as time passes. Ms. Jones stated that this might factor into examining Illinois's current 2-hour time limit in the per se provision. Ms. Jones also discussed why there is no "magic"

number for the amount of Delta-9 THC in blood that would correlate to impairment. She discussed law enforcement phlebotomy programs and e-warrants on the collection-side of the issue. Ms. Jones suggested reaching out to Illinois TSRP Jen Cifaldi or the person who runs the Illinois Law Enforcement Phlebotomy Program to see if they can provide information about how difficult it is for law enforcement to collect blood samples within 2 hours of a traffic stop.

5. Lindsay Simpson asked if there were states that have a 2-hour provision in their statute and also have express language in the statute stating that samples collected outside that window could still be used in a prosecution. Ms. Jones noted that one example is Indiana, which has no time limit for collection, but has a 3-hour rebuttable presumption for impairment, in their statutory scheme. Ms. Simpson also shared her personal view that extending the 2-hour window could be problematic because of how quickly THC leaves the bloodstream. She raised concerns about police officers not understanding the urgency of collecting a blood sample quickly if the collection window in the DUI-cannabis statute was extended beyond 2 hours.
6. Larry Shelton commented that, because people are used to thinking about ethanol (specifically the unique ability to correlate impairment with BAC in DUI-alcohol cases), there may be a disconnect or some confusion when people consider issues related to impairment for DUI-cannabis cases. He suggested examining data from cases where individuals were pulled over for showing signs of cannabis impairment to see how many times the results of their blood tests were below the 5 ng/mL threshold amount for a per se prosecution. Mr. Shelton also stressed the importance of communicating with law enforcement about the trend towards testing blood versus urine as testing technology and testing abilities change.
7. In response to a question from Ms. Hughes, Ms. Jones discussed how states that have legalized recreational cannabis have grappled with the choice of maintaining zero tolerance policies or replacing those laws with per se provisions. She outlined some factors that make correlating concentration of cannabis with level of impairment difficult from a scientific standpoint. Ms. Jones noted that expanding the 2-hour time limit for per se DUI-cannabis prosecutions in Illinois might not help with DUI prosecutions because delayed sample collections might allow certain drugs to dissipate from a blood sample.
8. Ms. Dragovich observed that the concerns underlying a statutory per se amount for DUI-cannabis also existed with the per se provision for DUI-alcohol because some individuals who are chronic alcohol users could have a higher level of ethanol in their system without showing signs of impairment.
9. Dr. Arunkumar stated that she has observed deceased individuals with high levels of fentanyl or alcohol who did not die of toxicity. Dr. Arunkumar expressed an interest in examining data from traffic fatality cases. She

explained that fentanyl is currently the most common drug observed in deceased individuals at the medical examiner's office. In the past it was alcohol or cannabinoids. In response to a question from Dr. Arunkumar, Mr. Shelton indicated that ISP tests for common categories of drugs using major panels and additionally has a "full drug panel" for substances that do not fit within those classes. ISP tests for fentanyl in urine. They also can observe it in blood, but cannot currently detect it in a range that is in line with the ASB Standard 120 document. He indicated a need for an infrastructure upgrade to meet ASB recommendations.

10. John Hanlon inquired as to how many states have zero-tolerance approaches to DUI-cannabis. Ms. Jones indicated that the National Alliance to Stop Impaired Driving provides such information by state. Ms. Dragovich observed that a zero-tolerance law would be inconsistent with the legalization of recreational cannabis in Illinois.
11. Ms. Watroba stated that she plans to attend the Illinois Impaired Driving Task Force open meeting on May 17th at 10 a.m. and that she will share the link with the subcommittee for any members who also wish to attend. Ms. Simpson stated that she will be presenting on the topic of DUI-cannabis at that meeting.
12. Mr. Hanlon concluded the conversation by noting that discussion on the issues the subcommittee is examining related to the DUI-cannabis provisions will continue at future meetings. Ms. Watroba indicated that Jen Cifaldi, Illinois's Traffic Safety Resource Prosecutor (TSRP), currently is scheduled to present at the next subcommittee meeting.

V. Old Business
None presented.

VI. New Business
None presented.

VII. Public Comment
There were no public comments.

VIII. Meeting Schedule
The next meeting was scheduled for June 7, 2024, at 11:30 a.m.

IX. Adjournment

Subcommittee chairperson John Hanlon adjourned the meeting at approximately 12:55 p.m.