



State of Illinois  
Illinois State Police  
Director Brendan F. Kelly

# DUI Cannabis Task Force Report



Illinois State Police



**ILLINOIS STATE POLICE**  
*Office of the Director*

JB Pritzker  
*Governor*

Brendan F. Kelly  
*Director*

August 3, 2022

The Honorable JB Pritzker  
Governor of Illinois  
207 State House  
Springfield, Illinois 62706

Dear Governor Pritzker:

Pursuant to 625 ILCS 5/11-501.10, enclosed is the mandated report from the DUI Cannabis Task Force.

According to the National Highway Traffic Safety Administration (NHTSA), in 2020, research indicated drug prevalence increased among drivers killed or seriously injured in a crash. NHTSA's study of seriously or fatally injured road users at studied trauma centers (Thomas et al., 2020) suggested that the overall prevalence of alcohol, cannabinoids and opioids increased during the public health emergency compared to before. Between mid-March and mid-July 2020, almost two-thirds of drivers in the study tested positive for at least one active drug, including alcohol, marijuana or opioids. The proportion of such drivers who were killed or seriously injured in a crash testing positive for opioids nearly doubled after mid-March 2020, as compared to the previous six months, while marijuana prevalence increased by about 50 percent.

On behalf of all the DUI Cannabis Task Force members, we stand ready to assist you and the leaders of the General Assembly in addressing this discouraging trend.

Very Respectfully,

Brendan F. Kelly  
Director

cc: House Minority Leader Jim Durkin  
Senate President Don Harmon  
Senate Minority Leader Dan McConchie  
Speaker of the House Emanuel "Chris" Welch  
Commission on Government Forecasting and Accountability (LRU)

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## **Introduction**

The DUI Cannabis Task Force was created and called to order on January 22, 2021. The task force was created to “study the issue of driving under the influence of cannabis and use the best practices in the area of driving under the influence of cannabis enforcement, including examining emerging technology in roadside testing” (625 ILCS 5/11-501.10) - (Source: Public Acts 101-27 and 101-593).

The goals and agenda for the task force were to research the impact of cannabis and to identify tools to protect public safety. The DUI Cannabis Task force had seven meetings, which were held virtually on January 22, 2021, February 26, 2021, April 22, 2021, July 30, 2021, September 1, 2021, September 17, 2021, October 1, 2021, February 4, 2022, and July 20, 2022.

## **Task Force Membership**

Director Brendan F. Kelly, Illinois State Police (Chairman)

State Senator Neil Anderson

State Representative Kelly Cassidy

State Representative Patrick Windhorst

Thomas Benigno, Secretary of State

Khadine Bennett, American Civil Liberties Union

Chief Robert Collins Jr., Dolton Police Department, Illinois Association of Chiefs of Police

Corinne Cantwell Heggie, Women's Bar Association of Illinois

Kristi Hosea, Mothers Against Drunk Driving

Sheriff John Idleburg, Lake County, Illinois Sheriffs' Association

Donald Ramsell, Illinois Association of Criminal Defense Lawyers

## **Legislative History**

On August 1, 2013, the Compassionate Use of Medical Cannabis Pilot Program Act (Public Act 98-0122) was signed by Governor Pat Quinn to legalize the use of medical cannabis under tightly controlled circumstances.

On August 28, 2018, the Alternatives to Opioids Act of 2018 (Public Act 100-1114) was signed by Governor Bruce Rauner which allowed an individual diagnosed with or undergoing treatment for a medical condition for which an opioid had been or could be prescribed may receive medical cannabis under specified conditions.

On June 25, 2019, the Illinois Cannabis Regulation and Tax Act (Public Act 101-0027) was signed by Governor J.B. Pritzker to legalize the recreational use of cannabis by adults, which included retail sales that began on June 1, 2020.

On August 9, 2019, the Compassionate Use of Medical Cannabis Pilot Program was amended by Public Act 101-0363, which was signed by Governor J. B. Pritzker. The pilot program was made permanent and added an additional eleven conditions to the existing program including chronic pain, anorexia nervosa, autism, irritable bowel syndrome, migraines, osteoarthritis, Ehlers-Danlos syndrome, Neuro-Behcet's autoimmune disease, neuropathy, polycystic kidney disease, and superior canal dehiscence syndrome.

## Summary of Presentations

### Illinois State Police Division of the Academy and Training (DAT)

The Illinois State Police, Division of the Academy and Training presented on how they are currently attempting to increase enforcement by providing additional training opportunities for police officers and a brief overview of the Division's responsibilities.

The Division of the Academy and Training, Alcohol Substance Testing Section, is responsible for the operation of all alcohol testing, which was previously done by the Illinois Department of Public Health. This involves the maintenance and certification of the breath alcohol instrument, training officers on how to operate the breath alcohol testing equipment, and training officers on standardized field sobriety tests.

Their goal is to have certified police officers, which can create effectiveness and decrease drivers who are under the influence. This can be accomplished by real life training courses and by having Drug Recognition Experts (DRE). The DAT is constantly searching for available advanced technologies.

Currently, the Illinois State Police offers the following training courses for Driving Under the Influence (DUI) enforcement:

- Standardized Field Sobriety Testing (SFST)
- Advanced Roadside Impaired Driving Enforcement (ARIDE)
- Drug Recognition Expert (DRE)

The DAT provided an overview of the three phases of Driving Under the Influence traffic stop investigation:

- Phase 1: Initial observation of the vehicle (i.e., traffic crashes, motorist assists, traffic stops)
- Phase 2: Contact with the driver
- Phase 3: Pre-arrest screening

Next, they provided an overview on oral fluid and how they are used to detect drug usage. Oral fluid is composed of the following, Saliva (Gingival fluid), Bacteria (Epithelial cells), and Blood (Food debris). Drugs circulate in the blood and pass into the oral cavity via saliva, which leads to the relationship between the concentration of drugs in the circulating blood and those that pass into the oral fluid which the oral fluid devices detect.

Finally, the DAT provided an overview of their Oral Fluids Feasibility Study. The study began on September 30, 2020, assessing the feasibility of several drug detection devices on the market. The Study included 28 Troopers and Sergeants, who were selected based on their higher level of DUI enforcement. Three oral fluid testing instruments were utilized in the study, which include the Sotoxa DDS2, Drager Drug Test 5000, and the VistaFlow.

## **Mr. Michael Nichols, Trial Attorney**

Mr. Michael Nichols discussed the defense part of DUI Cannabis arrests and the implications of roadside testing. He also provided his opinion of why the per se standard is problematic, and that defining the standard will be critical.

## **Mr. Ken Stecker, Michigan Traffic Resource Prosecutor**

Mr. Ken Stecker provided an overview of the Michigan Drug Recognition Expert Committee. He mentioned that the goal is to have all Michigan State Police officers ARIDE trained, and numerous officers DRE trained. He also advised that they have over 50 prosecutors DRE certified and more than 15 have attended a portion of the training.

Next, he discussed the Oral Fluid Roadside Analysis Pilot Program which Michigan started in 2016. Through this Pilot Program they released a two-phase report.

Provided in the summary of the Michigan State Police Oral Fluid Roadside Analysis Pilot Program – Phase II, “Roadside Oral Fluid testing in the Phase II Pilot,” has been proven to be accurate to a certain degree as demonstrated in the data contained within this report. Each of the six drug classes demonstrated varied percentages of accuracy when compared to the “Gold Standard,” which is a blood test. Oral fluid testing does not equal the “Gold Standard” but has been found to be accurate for purposes of preliminary roadside testing. The Abbott SoToxa Roadside Oral Fluid instrument is easy to use, requires minimum training, and provides a result for each of the six drug classes within five minutes after a sample is collected. It is important to point out that a Roadside Oral Fluid test result, regardless of positive or negative, does not determine if a driver is impaired or not impaired.”

Finally, he discussed how the Oral Fluid Devices were assigned during the Pilot Program. He stated that only DRE certified officers were issued the Oral Fluid devices, and the next goal is to have the devices issued to officers that are ARIDE trained.

## **Sergeant Roger Meyers, Colorado State Patrol (CSP)**

Sergeant Roger Meyers, Colorado State Patrol (CSP) provided an overview of the cannabis legislation history. He provided the current training standards that CSP has, which included a minimum of SFST and ARIDE training within three years of graduating from the academy.

Sergeant Meyers discussed how CSP has decided to focus on articulating impairment instead of focusing on a quantitative (number based) level of impairment. This was due to a pilot program that was completed, and the results were not very successful. The reason he described was the physical size of the devices, the physical wear and tear on the device, and the storage temperature threshold.



## **Ms. Stephanie Manning, Mothers Against Drunk Driving**

Ms. Stephanie Manning from Mothers Against Drunk Driving discussed the current technology for automakers which included the following:

- Driving performance monitoring systems – which monitor the vehicle movement with systems like lane departure warning and attention assist.
- Driver monitoring systems – which monitor the driver’s head and eyes, typically using a camera or other sensors.
- Alcohol detection systems – which use sensors to determine whether a driver is drunk and then prevent the vehicle from moving.

Lastly, she discussed the status of the HALT (Honoring Abbas Family Legacy to Terminate Drunk Driving) Act (HR 2138) in the U.S. House. The bill was introduced by Representatives Debbie Dingell (D-MI), David McKinley (R-WV) and Kathleen Rice (D-NY). The House of Representatives approved the HALT Act during the last Congress in 2020. The bill is now included in the INVEST in America Act (HR 3684), that the U.S. House of Representatives approved. The bipartisan companion bill in the U.S. Senate, the RIDE (Reduce Impaired Driving for Everyone) Act (S.1331), was introduced by Senators Ben Ray Luján (D-NM) and Rick Scott (R-FL). The RIDE Act has been integrated into the Committee-approved Surface Transportation Investment Act. Both bills direct the Department of Transportation to prescribe a motor vehicle safety standard that requires a motor vehicle to be equipped with an advanced alcohol detection device that (1) determines the blood alcohol concentration of the operator of the vehicle, and (2) prevents the operation of the vehicle if the operator is legally intoxicated. It also requires the National Highway Traffic Safety Administration to implement a program to equip the advanced alcohol detection devices on not less than 1,500 government-owned fleet vehicles by the end of FY2022.

## **Ms. Samantha Bloch, National Conference of State Legislators**

Ms. Samantha Bloch from the National Conference of State Legislatures (NCSL) provided a presentation of the drug-impaired driving laws throughout the country. Currently, 17 states allow for recreational marijuana use, 36 states allow for comprehensive public medical marijuana/cannabis programs, and 11 states allow the use of products with low Tetrahydrocannabinol (THC).

Next, she discussed the level at which an arrest could be made.

- Zero tolerance laws – Eleven states have specific zero tolerance laws, which means they prohibit driving with any amount of THC or THC metabolites in the body.

- Per se limits - Six states have specific per se limits for THC, ranging between one nanogram and five nanograms per ml.
- Reasonable Inference laws – Colorado is the only state currently that has a reasonable inference law. It states that in instances where THC is identified in a driver’s blood in quantities of 5ng/ml or higher, it is permissible to assume the driver was under the influence.

Reasonable Inference laws differ from per se laws that they allow drivers who are charged to introduce an affirmative defense to show that despite having tested at or above the legal limit, they were not impaired.

Ms. Bloch advised that over 200 bills related to alcohol and drug-impaired driving were enacted during the 2019 and 2020 legislative sessions combined throughout the country. They mainly dealt with reporting and data collection and implied consent and testing laws.

### **Ms. Jacque Huddleston, Administrative Office of the Illinois Courts**

Ms. Jacque Huddleston from the Administrative Office of the Illinois Courts discussed the importance of offense code table and that criminal offenses are assigned a unique code. There are 4,000 active codes and they must be reported to the Illinois Secretary of State and the Illinois State Police. Codes are updated twice a year in order to monitor current legislation, bill statutes, and 100 DUI possible cases. The simpler the case the better the right code will be selected for having a toxic compound in your system.

### **Mr. Dant Foulk, Illinois State’s Attorneys Association**

Mr. Dant Foulk discussed the effects of updating the Driving Under the Influence sections. Mr. Foulk stated a dozen officers gave their opinion that “it is harder to detect impairment cannabis use than impairment from alcohol use, especially when officers have more training in detecting alcohol use than cannabis use in the field. They would like better training and resources.” He summarized, that there is an increase in DUI arrests, and there is a need to increase the number of DRE & ARIDE trained officers.

- Officers believe they cannot gather enough evidence in cannabis crimes like alcohol or other drugs.
- Gap in the current statute (Officers feel they cannot make DUI cases in regard to cannabis use).

## **Mr. Shannon George, Illinois State Police Division of Forensic Services**

Mr. George gave a presentation on the effects and challenges of Delta 8-9 “Tetrahydrocannabinol.” The Illinois vehicle code states “Tetrahydrocannabinol concentration means either 5 nanograms or more of Delta-9 tetrahydrocannabinol per milliliter of whole blood or 10 nanograms or more of Delta-9 tetrahydrocannabinol per milliliter of other bodily substance.

Here are the recent challenges when it comes to THC and/ or metabolites, it can either be active or inactive. Both Delta-8 THC and Delta-9 THC are both active, but the dominant metabolite Delta-9 carboxy THC is inactive. The emergence of Delta-8 is a newer phenomenon, which previously was such a minor constituent it gathered little attention. The Farm Act legalized the growing of hemp, which has neither Delta-8 or Delta-9 but has plenty of CBD from which Delta-8 is synthesized easily. Vendors skirted federal law which delineated Delta-9 specifically and a new industry was born.

In the past, ISP’s lab services may not have been consistently separating Delta-8 THC and Delta-8 carboxy THC from their Delta-9 counterparts in blood (urine results are unaffected). Delta-8 THC is found naturally in cannabis but typically only in small amounts. It is made in a lab from hemp-extracted CBD and sold as “Legal THC.” Delta-8 THC is banned or restricted in other states (Alaska, Arizona, Arkansas, Colorado, Delaware, Kentucky, Idaho, Iowa, Mississippi, Montana, Rhode Island, Utah, Vermont, and Washington). One of the main concerns about Delta-8 is it is psychoactive like Delta-9 THC.

## **Mr. Clifford McCurdy, Illinois State Police Division of Forensic Services**

Mr. McCurdy outlined the different types of data from different drug types. He explained not all DUI’s are the same. It depends on the controlled substances that are present. The data is tracked quarterly, and several of the drugs are relatively the same. Cannabis, alcohol, and other drugs have increased over the years and public safety is key.

### **Mr. Larry Shelton, Illinois State Police Division of Forensic Services**

Mr. Shelton explained there are limited DUI offenses that follow a specific testing protocol. When ethanol levels in DUI's cross the .080 g/dL threshold, a report is issued. If the agency feels they need additional testing, they can request a test any time a case occurs in the system. Additionally, he reviewed the different terms of DUI's, such as Aggravated DUI, driving under the influence of alcohol and drugs, and "no drugs." Any drug or volatile included in the toxicology drug panel list is a potential finding in a case. The majority of DUI's are not multi-section cases.

### **Dr. Karen Levy-McCanna, Illinois State Police Division of Justice Services**

Dr. Levy-McKenna reviewed criminal history data reports from state/county courts and attorneys. These reports examined activity in criminal history cases, linking control numbers documents to data, and reviewed the class of offenses.

## Task Force Recommendations

1. Mandate the Illinois Department of Transportation to collect detailed reporting on crashes by adding additional contributory cause codes to ensure proper data can be reported for DUI crash by alcohol, cannabis, and controlled substance. Currently, the only option on the Traffic Crash Report (SR 1050) is “Under the Influence of alcohol/drugs.”
2. The Illinois Law Enforcement Training and Standard Board should prioritize funding for ARIDE and DRE training for all police officers engaged in DUI enforcement.
3. The Governor should be given authority to appoint an independent Chief Procurement Officer for Public Safety, with the consent of the Executive Ethics Commission. This will ensure the Chief Procurement Officer’s office continues to be a fiscal watchdog, while working to advance public safety. The Task Force recommends the General Assembly pass legislation to implement this advancement for the acquisition of necessary public safety technology and equipment for the purpose of DUI enforcement in the Illinois Procurement Code. This would allow for timely purchase, acquisition, and testing of new technology and public safety equipment. This would also allow the Illinois State Police to make educated decisions on what is best for first responders and the public and not the low-priced bid. This would be extremely beneficial as technology changes with roadside devices.
4. Support federal legislation which would require the National Highway Traffic Safety Administration to establish a two-year pilot program to create and study the effects of a public marketing campaign to raise awareness on driving while under the influence of prescription and over-the-counter medications. The program should be implemented in states or territories that are most affected by the opioid epidemic.
5. The Task Force identified challenges with the existing driving under the influence of cannabis statute. According to Illinois law a person is not operating under the influence of cannabis unless the per se amount (exact limit for presence of cannabis in the system) is reached. Per Illinois law, a driver is presumed under the influence of cannabis if they have a tetrahydrocannabinol concentration of 5 nanograms or more in whole blood or 10 nanograms or more in any other bodily substance. Some members of the Task Force expressed concern with the use of a per se limit for Cannabis because the scientific support for the 5ng level is lacking – they noted that an arbitrary limit has a tendency to convict persons who are over 5ng but not ‘under the influence’ and release persons who might be ‘under the influence’ even though they are under the 5ng limit. The debate over per se limits included concern that the dynamic nature of THC in the system makes a per se limit particularly difficult to establish. Some members suggested that the legal limit be repealed and replaced with an ‘under the influence of cannabis’ subsection while others suggested a higher per se limit better supported by research would be preferable. The Illinois Forensic

Science Commission is expected to continue to analyze this research and make recommendations for ongoing changes to the law as supported by science.

NOTE: This report was approved unanimously on July 20, 2022, with the following task force members in attendance.

- Brendan F. Kelly, Illinois State Police (Chairman)
- State Senator Neil Anderson
- State Representative Kelly Cassidy
- State Representative Patrick Windhorst
- Thomas Benigno, Secretary of State, (Represented by Ms. Brenda Glahn)
- Khadine Bennett, American Civil Liberties Union
- Robert Collins Jr., Chief of Dolton, Illinois Association of Chiefs of Police
- Corinne Cantwell Heggie, Women's Bar Association of Illinois
- Kristi Hosea, Mothers Against Drunk Driving
- Donald Ramsell, Illinois Association of Criminal Defense Lawyers

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