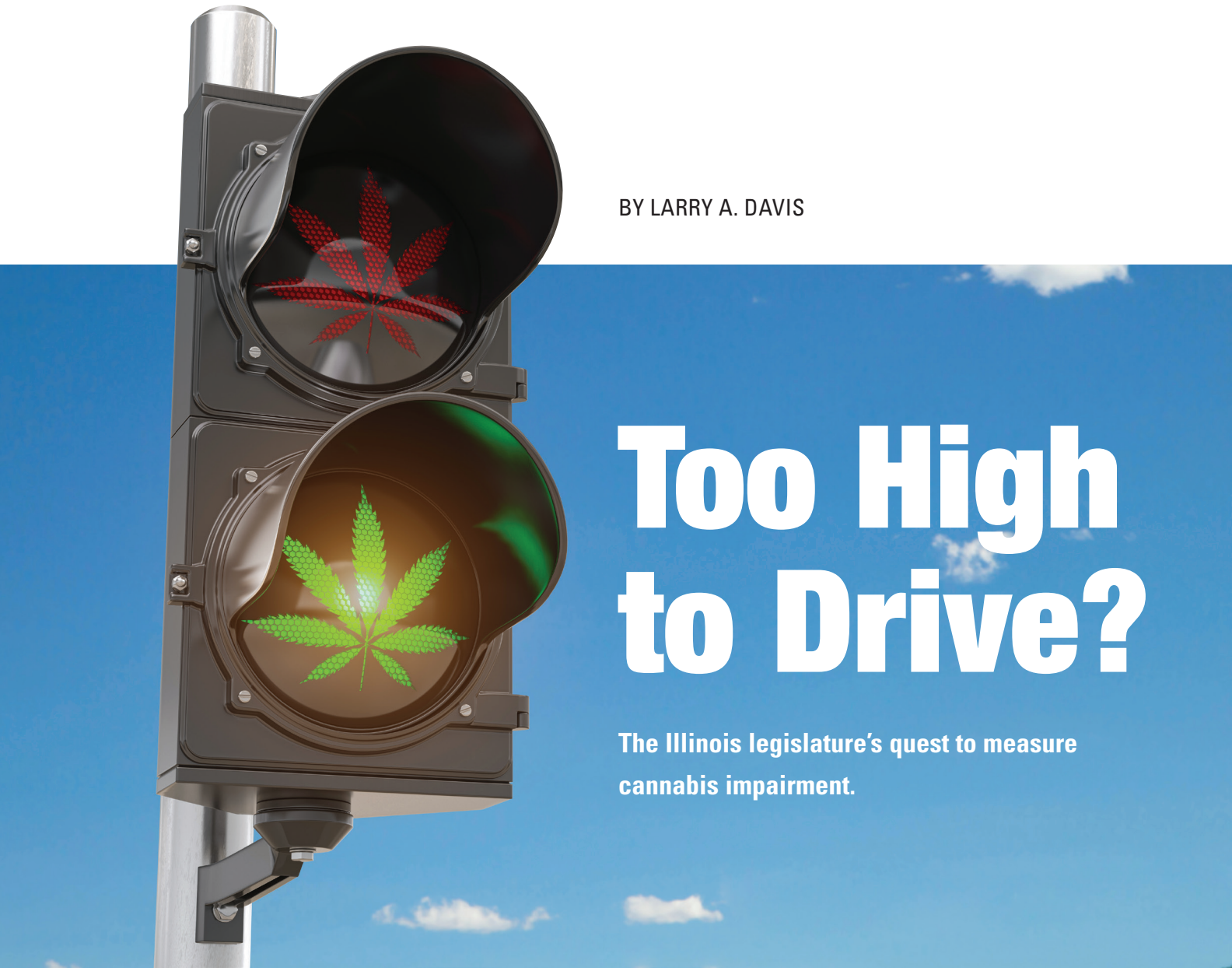

BY LARRY A. DAVIS

Too High to Drive?

The Illinois legislature's quest to measure cannabis impairment.

THE LEGALIZATION OF CANNABIS HAS STEADILY ACCELERATED in states across the country since California became the first state to permit its use for medical purposes with the passage of Proposition 215 in 1996. Illinois began to allow the use of cannabis for medical purposes on Jan. 1, 2014[1] and is now one of 33 states to do so. On Jan. 1, 2020, Illinois joined 10 other states to allow the cultivation, distribution, possession, and use of cannabis as a recreational drug.[2] All of

1. Pub. Act 98-0122 (effective Jan. 1, 2014).
2. Pub. Act 101-0027 (effective June 25, 2019); Pub. Act 101-0593 (effective Dec. 4, 2019).

LARRY A. DAVIS *is a principal of The Davis Law Group, P.C. in Northfield, which concentrates in DUI and traffic defense as well as administrative hearings before the Office of the Secretary of State. He is past chair and current member of the Traffic Laws and Courts Section Council.*

larry@illinoislawoffices.com

this has taken place against the background of federal law, which continues to designate cannabis as a schedule I illegal drug.[3]

While Illinois, together with these other states as well as countries, has been engaged in what some have argued is an unwise rush to legalization, there is no question that the speed of the legal acceptance of cannabis has outpaced the progress of scientific research into its use and the beneficial or harmful effects on the human body.

The lack of conclusive research into the use of cannabis is illustrated by pseudoscientific claims made about the benefits of cannabis derivatives such as cannabidiol (CBD), a nonpsychoactive substance marketed as CBD oil that can be readily sourced at your local mall, convenience store, or health food store. Mainstream food and beverage companies continue researching the infusion of CBD in products.[4] In the meantime, the U.S. Food and Drug Administration has warned that insufficient research has been conducted to conclude that CBD is safe or effective.[5] A similar lack of scientific consensus exists concerning driving under the influence (DUI) offenses, particularly in determining a statutory *per se* level of delta-9-tetrahydrocannabinol (THC), the psychoactive metabolite of cannabis, at which impairment can be presumed in a driver.[6]

The lack of science-based guidance on the safe use and proper regulation of cannabis is apparent in the inconsistent cannabis-based DUI laws that have been enacted in the course of the Illinois General Assembly's legalization of medical and recreational cannabis.

Readers should remember that DUI cases generally consist of two separate, distinct parts. The first consists of the civil statutory summary suspension (SSS) laws that provide for varying lengths of license suspension depending on whether a person refuses or fails testing.[7] The second comprises criminal DUI laws that carry potential incarceration, fines, costs, and separate license consequences.[8]

Evolution of cannabis-based DUI laws

Compassionate Use of Medical Cannabis Program Act. Legalization began with passage of the Compassionate Use of Medical Cannabis Pilot Program Act, later renamed the Compassionate Use of Medical Cannabis Program Act, ("Medical Cannabis Act") effective Jan. 1, 2014.[9] The Act permits the use of cannabis by registered users to treat and alleviate symptoms associated with qualifying medical conditions.[10]

At the time of its passage, a person could be charged with a cannabis-based DUI when driving or being in physical control of a motor vehicle while: 1) being under the influence of cannabis to a degree that renders the person incapable of safely driving; 2) being under the combined influence of alcohol and cannabis alone or with another drug, intoxicating compound, or methamphetamine to a degree that renders the person incapable of safely driving; or 3) having any amount of a drug,

3. 21 U.S.C. §§ 841(a)(1), 844(a), 812(b)(1).
4. See, *e.g.*, Annie Gasparro, *Adding CBD to Food, Drink Was a Hot Trend, Until the FDA Chimed In*, The Wall Street Journal (Jan. 9, 2020), https://www.wsj.com/articles/cloudy-regulation-slows-cbds-seep-into-food-and-drinks-11578574807.
5. See U.S. Food & Drug Administration, FDA Regulation of Cannabis and Cannabis-Derived Products, Including Cannabidiol (CBD), *available at* https://www.fda.gov/news-events/public-health-focus/fda-regulation-cannabis-and-cannabis-derived-products-including-cannabidiol-cbd.
6. National Highway Traffic Safety Administration, Marijuana-Impaired Driving: A Report to Congress (July 2017), *available at* https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812440-marijuana-impaired-driving-report-to-congress.pdf.
7. See generally 625 ILCS 5/11-501.1; *id.* at § 5/11-501.6; *id.* at § 11-501.9.
8. *Id.* at § 5/11-501.
9. Pub. Act 98-0122 (effective Jan. 1, 2014); Pub. Act 101-363 (effective Aug. 9, 2019).
10. 410 ILCS 130/5 *et seq.*; 77 Ill. Admin. Code § 946.10 (Debilitating Medical Condition).

TAKEAWAYS >>

- Statutes governing the recreational and medicinal use of cannabis lack science-based testing protocols to determine whether a driver is impaired because of cannabis use.
- The immunity from prosecution afforded to users of medicinal cannabis but denied to recreational users raises important legal issues, including due process and equal protection.
- The court has final say when determining the admissibility of evidence of impairment in a cannabis-related DUI arrest where conflict exists between the legislature and court.

THE LACK OF SCIENCE-BASED GUIDANCE ON THE SAFE USE AND PROPER REGULATION OF CANNABIS IS APPARENT IN THE INCONSISTENT CANNABIS-BASED DUI LAWS THAT HAVE BEEN ENACTED IN THE COURSE OF THE ILLINOIS GENERAL ASSEMBLY'S LEGALIZATION OF MEDICAL AND RECREATIONAL CANNABIS.

substance, or compound in the person's breath, blood, or urine resulting from the unlawful use or consumption of cannabis listed in the Cannabis Control Act.[11]

The third of these provisions allowed prosecution for DUI *regardless of whether the person was impaired* and became known among practitioners as the "trace law." Under the trace law, it made no difference as to the amount of cannabis present in the person's system or whether the cannabis was the nonpsychoactive metabolite, which has no effect on driving ability.

Over time, it became apparent to the proponents of the legalization of medical cannabis that a reexamination of the existing DUI framework was going to be required.

Immunity from prosecution for certain medical cannabis users. Since medical cannabis users could face criminal liability under the DUI trace law based upon the presence of cannabis, the Medical Cannabis Act granted these users immunity from prosecution unless a user actually was impaired due to its use.[12] However, the trace law continued to allow illegal nonmedical users to be prosecuted for DUI.

Legislative recognition of standardized field sobriety tests. Since 1981, performance tests have been widely used by law enforcement in DUI investigations. Three tests were developed through research conducted under the supervision of the National Highway Traffic Safety Administration (NHTSA) to assist law enforcement in recognizing *alcohol* impairment in drivers. These tests continue to consist of the Horizontal Gaze Nystagmus test (HGN), Walk and Turn test, and One Leg Stand test, collectively known as Standardized Field Sobriety Tests (SFSTs).[13] NHTSA also sponsored research that later resulted in the development of the Drug Recognition Expert (DRE) protocol consisting of a 12-part examination to detect drug impairment.[14] DRE training is now offered through the Drug Evaluation and Classification (DEC) program.

While the majority of traffic-enforcement officers regularly undergo training to administer SFSTs for alcohol, a relatively small percentage have received training as DREs primarily due to lack of funding, certified instructors, and available courses.[15]

With a large percentage of the law enforcement community lacking formal training to recognize drug impairment, which, in turn, negatively affects drug-based DUI enforcement and the ability of arrests to survive judicial scrutiny, a decision was made as part of medical cannabis legalization to legislatively recognize NHTSA-approved SFSTs as a determinant of cannabis impairment. This decision was made despite the fact that these tests relate to general substance impairment (including alcohol) and are not specific to cannabis.[16]

In fact, even when the DEC program is utilized by law enforcement, it is only designed to identify the category or categories of the drug-causing impairment as opposed to a specific drug, whether cannabis or any other drug. Interestingly, before this time, the legislature had never recognized SFSTs as determinative of alcohol impairment despite their validation and use in such cases since 1981.

NHTSA has not validated or approved the sole use of SFSTs to specifically establish proof of cannabis-based DUIs and, as of this time, continues to differentiate between SFSTs and DRE training.[17] As a result, the legislative "finding" that such positive NHTSA test results are determinative or evidence of cannabis impairment is without foundation.

A new type of statutory summary suspension. Prior to the Medical Cannabis Act, the only means of punishing a person's refusal to submit to testing or, in the alternative, failing testing was the SSS law. The SSS law has generally provided that an officer who had probable cause to

11. 625 ILCS 5/11-501.2(a-5).
12. *Id.* at § 5/11-501(a)(6).
13. See DWI Detection and Standardized Field Sobriety Test (SFST) Resources (2018), *available at* https://www.nhtsa.gov/standardized-field-sobriety-test-training-downloads.
14. See DRE Condensed Instructor Development Course - Participant Manual (Oct. 2016), *available at* https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/dre_idc_participant_manual_condensed-tag.pdf.
15. Megan Jones, *Drug Recognition Experts Will Play a Big Role in Detecting Drivers Who Are High Come Jan. 1, Police Say*, Chicago Tribune (Dec. 27, 2019), *available at* https://www.chicagotribune.com/suburbs/aurora-beacon-news/ct-abn-aurora-drug-recognition-experts-st-122920191227-lq34jrsz6n-h6hhlmy5nyd7hdnm-story.html.
16. See 625 ILCS 11-501.2(a-5).
17. See National Highway Traffic Safety Administration, DWI Detection and Standardized Field Sobriety Testing (SFST) Refresher, 4–5 (Feb. 2018), *available at* https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/sfst_refresher_full_instructor_manual_2018.pdf.

ISBA RESOURCES >>

- ISBA Cannabis Law Section, isba.org/sections/cannabislaw. Membership to this new section is free for all ISBA members for the 2020-2021 bar year.
- Ed Finkel, *Ready or Not, Cannabis Is Here*, 108 Ill. B.J. 24 (Jan. 2020), law.isba.org/36ALMwQ.
- Larry A. Davis, *Constitutionality of the* Per Se *DUI Cannabis Statute in Light of the Legalization of Recreational Use*, Traffic Law & Courts (Dec. 2019), law.isba.org/2XophYm.

believe that a person was driving under the influence could effectuate an arrest and then request the person to submit to blood, breath, or urine testing. Refusing or failing testing would result in the loss of the driver's license.[18] The existence of probable cause is constitutionally mandated under the Fourth Amendment to seize breath, blood, or urine from a suspect pursuant to arrest in the absence of consent.[19] Probable cause is typically obtained through the administration of a field sobriety physical performance test before an arrest; such testing is generally not considered a seizure under the Fourth Amendment.[20]

In light of the difficulty of establishing probable cause in a cannabis-related DUI investigation, particularly where the officer did not have drug recognition training, the Medical Cannabis Act created a new SSS law under section 11-501.9 that did not require probable cause to arrest but instead only required a reasonable suspicion that the driver was impaired by cannabis to request that the person submit to SFSTs, which, as stated earlier, the legislature recognized as determinative of cannabis impairment.[21] If the person refused testing or failed testing, a license suspension would ensue. Additionally, if, in the officer's opinion, the person failed an SFST, the officer would be deemed to have probable cause to arrest and could then request that the driver submit to chemical testing.

This was the first time that the legislature had mandated that a driver submit to SFSTs subject to license suspension. As stated, it was justified by the difficulty in identifying drug impairment when compared with alcohol impairment. However, inexplicably, this law only applied to persons who were registered medical cannabis users and did not apply to drugs other than cannabis. Those who were using cannabis illegally and who were suspected of driving under the influence had no obligation to submit to SFSTs and did not face a sanction for refusing or failing testing.

Trace law vs. a *per se* standard

After years of work, the ISBA was finally successful in obtaining the repeal of the cannabis DUI trace law effective July 29, 2016.[22] As noted earlier, the trace law was the only part of the DUI statute that did not require impairment and permitted prosecution regardless of the person's cannabis concentration or whether the metabolite present was psychoactive or inactive. Instead, it was agreed to establish *per se* limits of the psychoactive metabolite and create a rebuttable presumption of cannabis impairment.

The difficulty with establishing *per se* limits for cannabis-based DUIs is that unlike the presumptive impairment level of .08 for alcohol (a standard based upon a large number of recognized and accepted scientific studies), there is no scientific consensus as to the THC nanogram level at which a cannabis user is presumed to be impaired. Ultimately, the trace law was replaced by a law prohibiting having a THC concentration of five or more nanograms in a person's whole blood or 10 or more nanograms in a person's other bodily substance within two hours of driving or being in physical control of a motor vehicle.[23] These same limits have also been adopted by several other states that have legalized cannabis.

Due to concerns that users under the Medical Cannabis Act may develop a tolerance for cannabis, it was decided that a *per se* standard would be a poor indicator of impairment. As a result, the statute, which had previously exempted such users from the now-repealed trace law, granted registered medical users immunity from the *per se* cannabis DUI limits and continued the previous legislative scheme of only permitting prosecution in the event that the medical user actually was impaired.[24]

The new recreational use law and amendments to the law governing medical users

On June 25, 2019, the Cannabis Regulation and Tax Act became law permitting the recreational use of cannabis effective Jan. 1, 2020, and also made amendments to the DUI provisions of the Medical Cannabis Act and other cannabis-based DUI laws. What follows are highlights of the new cannabis-based DUI provisions for recreational use.

THE DIFFICULTY WITH ESTABLISHING *PER SE* LIMITS FOR CANNABIS-BASED DUIs IS THAT UNLIKE THE PRESUMPTIVE IMPAIRMENT LEVEL OF .08 FOR ALCOHOL (A STANDARD BASED UPON A LARGE NUMBER OF RECOGNIZED AND ACCEPTED SCIENTIFIC STUDIES), THERE IS NO SCIENTIFIC CONSENSUS AS TO THE THC NANOGRAM LEVEL AT WHICH A CANNABIS USER IS PRESUMED TO BE IMPAIRED.

Immunity from prosecution for medical cannabis users. The new law continues to grant medical cannabis users immunity from the *per se* provisions that prohibit driving or being in physical control of a vehicle with five nanograms or more of THC in whole blood or 10 nanograms or more of THC in other bodily substances.[25] Because recreational users are still considered to be presumptively impaired at these *per se* limits and subject to prosecution, the grant of immunity to medical users raises the question of whether the resulting legislative classification is arbitrary and would fail even a rational-basis test and therefore violate equal protection.

Other states that allow medical and recreational use and have *per se* limits

18. 625 ILCS 5/11-501.1.
19. *Birchfield v. North Dakota*, 579 U.S. __ (2016).
20. *People v. Mitchell*, 2017 IL App (2d) 160400-U.
21. 625 ILCS 5/11-501.9.
22. Pub. Act 99-697 (effective July 29, 2016).
23. 625 ILCS 5/11-501.2(b-5); *id.* at § 5/11-501(a)(7).
24. *Id.* at § 5/11-501(a)(7).
25. 625 ILCS 5/11-501(a)(7); *id.* at § 5/11-501.2(b-5).

do not provide any immunity.[26] If Illinois believes that cannabis users are presumptively impaired at these *per se* levels and pose a public-safety risk, then it is reasonable to argue that all drivers should be subject to these limits. If not, these *per se* provisions should be repealed in their entirety as a matter of public policy and as a matter of law.

The summary suspension laws. The SSS provisions governing cannabis-based DUIs have been amended by the new recreational law. There are currently two applicable SSS provisions in cannabis-based DUI cases: one based upon SFSTs and one based upon chemical testing.

1.) Statutory summary suspensions based on SFSTs under section 11-501.9. As discussed earlier, if the law enforcement officer has a reasonable suspicion (a lesser standard than probable cause) that the person is driving under the influence of cannabis, then SFSTs may be required by the officer to establish probable cause to arrest.[27] In addition to standard SFSTs, the statute now authorizes the administration of validated roadside chemical tests approved by NHTSA.[28] But the only type of roadside test claiming to measure cannabis at this time is saliva testing which, to date, has not been validated or approved by NHTSA.[29]

As discussed earlier, this type of SSS is administered before an arrest and is based on suspicion rather than probable cause. Prior to the current version of the statute, the obligation to submit to SFSTs was limited to medical cannabis users. It is now also applicable to recreational users. But the obligation to submit to SFSTs does not extend to summary suspensions based on alcohol or drugs other than cannabis.[30]

Driving relief during a suspension based upon this type of SSS, known as a monitored device driving permit (MDDP), is not available to persons with a suspension under this section. While the new recreational law repealed the previous prohibition preventing medical users from obtaining a MDDP, the legislature failed to amend the part of the MDDP statute that limits its relief to arrest-based suspensions under section 11-501.1—not 11-501.9.[31]

2.) Suspensions based on chemical testing. Section 11-501.1 is a SSS provision applicable to all DUIs, including those based on alcohol, cannabis, intoxicating compounds, controlled substances, and methamphetamine.[32] It is different from the section 11-501.9 SSS in that it: 1) is not limited to cannabis; 2) requires probable cause to arrest prior to testing; and 3) is based on chemical testing rather than SFSTs.

A person may be granted a MDDP for suspensions entered under section 11-501.1, provided that the person is a first-time offender.[33] But note that if the offender is suspended under both SSS sections (11-501.9 and 11-501.1) the person will not be eligible for a MDDP due to the lack of statutory authority for a MDDP for 11-501.9 suspensions as discussed above.[34]

Illegal transportation of cannabis in a motor vehicle. All drivers are prohibited from using cannabis or possessing any amount of cannabis in a motor vehicle unless it is contained in a sealed, odor-proof, child-resistant cannabis container. Passengers are likewise prohibited from possessing cannabis in a motor vehicle unless contained. Violations are designated as a class A misdemeanor and in the case of registered medical users may result in the loss of a medical cannabis card for two years following the termination of any sentence imposed by the court.[35]

Additionally, a conviction for illegal possession of cannabis in a motor vehicle by a registered medical user will result in a suspension of driving privileges. Oddly, there is no similar license sanction for illegal possession of cannabis by a recreational user.[36]

Commercial driver's licenses and cannabis-based DUIs. Commercial driver's license (CDL) holders face multiple risks to their driving privileges when they are arrested for DUI. The first is to their non-CDL or regular driving privileges, similar to the risk faced by any driver. They also face potential disqualification of their CDL privileges. CDL holders face these sanctions regardless of whether they are operating a commercial motor vehicle or non-CMV at the time of the offense. A CDL holder who refuses or fails testing faces a 12-month disqualification of CDL privileges. A CDL holder who is convicted or receives court supervision on the criminal DUI charge also faces a 12-month disqualification. A second-time offender faces a lifetime disqualification.[37]

It is notable that the law governing CDLs was not amended as part of the legislation legalizing cannabis for medical or recreational users. As a result of what appears to be an oversight, the disqualification statute continues to require that the cannabis use be "unlawful," which, for registered medical users and recreational users, is no longer the case.[38]

Conclusion

In its push to legalize cannabis in Illinois, the legislature has grappled with how to identify the cannabis-impaired driver through the use of summary-suspension-enforced testing and how to define such impairment. This effort has been substantially hampered by the lack of science-based studies necessary to answer these questions. As a result, we have a patchwork of inconsistent laws governing medical and recreational users, with little assurance that they are up to the task of arresting and removing cannabis-impaired drivers from the highway without entrapping innocent ones.

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26. See, *e.g.*, CO Rev Stat Sec. 42-4-1301(6)(a)(IV) (State of Colorado).
27. 625 ILCS 5/11-501.9.
28. *Id.* at § 5/11-501.2(a-5).
29. National Highway Traffic Safety Administration, *supra* note 6, at 10.
30. *Id.*
31. See 625 ILCS 5/6-206.1(a).
32. *Id.* at § 5/11-501.1.
33. *Id.* at § 5/11-500.
34. *Id.* at § 5/6-206.1(a).
35. *Id.* at § 5/11-502.1; *id.* at § 5/11-502.15.
36. See *id.* at § 5/11-502.1; *id.* at § 5/11-501.15; *id.* at § 5/6-206(a)(47); see also 92 Ill. Admin. Code § 1040.44.
37. 625 ILCS 5/6-514(a)(1), (2).
38. *Id.* at § 5/6-514(a)(2).

Notes for Practitioners

Evidence and scientific basis. The legislature's approval of the use of Standardized Field Sobriety Tests (SFSTs) in cannabis-based DUI arrests, despite the lack of scientific validation of SFSTs as evidence of cannabis impairment, raises issues for the practitioner.

In *Frye v. United States*, the U.S. Supreme Court held that a novel scientific method is only admissible if the technique holds general acceptance in the relevant scientific community.[39] While *People v. Bostelman* held that field sobriety tests were merely measures of balance, coordination, and basic cognition within the knowledge and experience of a layperson and therefore did not qualify as novel scientific testing requiring a *Frye* hearing for admissibility, the *Bostelman* case only dealt with alcohol impairment.[40] Whether *Bostelman's* holding extends to SFSTs administered in a cannabis-based DUI case is questionable. Validated drug-detection-performance tests such as the Drug Recognition Expert (DRE) protocol require the testimony of an officer trained in the administration of such tests.[41] Also of note: Since *Bostelman* was decided, one of the SFSTs—the Horizontal Gaze Nystagmus test—has been held to be subject to a *Frye* hearing and is now required to be administered by a qualified officer even in the context of an alcohol-related DUI.[42]

Statutes governing the admissibility of evidence may overlap the same power of the judiciary. But where conflict exists between the legislature and court, the court's determination of admissibility prevails under the Separation of Powers Clause.[43] A prosecutor's attempt to use SFSTs as evidence of impairment in a cannabis-related DUI arrest based on the legislative "finding" of approval may be subject to challenge to the extent that it violates the rules of evidence as determined by the court. Finally, consider that the legislative exercise of the state's police powers must be reasonable and not arbitrary or capricious. Its recognition of SFSTs as determinative of cannabis impairment without an adequate scientific basis may also be held to violate the proper exercise of the state's police powers and due process.

Challenging summary suspensions. If the legislative recognition of SFSTs is insufficient to establish probable cause to arrest for a cannabis-related DUI based upon due process and evidentiary issues, then a summary suspension based on such testing and the admissibility of such evidence would be subject to challenge.

Probable cause and due-process problems. Defense counsel should strongly consider challenging any *per se* cannabis-based DUI arrest. The legislature's declaration of the *per se* nanogram chemical levels of presumptive impairment without a reasonable scientific basis and the grant of immunity from prosecution to medical users but not recreational users may be challenged as a due-process violation of the state's reasonable exercise of police power and the Equal Protection Clause.

If the SFSTs authorized by the legislature are without a sound scientific basis to be determinative of cannabis impairment, their use to establish probable cause to arrest may constitute a due-process violation of the state's police powers. A person also could challenge a license suspension under this section since the suspension would involve the loss of a property right.[44]

Further, since the only current roadside test available for cannabis detection is saliva testing, which, to date, has neither been validated nor approved by the National Highway Traffic Safety Administration (NHTSA), its use as a basis for probable cause would be prohibited. Additionally, even if validated and approved, such chemical testing—absent consent—constitutes a Fourth Amendment seizure. Since the statute only requires that the person be "suspected of driving under the influence of cannabis" to conduct such testing (rather than the constitutional requirement of probable cause), it may be held to be unconstitutional.[45]

Practitioners in this field may also wonder whether the same issue may exist with the use of preliminary breath-screening tests—a chemical test taken from a suspect's breath prior to arrest in alcohol-DUI cases authorized by a statute that only requires a reasonable suspicion. However, that statute also provides that the subject may refuse testing, making testing subject to consent and removing an argument that testing was unconstitutional.[46] No such right to refuse without penalty exists for roadside testing in the context of cannabis-based DUIs.

Failing or refusing testing. There is no language in the statute exempting either a medical or recreational user arrested for a cannabis-based DUI from the chemical testing requirements imposed under section 11-501.1.[47] However, since a registered medical user is not subject to the *per se* limits of the DUI law, why should a medical user be subject to suspension for failing testing or for refusing testing, the results of which cannot be used?

The failure of section 11-501.1 to exempt registered medical cannabis users from its purview would appear to suggest that such users are subject to its provisions. But in light of their immunity from *per se* cannabis-based DUI standards it could be argued that this is not the case.

Commercial drivers. Since the Commercial Driver's License (CDL) statute requires that a cannabis-based DUI be a result of its *unlawful use or consumption* and cannabis use has been legalized, can a potential qualification be entered against the CDL holder who uses cannabis within the terms of the law? It would appear the answer is "no," opening the door to challenging such disqualification. IBJ

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39. *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923).
40. *People v. Bostelman*, 325 Ill. App. 2d 22 (2d Dist. 2001).
41. See *People v. Gocmen*, 2018 IL 122388; see also Ill. R. Evid.703 (effective Jan. 1, 2011).
42. The horizontal gaze nystagmus test held subject to a *Frye* hearing. See *People v. McKown*, 2010 IL 102372.
43. *People v. Peterson*, 2017 IL 120331; Ill. Const. Art. 2, Sec. 1 (1970).
44. See *Bell v. Burson*, 402 U.S. 535 (1971); *Dixon v. Love*, 432 U.S. 105 (1977); *Mackey v. Montrym*, 443 U.S.1 (1979).
45. 625 ILCS 5/11-501.1(a-5); U.S. Const., amend. XIV; Ill. Const. 1970, art. I, sec. 6.
46. See *People v. Rozela*, 345 Ill. App. 3d 217 (2d Dist. 2003); *People v. Taylor*, 2016 IL App (2d) 150634.
47. 625 ILCS 5/11-501.1; *id.* at § 5/11-501.5.