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THE IMPACT OF ILLINOIS' PROPOSED LEGALIZATION OF CANNABIS ON TRANSPORTATION LITIGATION

Illinois plans to legalize adult-use cannabis by January 1, 2020. Amendment 1 to Senate Bill 7, will allow Illinois residents to possess 30 grams of cannabis, 5 grams of cannabis concentrate and 500 milligrams of THC contained in cannabis-infused products. The bill will also allow for the expungement of misdemeanor Class 4 felony marijuana convictions and makes a special designation in the licensing process for "social equity applications," or businesses having a majority of owners or employees from communities that were "disproportionately impacted" by the war on drugs.

The proposed legislation may have a significant impact on past legal convictions and the state budget. According to the bill, the expungement process could be applicable to drug dealers found guilty of possession. According to the governor's budget, the bill may also account for approximately $170 million in new revenue from licensing fees.

The impact of the proposed legislation may have an even further impact than criminal records and new revenue, as the state may have to deal with a spike in drug impaired driving. Detection of marijuana in drivers involved in traffic crashes has become increasingly common, but is problematic due to limitations of drug-testing technology. Currently, Illinois prohibits anyone from driving with a detectable amount of THC in the body that makes a person unable to drive safely. 625 ILCS 5/11-501(a). The statute recognizes that actual impairment is not an element of the offense and that an individual can be convicted of the offense even if they had not ingested cannabis for several weeks. *Id.* An individual has also given implied consent to a chemical test, drug test or blood test, simply by the act of taking physical control of a motor vehicle on a public roadway. *Id.* Failure to comply with a request for a test, results in a driver's license revocation and suspension.

As an attorney who routinely handles transportation litigation, it has become increasingly important to analyze the THC levels of a driver after an accident. I have found that many toxicologists are unable to give opinions concerning whether an individual was driving impaired, based solely on the level of THC found in a blood test. However, Illinois' per se law approach to the prohibition of driving while impaired, is a simple approach for law enforcement. As a defense lawyer, we need to explore methods to better collect crash and citation data to enhance the analysis of individuals who are driving under the influence of drugs and we need legislation to assimilate to other states. In Colorado, a driver is presumed to be driving under the influence if the THC levels identified in the blood is in quantities of 5ng/ml or higher. This approach will set a minimum bar for arguments that an individual was driving impaired. Thankfully, Illinois still has to approve the proposed legislation, as it will also need to analyze many other laws that impact the daily lives of everyone in the state.