

CRIME AND CANNABIS: A Moving Target

- Cannabis Regulation and Tax Act
  - In June 2019, Gov. Pritzker signed 410 ILCS 705/1-1, et seq into law and became effective Jan. 1, 2020.
  - Effectively legalized recreational use of marijuana in Illinois.
- What about the Feds?
  - Still illegal pursuant to Federal law.
  - 11 states have enacted recreational cannabis laws.

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- How much can I get? (well not me personally but someone I know)
  - If 21, Illinois residents may possess 30 grams of cannabis, five grams of concentrate, or 500 milligrams of THC in cannabis infused product. (410 ILCS 705/10-10)
    - These are intended to be cumulative.
  - Non-IL residents can possess half of that in each category.

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- Cannabis is legal! Well kind of...
  - Possession above the limit still violates the Cannabis Control Act. 720 ILCS 550/4
    - Possession can be either constructive or actual.
      - Must legally possess and have purchased in order to satisfy these requirements.
      - More than 30 grams but not more than 100 = Class A misdemeanor
      - More than 100 grams but not more than 500 grams = Class 4 Felony
      - More than 500 grams but not more than 2,000 grams = Class 3 Felony

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- Manufacture/Delivery of Cannabis is still illegal.
  - "Manufacture" means the production, preparation, or processing of cannabis either directly or indirectly. 720 ILCS 550/2(h)
    - 2.5 grams to 10 grams = Class A misdemeanor
    - 10 grams to 30 grams = Class 4 Felony
    - 30 grams to 500 grams = Class 3 Felony
    - It just goes up from there.

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- What constitutes a delivery?
  - The actual, constructive or attempted transfer of possession of cannabis with or without consideration. 720 ILCS 550/3(d).
- What if I'm just getting some for a friend?
  - Casual Delivery" means the delivery of not more than 10 grams of any substance containing cannabis without consideration. 720 ILCS 550/3(b).
  - This is still illegal, but less serious as it gets treated like an illegal possession under Illinois law. 720 ILCS 550/6.

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- But I can use it anywhere right? Not so fast
  - Not in public.
  - Not near building entrances.
  - Not in proximity to someone under 21.
  - Never in a vehicle (driver or passenger).
  - Not in a private residence used for child care or social service care.

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- Home Grown for all of you DIY types.
  - If over 21, may grow up to 5 plants per household.
  - Plants must be locked in a separate room away from members of the household.
  - Not in public view.
- Transportation of Cannabis
  - If over 21, may only possess in a vehicle if:
    - "reasonably secured" in a sealed container.
    - Odor proof and Child-resistant.
    - Any violation is a Class A misdemeanor.

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- Driving Under the Influence of Cannabis: Unique challenge for GAL's.
  - Two Cannabis related DUI charges
    - Driving Under the Influence of Cannabis
    - Per se Cannabis DUI
- Driving Under the influence of Cannabis – Class A Misdemeanor
  - Identified by police officers through performance of Field Sobriety Tests, Non-Standardized Tests, and general observations.
  - Requires person to be actively impaired. (Think driving while actively smoking or having just smoked.)

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- Per Se Cannabis DUI
  - If you drive or are in actual physical control of a motor vehicle with 5 nanograms of THC in your blood or 10 nanograms of THC in other bodily fluid it's a Per Se DUI. (Just like .08 or greater BAC)
    - Doesn't require you to be impaired at the time. Herein presents the problem for GAL's.
    - THC is fat soluble and can remain in the system for up to 28 days.
    - The nanogram limit was taken from the State of Washington.
    - Not tested the same way .08 BAC was for DUI Alcohol.
    - Metabolized different than alcohol. Meaning 5 nanograms doesn't necessarily mean impairment.

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### CRIME AND CANNABIS: A Moving Target

- Should cannabis consumption impact your decision? Yes, but not by itself.
- 410 ILCS 705/10-30 Discrimination prohibited
  - (a) "Neither the presence of cannabinoid components...nor conduct related to the use of cannabis or the participation in cannabis-related activities lawful under this Act by a custodial or noncustodial parent, grandparent, legal guardian, foster parent, or other person charged with the well-being of a child, shall form the sole or primary basis or supporting basis for any action or proceeding by a child welfare agency or in a family or juvenile court..."
  - UNLESS...it presents "an unreasonable danger to the safety of the minor or otherwise show the person to not be competent as established by clear and convincing evidence." *Id.*
    - Examples include under the influence while caring for the minor;
      - Allowing the minor to use marijuana;
      - Use marijuana in the presence of the minor; etc...
- ONLY PROTECTS LAWFUL USAGE.

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