

Cannabis Enforcement Following Legalization on January 1, 2020

12/17/19



The purpose of this bulletin is to provide an overview of the cannabis enforcement framework following the passage of recreational cannabis legalization. These changes are effective and enforceable on January 1, 2020.

I. Cannabis Legalization: Personal Use and Home Grow Cannabis Plant Limits

Lawful Personal Possession Amounts: The cannabis legalization law allows Illinois residents age 21 and older to possess lawfully:

- Up to 30 grams of cannabis leaf;
- Up to 500 mg of THC-infused products; and
- Up to 5 grams of cannabis concentrate

For non-Illinois residents age 21 and older, the above thresholds are cut in half, and they can possess lawfully:

- Up to 15 grams of cannabis leaf;
- Up to 250 mg of THC-infused products; and
- Up to 2.5 grams of cannabis concentrate

Home Grow of Cannabis Plants: Illinois residents who are qualifying patients with an Illinois medical cannabis registry identification card can grow up to 5 cannabis plants over 5 inches tall within their residence. The cannabis plants and any cannabis leaf in excess of 30 grams must remain outside of public view within a closed, locked space on the residential property.

If a person does not have an Illinois medical cannabis card, it remains illegal to grow any cannabis plants. If a person without an Illinois medical cannabis card is caught growing up to 5 plants, it is a civil law violation.

Any person caught growing *more than 5* cannabis plants, with or without a medical cannabis card, is subject to a felony, with increasing penalties based upon the number of cannabis plants recovered. *See 720 ILCS 550/8.*

You should be aware that other jurisdictions have experienced an increase in the number of unlawful cannabis "home grow" operations following legalization.

II. Unlawful Use of Cannabis

A person violates the Act when he or she *uses* (smokes, ingests, vapes) cannabis, cannabis concentrate, or cannabis product in any of the following circumstances:

- In any "public place," where the person can be "reasonably expected to be observed by others"
 - o A "public place" *includes* any government building or publicly owned land (i.e., parks, sidewalk or railcar, government building lobby)
 - o A "public place" *excludes* a private residence, whether the person is in his or her home or is within another's residence
 - o Note that this is distinct from the "public way" – a "public place" can be on private property where the person reasonably expects to be observed by others

Ex. 1 – R/O is called to a residential street for persons loitering and partying on the sidewalk. As R/O drives onto the block, he observes a group of individuals standing within the front yard of a residence. As R/O approaches, he smells the odor of cannabis and observes a person holding a lit joint. R/O asks the subject if he is smoking cannabis, and the subject replies, "Yes, it's legal now! I'm 21, and I'm on my property." R/O informs the subject that it remains illegal to use cannabis in any public place where he can be expected to be observed by others, and that in the future he must use cannabis outside of public view.

- In any motor vehicle;
 - o Note – use of cannabis by a driver within a motor vehicle has a state level Class A misdemeanor charge under the Vehicle Code, 625 ILCS 5/11-502.15(a)
- On school grounds, or within a school bus, unless the person has an Illinois medical cannabis card;
- In a correctional facility;
 - o Note – state criminal penalties also apply for bringing cannabis into a penal institution, 720 ILCS 5/31A-1.1 (Class 3 felony)
- In a residence used to provide licensed child care;

Smoke-Free Illinois Act. Smoking or vaping cannabis and cannabis products remains unlawful anywhere that it is illegal to smoke under the Smoke-Free Illinois Act. Generally, this includes within 15 feet and inside of any

building that is generally open and available for public use, and any place of employment. Examples include but are not limited to bars, restaurants, retailers, concert halls, hospitals, healthcare facilities, sports arenas, private clubs, theatres, entertainment venues, non-smoking areas of hotels, and any government or publicly owned building.

- Note – the unit of local government may have authorized limited "adult use consumption licenses" to licensed cannabis dispensaries and retail tobacco ("hookah") shops for persons over 21. Otherwise, on-site cannabis use remains prohibited for a business or retail location.

III. Unlawful Possession of Cannabis

With the authorized state and municipal violations taken together, enforcement against persons for simple possession of cannabis will vary based upon the possessor's age, generally:

- Persons over 21 are subject to criminal possession penalties under the state Cannabis Control Act if in excess of the possession limits, and can also be cited for municipal violations
- Persons age 18-20 are subject to both civil law violations and municipal ordinance violations for simple possession of any amount of cannabis
- Juveniles under 18 are subject only to civil law violations for simple possession of **any** amount of cannabis, but cannot be cited with a municipal violation for use or possession (*See Section IV*)

State Criminal Possession Offenses, Persons 21 and Older: A person age 21 and older who possesses cannabis in excess of the "personal possession" limits will remain subject to the criminal penalties in the Cannabis Control Act, under 720 ILCS 550/4. On a first offense, simple possession of more than 30 grams is a misdemeanor, and more than 100 grams is a felony.

State Civil Law Violations, Persons Under 21: It is unlawful for a person under 21 to possess *any amount* of cannabis, subject to a civil law violation under the Cannabis Control Act, 720 ILCS 550/4(a). Following legalization, the escalating criminal penalties for simple possession of cannabis *do not apply* to persons under 21. Under state law, only the civil law citation is available for simple possession of cannabis for persons under 21. Where evidence of selling exists, however, the penalties for possession with intent to deliver and delivery of cannabis remain unchanged and are enforceable for illegal sales and transfers of cannabis regardless of age.

Additionally, if possessing cannabis while driving a motor vehicle, a person under 21 may also be subject to driver's license suspension under the Illinois Vehicle

Code, 625 ILCS 5/6-206.

As previously discussed, persons age 18-20 who are found in underage possession of cannabis can be cited for a civil law violation under 720 ILCS 550/4(a).

IV. Juvenile Cannabis Enforcement

State Civil Law Violations, Juveniles Under 18: It is unlawful for a person under age 18 to possess *any amount* of cannabis, subject to a civil law violation under the Cannabis Control Act, 720 ILCS 550/4(a). If possessing cannabis while driving a motor vehicle, the person under 18 may also be subject to driver's license suspension under the Illinois Vehicle Code.

The Juvenile Court Act was amended to prohibit taking a minor into a municipal lockup, jail, or corrections facility solely for underage consumption or underage possession, 705 ILCS 405/5-401(3). As such, juveniles who are arrested solely for possessing cannabis unlawfully ***will be cited with a civil law violation only***, and *not taken into custody for processing* at a district station or the Juvenile Intervention Support Center ("JISC") for other municipal violations related to underage use or possession of cannabis.

Criminal penalties for delivery or possession with intent to deliver cannabis remain enforceable against juveniles, 720 ILCS 550/5.

V. Additional Cannabis Violations Related to Persons Under 21

False Identification: Using false identification to purchase cannabis or to enter into a cannabis establishment by a person under 21 is a Class A misdemeanor. *See* 410 ILCS 705/10-20(b).

Parent or Guardian Social Host Prohibition: A parent or guardian who allows an underage invitee under age 21 into the parent or guardian's residence, vehicle, or watercraft, and knowingly permits the consumption of cannabis therein, is guilty of a Class A misdemeanor. It is a Class 4 felony if death or great bodily harm results. *See* 410 ILCS 705/10-15(d).

Facilitating the Use of Cannabis: It is unlawful for any person to facilitate the use of cannabis by a person who is under the age of 21, unless that person has an Illinois medical cannabis card.

It is unlawful for any person to allow another person under age 21 to purchase, possess, use, process, transport, grow, or consume cannabis in any amount or

in any form, unless the person under 21 has an Illinois medical cannabis card or is authorized under the Community College Cannabis Vocational Pilot Program.

Transferring Cannabis to Persons Under 21: It is unlawful to transfer cannabis to a person under 21, unless that person has an Illinois medical cannabis card.

- Note – the state criminal penalties for unlawful delivery of cannabis also apply, under 720 ILCS 550/5.

VI. Cannabis Violations in Vehicles

State Vehicle Code: A new Class A misdemeanor penalty exists under the Vehicle Code, which prohibits:

- A driver from *using* cannabis within the passenger area of a motor vehicle upon a highway;
- A driver from *possessing* cannabis within any area of a motor vehicle upon a highway, unless the cannabis is in a container that is:
 - o Sealed
 - o Odor-proof, and
 - o Child-resistant
- A passenger from *possessing* cannabis within the passenger area of a motor vehicle upon a highway, unless the cannabis is in a container that is:
 - o Sealed
 - o Odor-proof, and
 - o Child-resistant
- See 625 ILCS 5/11-502.15
 - o Note – these elements also mirror the current state law provisions for unlawful lawful possession of cannabis in a motor vehicle by an Illinois medical cannabis cardholder, under 625 ILCS 11-502.1;

Ex. 2 – R/O conducts a traffic stop of a vehicle on a public street. As R/O approaches, she observes the smell of cannabis emanating from the vehicle. In plain view in the console, R/O observes a plastic bag containing cannabis. The subject driver produces a valid driver's license showing he is over 21, and R/O determines that there is no indication that the subject is driving under the influence. R/O informs the subject driver that he must transport cannabis in a sealed, odor-proof, and child-resistant container while driving in a car. R/O may cite the subject with a violation of 625 ILCS 5/11-502.

VII. DUI Cannabis Enforcement

The state cannabis legalization law updated a provision to the Illinois Vehicle Code recognizing "roadside chemical tests" (in addition to the current standard field sobriety tests) for DUI investigations into an impaired driver under the influence of cannabis. At this time, there are no validated roadside chemical tests that are approved by the National Highway Traffic and Safety Administration, and admissible in the Illinois courts that have gained general acceptance in the scientific community.

Unless and until the technology to readily administer a roadside chemical test for cannabis impairment gains scientific and legal reliability, you should continue to use currently accepted indicators of cannabis use or impairment when investigating a DUI. Examples include but are not limited to –

- Divided Attention Tests (i.e., one leg stand, walk and turn)
- Behavioral Indicators (i.e., nervousness, speech)
- Smell or presence of cannabis
- Admissions of cannabis use
- If a driver has 5 nanograms of THC in the blood, there is a presumption of impairment.

VIII. Police Canine Searches

If a canine is imprinted for cannabis, the dog does not have to be retired. In other words, the law does seem to make provisions to permit the continued use of canines in connection with vehicle stops because it requires cannabis in vehicles to be transported only in "odor proof" containers. Thus, if the canine sniffs cannabis it can be argued it is contraband *per se* (because it is not in an odor proof container).

Going forward, imprinting for cannabis is optional. The Illinois Law Enforcement Training and Standards Board (ILETSB) has statutory authority for the certification of canines (50 ILCS 705/10.12).

IX. Cannabis in Rental Property

Landlords can prohibit marijuana use on their property. If an individual calls the police about a violation, and law enforcement responds and discovers the smell of marijuana smoke, the violation should be seen as a violation of the landlord's policy and not a violation of the law. The individual should be advised to file a complaint with the landlord.

X. Cannabis in Federally Funded Public Housing

The United States Department of Housing and Urban Development (HUD) prohibits any use and/or possession of cannabis in public housing because HUD is subsidized with federal funds and cannabis is still illegal under federal law.

XI. Illegal Cannabis Sales

Unlawful Delivery or Possession with Intent to Deliver: The unauthorized sale, delivery, or possession with intent to deliver cannabis remains illegal under state law, subject to existing penalties in the Cannabis Control Act. *See 720 ILCS 550/5 et seq.*

The sale and transfer of cannabis outside of the newly regulated and licensed cannabis cultivators and dispensaries remains unlawful and subject to enforcement under existing state-level penalties. The unlawful delivery and possession with intent to deliver penalties *are applicable regardless of the dealer's age.*

XII. Impoundment of Vehicles for Cannabis Violations – Unlawful Sale and Purchase

Vehicles are still subject to seizure and impoundment provisions to initiate asset forfeiture proceedings for a *felony violation* of the Cannabis Control Act, 720 ILCS 550/12.

XIII. Cannabis Expungement Provision

For officer awareness, there is a provision within the state law that requires the Illinois State Police and local law enforcement agencies to automatically expunge arrest records and convictions for the possession, delivery, or intent to deliver less than thirty (30) grams of cannabis where:

- The arrest did not also involve a violent crime;
- More than one year has elapsed from the date of the arrest; and
- No charges have been filed, charges were dismissed, or the defendant was acquitted

Additionally, the law creates a process for individuals to obtain a pardon through the Prisoner Review Board for Class 4 felony convictions under the Cannabis Control Act, and allows State's Attorneys to petition to vacate and expunge Class 4 felony convictions as well. Officers should be aware moving forward that criminal history records involving Class 4 felony and misdemeanor cannabis arrests and convictions may not

be entirely complete.

Law enforcement agencies must automatically expunge qualifying records pursuant to the following schedule:

1. Records created prior to the effective date of the Act, but on or after Jan.1, 2013, shall be automatically expunged prior to Jan. 1, 2021.
2. Records created prior to Jan. 1, 2013, but on or after Jan. 1, 2000, shall be automatically expunged prior to Jan. 1, 2023.
3. Records created prior to Jan. 1, 2000 shall be automatically expunged prior to Jan. 1, 2025.

XIV. Drug Paraphernalia Redefined

The state criminal penalty for possession of drug paraphernalia was amended to *exclude* cannabis paraphernalia from the offense. As such, the penalty for possession of drug paraphernalia now applies only to paraphernalia used or intended to be used with controlled substances other than cannabis. *See 720 ILCS 600/3.5.*

XV. Cannabis Use for Law Enforcement

Law enforcement agencies may prohibit on duty and off duty use of cannabis.