

Marijuana initiative wording complicates DUI prosecutions

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PHOENIX (CBS5) - A single paragraph 13 pages into the Regulation and Taxation of Marijuana Act, also known as Arizona's Prop 205, may create an insurmountable obstacle to prosecutors who are trying to convict people of driving under the influence of marijuana.

"This provision protects marijuana-using drivers unlike any other substance-using drivers within the state of Arizona," said Bill Montgomery, who is the Maricopa County Attorney and a vocal opponent of the initiative.

The voter initiative is set to appear on November's ballot and would legalize recreational marijuana if passed. But it is raising real concerns in the law enforcement community. The main problem is that states that have legalized recreational marijuana have seen the number of marijuana-impaired drivers rise substantially. But the Arizona initiative takes away one of the main tools used to prosecute these cases.

The initiative is 19 pages long. Page one contains a line, which reads, "Driving while impaired with marijuana remains illegal."

But 13 pages in, the initiative stipulates, "A person may not be penalized by this state for an action taken while under the influence of marijuana or a marijuana product solely because of the presence of metabolites or components of marijuana in the person's body or in the urine, blood, saliva, hair or other tissue or fluid of the person's body."

Montgomery says that translates to mean that THC in the suspect's blood, alone, will not be enough to convict that suspect of driving under the influence. Investigators would need to prove impairment through observations, like a field sobriety test, which suspects are not required to perform.

"You could say that residential burglary remains illegal, but then, later on, you say that you can't use fingerprints. You've just taken away the means by which I can prosecute people and hold them accountable for that," said Montgomery.

In alcohol-related DUI cases, if the suspect refuses a field sobriety test, the investigating officer may be able to get a warrant for a blood test. And if the blood test comes back with a blood alcohol level of .08 or higher, the suspect is presumed to be legally impaired, field sobriety test or not. Colorado and Washington, which have both legalized recreational marijuana, established a threshold for marijuana impairment of 5 ng/ml of THC in a person's blood. But the Arizona initiative contains no such established level.

"This initiative creates immunity for those marijuana-impaired drivers," said Montgomery.