

As legalization stalls at state level, local governments tackle marijuana policy

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Nearly a decade after Colorado became the first state to legalize recreational marijuana, the debate has spiked in Wisconsin as more states join the pro-marijuana ranks.

Some local units of government have made moves to decriminalize the drug as progress at the state level appears unlikely.

Gov. Tony Evers proposed legalizing medical and recreational marijuana in his state budget plan, but GOP leaders plan to scrap the proposal as they craft a budget of their own.

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But Evers is still pushing the idea.

“As you know, I am proposing that we legalize marijuana and that we regulate and tax it just like we do with alcohol,” Evers said during a budget listening session this week. “An important piece of this proposal would be to modify criminal penalties for marijuana-related crimes to align with legalization, and create a process for individuals serving sentences, or previously convicted of marijuana-related crimes, to have the opportunity to repeal or reduce their sentences for non-violent, minor offenses.”

Assembly Speaker Robin Vos has previously stated his caucus would not support recreational marijuana proposals, but members may draft their own measures

regarding medicinal use. Any consideration from Republicans on the issue would occur in a separate bill outside the governor's state budget.

"I've supported [medical marijuana], I've been as public as I can be. I think I was one of the first legislators in the Capitol to say I'm open to that idea," said Vos during a virtual WisPolitics.com luncheon in January. "I'm still trying to find a way where we can do it where people accept the fact that we are not going to legalize recreational marijuana."

But GOP Senate Majority Leader Devin LeMahieu on Thursday told a WisPolitics.com virtual luncheon that even a separate medicinal marijuana bill couldn't get approval from Republican senators.

"First of all, we don't have support from the caucus," said LeMahieu. "And that's pretty clear that we don't have 17 votes in the caucus for medicinal purposes, or recreational purposes, to legalize it."

He also said the state should wait for FDA approval before allowing it for medical purposes.

Such approval could be long in the coming. Marijuana is listed as a Schedule 1 drug— those "with no currently accepted medical use and a high potential for abuse"— which presents barriers to researching it for medical use.

'De-facto decriminalization' or 'unregulated chaos'?

With legalization at an impasse, various Wisconsin jurisdictions are downgrading marijuana enforcement and prosecution.

In Wisconsin, any possession of marijuana is a misdemeanor and punishable by up to six months in prison and a \$1,000 fine.

But in some cities, possession and consumption are no longer a crime — as long as users follow guidelines set by some counties and municipalities.

Milwaukee County passed a proposal in late March that reduced marijuana fines to \$1. The Milwaukee Common Council is considering a similar move.

Madison last November decriminalized the possession and use of up to 28 grams of marijuana or cannabis derivatives. And the Dane County district attorney told

Madison police not to refer marijuana cases for prosecution if they involve 28 grams or less.

The Badger Institute, a Madison-based conservative think tank, in a [policy brief](#) also notes that Appleton, Eau Claire, Green Bay and Racine have decriminalized possession of small amounts of marijuana.

The Badger Institute report also pointed to fewer possession charges, minimal jail time and almost no prison sentences for marijuana in Wisconsin, unless the charge was accompanied by other offenses.

The brief shows only 0.23 percent of all Wisconsin prison admissions were for marijuana cases that did not include more serious crimes in 2019. According to the brief, only 16 percent of marijuana cases charged in circuit court resulted in jail or prison time.

The report, authored by policy analyst Julie Grace, said lesser charges and sentences — combined with deferred prosecution agreements, diversion programs, and marijuana possession decriminalization by local municipalities — have resulted in “de facto decriminalization of marijuana use throughout much of the state.”

But legal pot proponents, such as Alan Robinson of WiNORML, disagree. WiNORML has partnered with state Sen. Melissa Agard, D-Madison, on legalization efforts.

“As to the question of whether or not marijuana is already decriminalized in Wisconsin, the answer is a resounding no,” Robinson said.

Robinson pointed to the underbelly of the marijuana industry as a prime reason to pursue legalization.

The nature of how marijuana is sold and distributed will happen with or without guidance by the state government, Robinson noted, but he argued that some of the substance’s most noteworthy problems could be solved through regulation.

“We’re in a state of unregulated chaos. We know that drug dealers don’t check IDs. We know that bud-tenders are required to in legal states. If you want to keep drugs away from children, then you take the chaos element away,” Robinson said. “One of the things that we’ve seen in states that have legalized it that [it] repairs communities that have been most negatively impacted by cannabis prohibition.”

Polling has shown broad public support for marijuana legalization in Wisconsin. An April 2019 Marquette University Law School [poll](#) found that 59 percent of voters say the substance should be legalized for recreational purposes while 36 percent say it should not be made legal; 83 percent of voters said marijuana use for medical purposes with a doctor's prescription should be legal, with 12 percent saying it should not be.

Two Republican lawmakers proposed legislation in March that would significantly reduce the state penalty for possession of up to 10 grams of marijuana.

Sen. Kathy Bernier, R-Lake Hallie, and Rep. Shae Sortwell, R-Two Rivers, noted in a memo to fellow lawmakers that [Assembly Bill 130](#) and [Senate Bill 164](#) wouldn't legalize marijuana, which is still illegal at the federal level.

It would reduce the current \$1,000 state fine to a \$100 forfeiture for possessing or attempting to possess up to 10 grams of marijuana. It also would eliminate the up to six-month prison sentence only with the increased penalty in current law for a second or subsequent violation involving up to 10 grams.

If approved, the bill would both change the current state penalties for marijuana possession and supersede smaller fines now enforced in some municipalities. The Assembly and Senate received fiscal estimates for the bills, and neither bill has been scheduled for a public hearing.

The bill currently has four co-sponsors in the Assembly including Robert Brooks, R-Saukville; Joel Kitchens, R-Sturgeon Bay; David Bowen, D-Milwaukee, and Nick Milroy, D-South Range. There are currently no co-sponsors in the Senate.

Agard, a longtime advocate of legalizing recreational and medicinal marijuana use, has argued that the substance might be legalized nationally first by a U.S. Supreme Court decision.

"We're an island of prohibition," said Agard. "[It] did not work with alcohol and it will not work with cannabis."

See a companion article on the law enforcement challenges marijuana legalization could present [here](#).