

Marijuana legalization can present law enforcement challenges

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As Wisconsin debates the legalization of marijuana, law enforcement officials in Michigan — Wisconsin's first neighbor to legalize recreational use — note challenges in enforcing marijuana-related DUIs and addressing break-ins linked to homes with grow operations.

Michigan voters made medicinal use legal in the state in 2008. Lawmakers passed recreational use in early November 2018 with implementation in December 2019.

Minnesota legalized medicinal use in 2014, and recreational marijuana legislation is working its way through the committee process, bringing it closer to a possible vote. In 2019, Illinois legalized recreational and medicinal use of the substance starting in 2020, and dispensaries are now operating just across the border.

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Iowa's Legislature has yet to take up a bill on either type of use.

Seventeen states and the District of Columbia have legalized adult recreational marijuana use. Additionally, 36 states and the District of Columbia have legalized medical marijuana use.

Senate Majority Leader Devin LeMahieu, speaking at a WisPolitics.com luncheon, said he felt no pressure because of the action of neighboring states, but he did raise several law enforcement issues.

"They just have concerns over trying to enforce it, when they pull over people to figure out if they are driving impaired under marijuana," he said.

According to Nate Dreckman, president of the Badger State Sheriffs Association, sheriffs across Wisconsin have varying views on medicinal marijuana legalization. He is confident that most sheriffs across the state do not support recreational marijuana legalization.

Wisconsin Professional Police Association Executive Director Jim Palmer says he believes marijuana legalization will eventually come to Wisconsin.

"I don't know when that will be," Palmer said. "But I think it is critically important to learn from the experiences of our neighbors."

Special training recommended to spot marijuana-impaired driving

Matt Saxton, executive director of the Michigan Sheriffs Association Executive Director and a former county sheriff, has noted a spike in people driving under the influence of marijuana since recreational use was legalized.

But he said he doesn't believe it increased DUIs overall and part of the spike may be due to increased recognition by officers and deputies who are receiving new training.

"Probably the increase is that it is being looked for," Saxton said. "In the past, if someone had been driving under the influence of alcohol and had THC in their system they would have only been charged with drunk driving as opposed to drugged driving."

The most recent Michigan impaired driving audit report shows the number of alcohol or drug DUI arrests fell from 31,856 in [2018](#) to 30,626 in [2019](#). This drop in DUI arrests is a part of a decade-long decline in arrests since 41,883 people were arrested in Michigan in 2010, according to an [MLive.com](#) article.

Minnesota and Illinois have seen similar trends. Before legalization of medical marijuana in Minnesota, there were 25,715 arrests for alcohol or drug-related DUIs in [2013](#), according to a report from the Office of Traffic Safety that year. The same office found that the number of arrests for DUIs in the state has fallen to 24,862 by [2017](#), which is the most recent year data are available.

In Illinois, arrests for alcohol or drug-related arrests have fallen from 32,450 in 2017, according to the [Illinois Criminal Justice Information Authority](#). That fell to 26,224 in 2019, according to the state's [2021 DUI Factbook](#). Illinois DUI statistics for

2020, the first year where marijuana was legal in the state, both recreationally and medicinally, are not available yet.

The state of Michigan now has various sheriff and police departments with drug recognition experts on staff, according to Hilson.

“Law enforcement did a really good job preparing themselves for [legalization],” Hilson said. “Our traffic resource prosecutor and myself spent several months giving presentations on what to look for and we now have qualified drug recognition experts across the state.”

These drug recognition experts receive an in-depth education about different drug categories, human physiology and the signs and symptoms of someone driving under the influence, according to the [Michigan State Police website](#).

Law enforcement officers in Michigan also learn how to administer a different dexterity test for marijuana than alcohol.

In 2017, such officers in five counties participated in a state-led pilot program to administer roadside saliva tests to determine whether a driver was under the influence of marijuana.

Currently, any county with a qualified drug recognition officer can administer the roadside tests. While any officer in the county can administer the dexterity or saliva tests to a driver in Michigan, only the drug recognition officers are qualified to testify in court about these practices, according to Hilson.

In Wisconsin, most officers are not trained the same way as Michigan officers, according to Palmer.

Palmer said the lack of training and roadside tests are reasons why marijuana should remain illegal in Wisconsin, at least for the time being.

Duplicating the drug recognition training program in Wisconsin, even without imminent marijuana legalization in the state, could help law enforcement prepare for the future and deal with current cases, according to Palmer.

Dreckman agreed with Palmer that introducing new law enforcement practices in regards to policing marijuana would be beneficial.

“In our agency, for example, we got a drug recognition expert,” said Dreckman. “And additionally the training regarding DUI enforcement is starting not only to focus more on marijuana use, but other drug use as well.”

Impairment standards vary by state

In Michigan, there is a zero-tolerance policy in place for driving with THC in your system. In Illinois, a driver can have a limit of 5 nanograms of THC per milliliter of blood. Delta-9 THC is the primary psychoactive compound that gives marijuana users a high.

According to 2019’s [Wisconsin Act 68](#), the current legal limit of delta-9 THC in a person’s blood in Wisconsin is 1 nanogram/ml.

According to a [1995 Johns Hopkins University study](#), marijuana with a THC concentration of 1.75 percent, or 17.5mg/g, can cause a person to have 57 nanograms per milliliter of blood after just four puffs of smoke. Blood levels decrease rapidly to single digits after an hour. But, marijuana strains at dispensaries today are more potent, varying in delta-9 THC concentration levels between the low teens and high 20s.

The level of delta-9 THC in a person’s blood is not only related to the concentration of delta-9 THC in the strain of marijuana they are smoking. It can also be affected by how often people smoke, how much they smoke at one time, and their weight.

A new [study](#) released by the Lambert Initiative for Cannabinoid Therapeutics in Sydney, Australia this year found that driving-related skills recover after about five hours if a driver smokes 20mg of delta-9 THC. A 1-gram joint of marijuana with 20 percent THC contains 200 milligrams of the substance.

In a [2019 study](#) by the Canadian Institutes of Health Research, drivers with less than 5 nanograms of delta-9 THC per milliliter of blood were no more likely to get into a driving accident than people with zero nanograms per milliliter. Drivers with equal to, or greater than, 5 nanograms of delta-9 THC per milliliter had a “statistically non-significant increase” in accidents compared to drivers with zero nanograms per milliliter, according to the study.

According to Dreckman, this is the challenging part of legalization, because so far there is no standard level that signifies impairment like we have for alcohol.

“The issue is, is there is no per se ‘limit’ of nanograms you can have in your blood and still be considered non-intoxicated from it,” he said.

Dreckman added that he thought it was important that a limit is found before Wisconsin moves forward with marijuana legalization of any kind.

Home-growing can invite break-ins, peeve neighbors

In Michigan, several problems related to legalization of weed stem from people growing marijuana at their homes, according to Saxton. Efforts were made to get comments from Illinois officials in similar positions, but they didn’t respond.

Saxton said excessive home growing has led to a rise in the black market, because groups of people buy seeds and grow plants that they are supposed to be using and then sell their marijuana on the black market for less than dispensaries.

Saxton said sheriffs have seen a rise in home break-ins in many areas across the state, while studies from the National Police Foundation found similar trends.

“We saw an increase in [Calhoun County] thefts of legal grows of marijuana,” Saxton said. “We saw an increase of break-ins of occupied homes as well as of unoccupied properties, like barns, and that was a trend across the state that I heard from talking with other sheriffs.”

DJ Hilson, the current district attorney for Muskegon County and former president of the Prosecuting Attorneys Association of Michigan, said the accumulation of crime statistics related to marijuana home-growing is ongoing. Hilson attributed this to Michigan’s two-year legalization timeframe and argued that while crimes related to marijuana legalization have not reached levels that opponents expected, they are still happening.

Hilson said that current laws in Michigan allowed for up to 12 plants to be grown on a premise. In Wisconsin growing marijuana is strictly illegal.

In most instances, police officers are called to home grow operations due to the smell of cannabis — not the legality of the act, according to both Hilson and Saxton.

“A person can grow marijuana in their backyard as long as it is fenced in and their neighbors have to put up with that smell,” Saxton said. “There’s nothing [law enforcement officers] can do because it is legal to grow the plants and they are not

required to do anything about the smell.”

One way to diminish illegal activity tied to home-growing would be to ban it altogether and Wisconsin’s Palmer suggests state lawmakers should consider such a prohibition.

“If you are going to legalize marijuana and tax it as a state, it would make sense to limit factors that could increase illegal activity and reduce revenue,” Palmer said.

A legalization measure proposed by Wisconsin state Sen. Melissa Agard includes provisions for marijuana home growing in the state; Evers’ budget provision would allow for a state resident to grow up to six plants in their home.

Dreckman said the details of who will regulate home-growing marijuana need to be ironed out before the state should add it as a provision to any legalization efforts.

“There’s a big concern about that, who regulates it and who goes and checks on [home-growing houses],” said Dreckman. “Do you have to register that you are growing [marijuana] at your house so that you could be inspected? A lot of questions have to be answered.”

Read a companion story on the marijuana policy landscape in Wisconsin [here](#).