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Considerations for Marijuana Legalization

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Considerations for Marijuana Legalization

by

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Dedications

This paper is dedicated to my wife Alecia and sons Liam, Jude, and Milo. Their sacrifices made this whole paper possible.

Abstract

Marijuana legalization began approximately 29 years ago but legalization has only gained momentum in recent years. Most states in the US have enacted laws allowing for medical marijuana or recreational marijuana use. These laws have all been enacted with the past 20 years and highlighted the complicated issue of legalization of once heavily controlled substances. Minnesota is now beginning the process of legalizing recreational use of marijuana and introduced legislation. Legalization has brought with it public health and safety concerns as well as ethical dilemmas. The specific concerns about an increase in driving while intoxicated/impaired (DWI), crashes, heightened criminality, and adolescent access have been inconclusive. The Ethical contradictions between state and federal law will need to be resolved for legal continuity. Medical practitioners will also need to come to a consensus on the benefits and dangers of prescribed marijuana. Medical marijuana studies have not produced long-term data to confirm its ongoing benefit.

Law enforcement should be one of the leaders in the legalization debate based on the history of the state and federal enforcement of marijuana and their continued enforcement of preceding changes in marijuana laws.

Keywords: *Marijuana, legalization, considerations, ethics*

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Chapter 1: Introduction

Marijuana can trace its origins back 5000 years ago to the time of modern-day China where it was used for medicinal purposes. In the United States, the first evidence of marijuana uses as a medicine began in the 19th century before being federally restricted in 1937 with the passage of the “Marihuana Tax Act” (Bridgeman, 2017). From that point on, marijuana faced increased scrutiny and regulation with subsequent laws passed in the years between 1937 and 1970, where marijuana was listed as a schedule 1 controlled substance in the Controlled Substances Act of 1970. In 1996, California passed the Compassionate Use Act, which allowed marijuana to be used for medicinal purposes. Since that time, marijuana has now seen a regression in enforcement and public scrutiny. This has also come with an increase in a positive public opinion and popularity of marijuana and marijuana use in recent years. Marijuana has now become the most commonly used illegal drug in the United States with approximately 48 million Americans using marijuana at least once since 2019 (Center for Disease Control [CDC], 2021).

Marijuana legalization is by no means a new issue. Marijuana has been around for centuries and only recently has its use been restricted. The reasons for those restrictions could largely be summed in a word; ‘fear’. In recent decades that fear has softened and some have even begun to rediscover marijuana’s potential benefits for pain management and its calming effects. This has led to new studies using modern scientific techniques that have allowed us to get a much better picture of the true benefits and costs of marijuana use.

Most states in the United States have now have changed their marijuana laws to allow for marijuana use for medicinal, recreational, or both, and it has been decriminalized. Only 11 states remain where marijuana is either fully illegal or has an ambiguous status of allowing Cannabidiol (CBD) oil only. Once thought of as a dangerous drug that should be controlled, the

opinion seems to be shifting towards tolerance and acceptance of marijuana use for medicinal as well as recreational purposes.

There is no shortage on studies that pertain to this subject. The United States is a great laboratory to conduct studies because states differ in their marijuana legal status. One state may have full legalization, whereas a short drive to a neighboring state that may have a full ban. This has allowed for a plethora of data on marijuana use rates, DWI's, crime, and marijuana's relationship to mental health. Where studies lack is in long-term data as it relates to crime and marijuana's long-term health risks. With some states only legalizing marijuana recently, the long-term effects are still not known. Furthermore, some data obtained about traffic related issues is only surface deep and needs to be researched more to find root causes.

The marijuana debate is filled with controversies, dilemmas, and contradictions. The most prevalent of all is the split between federal and state laws pertaining to marijuana's legal statuses. For years, citizens in states that had legalized marijuana were in full compliance with state laws but were still in violation of federal laws and some were even charged with federal crimes. The federal government has relaxed its enforcement of federal law in states that have legalized marijuana, but this is a matter of policy and not covered by law. Other controversies such as increased access to marijuana by adolescents has not produced significant increases in marijuana use as opponents have speculated. Marijuana related DWI's has increased in some states but not in others. Some argue this is due to legalization while others argue this is due to a change in law enforcement practices. Also, the idea of a black market for marijuana being closed due to its legalization has not come to fruition, and it could be argued has even aided in the cross-border marijuana trade due to the contradiction in state and federal laws.

The one of the current law enforcement approaches to marijuana has mirrored that of alcohol in that certain levels of possession, and use will be allowed, but beyond that threshold crosses into illegality. Where alcohol and marijuana differ is that alcohol has not seen significant changes in its product in recent decades, so that alcohol related laws have been able to largely remain unchanged since their inception. The so-called “Woodstock weed” or marijuana from the 1970’s contained approximately 1-3% THC and has been purposely bred to dramatically rise marijuana’s THC to the present level of 18-23% THC. Marijuana concentrates have a significantly higher THC level with some approaching 95-99% THC (Smart Approaches to Marijuana [SAM], 2020). Marijuana laws have already come in a wide variety from the different states that have legalized marijuana which shows how complicated navigating these new laws are.

With all 50 states having a universal .08 Blood Alcohol Concentration (BAC) level for alcohol intoxication, this allows for studies to have a universal starting point to work from for DWI studies. Marijuana related DWI’s do not benefit from those same starting points. Some states have a similar blood concentration level while others have a zero-tolerance approach.

Most importantly to the DWI and crash related argument is that law enforcement has no mechanical means to test marijuana intoxication. The widely known Breathalyzer is a tool limited to alcohol-related DWI’s. At the time of this paper, there is no test that officers can conduct on the street or at the police station that will reveal someones marijuana or any other drugs intoxication level. Officers are limited to blood and urine testing, both of which face stricter scrutiny from the courts due to their increased level of government intrusion and fourth amendment considerations.

The medical marijuana debate has a significant crossover with the recreational use debate. Traffic safety, addiction, and adolescent access to marijuana are a few potential problems where medical and recreational use crossover. That is not to say that marijuana can have its benefits, and that argument is more visible in its potential medicinal uses. Marijuana can be used for the treatment of chronic pain, assisting cancer patients with nausea and weight loss associated with cancer treatment, and treatment of epilepsy. The medicinal side of marijuana also carries with it some limitations. Some studies have shown that marijuana can do more harm than good if not coupled with other forms of therapy. Also, the way in which marijuana is used can have a dramatic effect on its benefits versus costs.

With marijuana laws changing and marijuana use on the rise in recent years, it is important for the public and leaders to understand the potential consequences that come with legalization. Marijuana has also seen an increase in potency and other drug additives which complicate this issue even further. This paper aims to provide a broad overview of many of those problems and some context to help navigate this issue for the future.

Some benefits include medicinal purposes, taxation benefits from marijuana producers and users, cost savings to courts in prosecutions for marijuana drug cases, and ethical continuity between marijuana and other legal vices such as alcohol and tobacco. Some of the costs are still being studied, but the initial theories are an increase in DWI's, traffic crashes, marijuana access to adolescents and the long-term costs of marijuana use by those adolescents, and the careful use of marijuana due to its addictive nature and mood-altering effects.

Those legalization vanguard states have been the source of many studies on how marijuana legalization will affect citizens. These studies are data-driven and produce facts that are easy for anyone to debate. They can be controversial at times since they may produce results

that the end reader may not like. With that, enters the human aspect of this debate. This aspect is difficult to quantify but is still very much a key aspect to the debate on legalization.

A recent letter from the Minnesota Chiefs of Police Association (MCPA) and Minnesota Sheriffs Association (MSA) to the Minnesota House of Representatives shows that marijuana legalization is gaining steam in Minnesota (Minnesota Sheriff's Association [MSA] & Minnesota Chiefs of Police Association [MCPA], 2023). That letter identifies 3-main points that have not been addressed or will need to be addressed in order to gain support from those groups. While their points address real concerns regarding this topic, they fail to address any ethical or moral concerns.

Several ethical and moral considerations arise as states begin the conversation about legalization. These considerations can be broken down into three main categories.

The first of which is the medical category. Marijuana is often touted as a cure for many ailments and there is extensive research to prove this point. However, the way in which marijuana is consumed can have a significant effect on the overall benefits and negative consequences of its use. Doctors will also be caught in the legal ambiguity of prescribing a federally illegal substance and could face a loss of their license if the federal government changes its policy on marijuana enforcement. Doctors will also need to educate their patients on the safe sourcing of marijuana since, unlike prescription medications, marijuana can be grown by patients in their own homes.

Another ethical concern category is the criminal justice ethics of marijuana legalization. Law enforcement will be faced with the challenge of upholding their oaths to support federal as well as state law. Fourth amendment searches and seizures will be tested due to marijuana's unique smell being a pretext for further searches but not yet evidence of a crime. As it currently

stands in Minnesota, officers are covered by reasonable suspicion. If marijuana is legalized but controlled by possession amount limitations, the reasonable suspicion standard will be tested in courts as it relates to marijuana. Furthermore, attorneys who advise clients about marijuana will also be subjected to the federal and state split in legality. The wrong advice could land an attorney in court with a federal aid and abet charge.

Lastly, is society's ethical considerations. Drawing parallels to the United States allowance for alcohol and tobacco use, both of which produce harmful side effects to the users and perhaps unintended effects to persons surrounding the users. Does marijuana also not fall neatly in line with alcohol and tobacco as tolerated vices? Further, the public perception of marijuana use and distribution has softened, but the idea of harsh penalties for lawbreakers still remains. Many citizens will remain incarcerated long after marijuana is legalized, so society will have to review the morality of allowing the continued detention of citizens for crimes that have been legalized since their convictions.

With that, the momentum of marijuana legalization still seems to be going full steam ahead. Minnesota has the benefit of learning from other states successes and mistakes. Minnesota will have to review the conflicting data between states regarding traffic-related issues in the wake of legalization. A significant amount of tax dollars will need to be dedicated to studying the initial and long-term effects that any legalization legislation has on the people of Minnesota so that changes to the laws can be made if necessary. Further, tax dollars will need to be set aside to train Minnesota's police officers to adapt to the change regarding Fourth Amendment searches and seizures, DWI's, and navigation of state and federal laws. There will also need to be a significant increase in Drug recognition experts, or at the very least all officers should be trained

in advanced drug detection methods. Law enforcement will need to have a seat at the table with legislatures at all levels to ensure a successful roll-out of any recreational marijuana laws.

Chapter 2: Review of the Literature

The vast amount of considerations that make up the debate for the legalization of marijuana can be broken down into two main categories. Those categories are ethical considerations and public health and safety considerations. Both categories have significant crossover, but have many aspects to them that make them stand-alone categories. Most importantly, these considerations can be balanced and weighted by each individual citizen based on their own individual viewpoint. A viewpoint which has largely shifted in one direction in recently.

Public health and safety considerations

The United States has seen a monumental public opinion shift on marijuana use in recent decades. A drug that was once considered on par with other illicit drugs like heroin and cocaine has now morphed into something that is approaching acceptance levels on par with alcohol. A total of 37 states have legalized marijuana use for medicinal purposes (The National Conference of State Legislatures [NCSL], 2022). Of those 37 states, 19 allow for the possession and recreational use of marijuana, with more being added each year (Procon.org, 2022). A large number of studies and data have been collected in states that have legalized marijuana which has guided the remaining states in their own implementation of marijuana legalization. Regarding age restrictions, all the legalized states have chosen to adopt 21 years of age for recreational use and possession which mirrors current alcohol laws in Minnesota. DWI laws have taken one of two pathways where states have either chosen to enact laws that mimic alcohol related DWI's in that there is a certain threshold that needs to be crossed to prove intoxication, or they have chosen to remain with per se laws that indicate any amount detected in the blood or urine constitutes intoxication.

Minnesota is unique in the fact that it has legalized marijuana for medicinal use but has yet to fully legalize marijuana for recreational use. In 2022, Minnesota did pass a law allowing for marijuana edibles with a maximum of 5 mg of Tetrahydrocannabinol (THC). While this is not full legalization, it does tiptoe closer to full legalization. Much like the other 36 states, Federal law has placed Minnesota in a precarious position where state versus federal law is in conflict. In a recent Supreme Court ruling, the opinion of the court was that the federal government did have the authority to prosecute citizens for marijuana possession and cultivation in states that had legalized marijuana even for medicinal use (*Gonzales v. Raich*, 2005). This has not stopped many states from still legalizing marijuana. Further, California, the state where *Gonzales* case originated from, went a step further and legalized marijuana for recreational use in 2016. At the time of the case, it only allowed for medicinal use based on the 1996 Compassionate Use Act. The Department of Justice (DOJ) has further muddied the waters when Attorney General Merrick Garland made the statement in 2021, “I do not feel that the (DOJ) should be using its limited resources to go after people using marijuana in compliance with state law” (Jaeger, 2021, para. 10). As recently as April 4, 2022, the House of Representatives passed legislation that would decriminalize marijuana use at the federal level and reform drug previous drug conviction related to marijuana (S. Resolution 3617, 2022). Due to the politically divided Congress, the bill will likely not succeed in the Senate. What is clear, is that the government’s opinion of marijuana use is changing, and marijuana laws are playing catchup.

While acceptance has risen, the use of marijuana has only risen slightly; heavy use, however, has risen dramatically. While casual use of marijuana has little long-term effects, heavy use has been linked to increased rates of psychosis, particularly in adolescents. This could create

long-term issues for front-line workers in the mental health treatment community and law enforcement as well as degrade public safety.

There is a clear connection between law enforcement and mental health in the United States. The police have been viewed as a one-stop shop for all societies ailments from neighbor disputes to ducks stuck in a storm drain, to people acting “crazy” in a public park. A lack of mental health resources in most jurisdictions’ places law enforcement as the point of contact with people in crisis who otherwise would not have had any contact with law enforcement. Law enforcement’s response has also come under scrutiny to the point that the public is asking for change. Law enforcement has begun to accept this shift in strategy, and new ideas have begun to emerge on how to handle people in crisis. While recent research shows that there is no clear connection between mental illness and crime, someone suffering from mental illness does have an increased chance for a police encounter (Peterson et al., 2014; Livingston, 2016). The problem can be exacerbated further by adding alcohol or drugs into the situation.

All of these issues taken individually would be challenging enough for law enforcement, but when they are all presented at once like in the states that have legalized marijuana, the effects of which may not be felt for many years.

Marijuana’s long-term psychological effects are also being studied by scientists, and it has produced some mixed results. One study conducted in states with legal medical marijuana laws showed that there was a 10% decrease in suicide rates of men aged 20-39 and all other gender and age categories showed no significant increase or decrease in suicide rates (Anderson et al., 2014). Another study showed that the adolescent brain can be particularly vulnerable; “Early initiation of cannabis use increases the risk of early onset psychotic disorder, especially for those with a preexisting vulnerability and who have greater severity of use” (Bagot et al.,

2015, p. 1). One study looked at the effect that early marijuana use has on the brain, and it found significant differences to the size of parts of the brain for marijuana users compared to non-users (Filbey et al., 2015). Another study notes that adolescent marijuana use rates were not affected by medical marijuana law changes or recreational marijuana use laws (Anderson et al., 2021). This would quell opponents' concerns about legalization when they cite that an access upsurge of marijuana will increase marijuana use. It would seem that there still is cause for concern for adolescents that do use marijuana as well as individuals that heavily use marijuana. Both would also be a cause for concern if the substance was changed from marijuana to alcohol or any other illicit substance. Furthermore, there may be cause for concern for using marijuana as a substance to mask an underlying mental health issue. Marijuana use has often been cited as a coping mechanism for treating post-traumatic stress disorder (PTSD). This may have the undesired effect of treating symptoms of a problem as opposed to solving the problem itself. One study on military personnel suffering from PTSD and not active in mental health treatment found an increase in PTSD symptoms with marijuana use (Allan et al., 2019).

The most consequential effect marijuana legalization can have is on the adolescent age group. Studies have made it clear that marijuana use by minors can lead to a number of mental health issues such as psychosis and suicidal tendencies as well as being a "gateway" drug to other more dangerous substances, all of which carry their own dangers with frequent use. This would not be so concerning if it was not coupled with the fact that adolescent marijuana use nationwide has been increasing rapidly and "surpassed tobacco use prevalence between 2008 and 2011, with the prevalence of lifetime marijuana use rising by 21% and past-year marijuana use rising by 31%" (Ladegard et al., 2020, para. 4). This concern is further bolstered by the fact that

in states that have medical marijuana laws, there has been an increase in adolescent marijuana use between the ages 12-20 years (Wen et al., 2015).

While this fact is concerning, studies show that the trends for marijuana use have been steadily increasing even prior to marijuana legalization laws (Dills et al., 2021). “Rising marijuana use may not be a consequence of legalization but a cause of it” (Dills et al., 2021, p. 6) It would seem then that the problem does not lie with legalization, but more with the awareness of its potential long-term side effects. More studies will need to be done in this area to explain the gap as to why legalized states have not seen increases in marijuana use even though adolescents clearly have greater access by default to marijuana in those states.

Criminal justice practitioners will have to pay attention to the substances that are being used by the people they are dealing with. The evidence of substance use or abuse can be particularly difficult to detect in adolescents. Anti-social behaviors, criminal behavior, or mental illness could be traced back to early marijuana use. If that is the case, then special care will not only be needed to identify the root cause of the problem but also with dealing the long-term effects. Law enforcement may be the first to learn of at-risk youths when they encounter juveniles who are found in possession of marijuana and using marijuana. They may be the first line of defense when it comes to addressing a problem before it begins to manifest itself. Often the adolescents that police officers have come into contact with are in possession of marijuana or some other substance. The circumstances of how officers come into contact with them vary but if it's for some criminal matter then many times officers will also observe some sort of signs of substance use. The same cannot be said for adults. More often than not officers find no signs of substance use. Even nicotine use is becoming less frequent.

Another aspect to legalization that is touted by proponents is shuttering of the black market for marijuana sales if it is legalized and regulated. Inconsistencies in marijuana laws have allowed for the black market to not only maintain its foothold in the United States but in some cases have expanded. In California, where medicinal and recreational marijuana use is legal, legal marijuana growers are producing approximately five times the amount of marijuana than is legally consumed (Rutgers Center of Alcohol & Substance Use Studies, 2020). Smaller farmers that have been priced out of the market by large commercial operations now turn to the black market to sell their product. Oftentimes by crossing state lines into states that have full bans on marijuana use.

This issue could be diminished if not resolved by legalizing marijuana for recreational use nationwide. This issue is further complicated by the fact that states that have legalized marijuana have also placed significant tax burdens on the producers and consumers of marijuana. California taxes both the grower and seller at approximately 15%, while Washington State places a tax of 37% on all sales for recreational use (Rutgers Center of Alcohol & Substance Use Studies, 2020, paras. 10-11). Coupling these facts with the fact that illegal marijuana and other drug operations benefit from the relatively cheap costs of business operations, it makes it harder for legitimate operations to produce a profit. While the legal importation of marijuana has not begun yet, that issue is on the horizon for domestic legal marijuana-related businesses. Domestic businesses will then have to compete on the world stage against countries that can produce and distribute marijuana at a significantly reduced cost thereby offshoring another business that otherwise could be regulated and taxed domestically. Once this restriction is lifted many domestic businesses will not be able to compete with international businesses. However, this problem is shared by almost every legitimate business. What local marijuana growers currently

benefit from is the legal ambiguity between state and federal law which bars the transporting and importation of marijuana beyond state lines. Local growers will be able to distribute within their home state without impunity. They are protected from other legitimate growers in neighboring states. However, legitimate growers will still have competition from illegal growers outside the state and country.

Driving while intoxicated (DWI) is crime in all 50 states. The specifics of what counts as being intoxicated varies from state to state. What is consistent though is that officers have the discretion to determine if someone is intoxicated by a substance based solely on their observations and do have the power to arrest based on those observations. Evidence of impairment can be collected later via a breath, blood, or urine test. DWIs are most often thought of as alcohol related crimes and the data supports that. A study from the National Survey on Drug Use and Health showed that in 2018, 20.5 million people aged 16 and older drove under the influence of alcohol, while 12.6 million drove under the influence of an illicit drug (National survey on drug use and health [NSDUH], 2019). The data is mixed on the effect that marijuana use has on driving. Unbeknownst to many is that current impaired driving laws do incorporate marijuana through a “catch-all” terms in the state statute that allow for a conviction if an officer can determine you're impaired while driving. This places the burden on the officer to articulate impairment as opposed to using mechanical testing or warrant-based blood draws as the primary form of evidence. Unlike alcohol, marijuana does not require a certain impairment threshold like .08 BAC. and the bar is simply set at 0.

Opponents to the legalization of marijuana have argued that the legalization would create an increase in traffic accidents as well as traffic fatalities due to the physiological effects on the body. Studies have well documented the neurophysiologic effects that both marijuana and

alcohol have on the body where reaction time as well as judgement are affected. The translated effects onto road behavior are significantly different, however. The prevailing assumption is that recent marijuana use prior to driving and drugged driving, would create similar behaviors to alcohol use prior to driving. Research has shown that marijuana use caused drivers to slow down, and they were less likely to overtake other vehicles on the road. The researchers attributed this driving behavior to belief that marijuana users tend to overestimate their impairment while alcohol user tend to underestimate their impairment (Sewell et al., 2009). However, studies conducted in Colorado and Washington State after legalization of recreational use of marijuana did show an increase of fatal crashes where drivers were found to have Delta 9 Tetrahydrocannabinol (THC) in their system. On the contrary, a study conducted in California after marijuana decriminalization in 2011 showed no change in traffic fatalities (Sewell et al., 2009).

Several reasons could be for this increase in Colorado and Washington State as noted in one study, “assessment of the frequency of measured marijuana use given fatal crashes, not the frequency of fatal crashes given marijuana use, and would occur if use increased even if there were no associated increases in crashes” (Dewey et al., 2021, pg. 247). Another reason could be that officers in legalized states may investigate and check for marijuana use more routinely than in states that have not legalized marijuana. Further arguments suggest that certain individuals who would normally drink alcohol in public due to its higher social acceptance would not use marijuana in public and therefore be less likely to drive. This argument is difficult to measure due to the limited number of studies conducted on that particular subject. This aspect is further complicated due to a lack of consensus on impairment.

The black market and DWI concerns could be symptoms of a much larger problem that has been raised by opponents to legalization. An overall crime increase is assumed to accompany legalization due to the fear that drug addicts will naturally commit other crimes to fuel their drug addiction. Their marijuana addiction could then be a gateway drug into other harder drugs and would continue the cycle of crime. Research in states that have legalized suggests the contrary is true. Both Colorado and Washington State saw a decrease in property crimes while Washington State also saw a decrease in violent crimes (Wu et al., 2020).

Drugged Driving is the term often associated with DWI from illicit drug use, and marijuana accounts for the bulk of these cases. The acute effects of marijuana, meaning the effects that show a person is intoxicated, can last for several hours after use (RTI International, 2020). Marijuana's effects may not be as pronounced when compared to persons under the influence of alcohol and the effects can be especially muted for heavy marijuana users. Due to the uniqueness of drugged driving investigations when compared to alcohol related DWI's, the use of blood or urine for the collection of evidence is currently the only means officers have at their disposal. Blood is the preferred method due the accuracy of its results and ease of sample collection, but it comes with its own set of challenges when coupling observed impairment and blood test results. THC, the primary psychoactive ingredient in marijuana, can be detected in the blood stream for days or even weeks after use. Urine tests can also have a similar lengthy detection window. Some states that have legalized marijuana have also adopted a threshold number, much like alcohols .08 BAC limit, as means of determining impairment. Other states still use either zero tolerance or per se laws where law enforcement observations coupled with any amount detected in the bloodstream is enough for a DWI charge. These laws have not been able to keep up with crash-related police encounters where no driving conduct is observed. The

mere scent of marijuana inside a vehicle could be enough to arrest for a DWI and obtain a warrant for blood or urine, or at the very least investigate further in the hope that the driver cooperates with that investigation.

Colorado, which was one of the vanguard states to legalize recreational marijuana, found a significant increase in marijuana-related crash fatalities after marijuana legalization (Dewey et al., 2021). Curiously, that same study found that there has not been an increase in marijuana-related crashes where there is no fatality. A similar study also found the same rise in traffic fatalities in Colorado after legalization but found no increase in traffic fatalities in California after legalization (Sewell et al., 2009). This suggests that although marijuana is detected, it is not the cause of the traffic-related fatality. Common sense would dictate that the legalization of marijuana or any other illicit substance for that matter, would automatically have an increase in use. As noted earlier, the testing for THC in the blood-stream or urine stream does show marijuana use, but it does not necessarily show impairment. It can further be complicated by a number of other factors such as body type, frequent use of marijuana, and detection of THC can remain in the body long after its use. Testing for THC will have to catch up to the testing standards that have been set by alcohol in that more options need to be made available to law enforcement so that blood and urine are not the only options.

Legislatures have largely been forced to take a zero-tolerance approach to driving under the influence of illegal substances due to the fact that they are uniquely difficult to connect the presence of the substance in someone's system to their level of impairment. Not unlike alcohol, drug impairment can be obvious to any law enforcement officer. Police officers document driving while intoxicated (DWI) arrests for alcohol much like they would drug arrests but unlike DWI arrest for alcohol, drug DWI arrests require blood or urine to detect the presence of an

illegal substance. One study noted “Science has not provided a simple test for impairment” (Boldt, 2020, para. 1). That same study indicated that a lack of a simple test has resulted in officer deferring to the next best thing that is widely available, blood and urine. Both of these sources only note the presence of the substance that is being searched for, not the level of impairment. Alcohol laws have long held the standard of .08 blood alcohol content (BAC) as the legal limit for alcohol consumption and driving. This standard was set in place by the federal government and has since been adopted by 49 states. Utah is the only outlier where .05 BAC is the legal limit. This limit is a per se law in that any impairment detected beyond the .08 BAC limit is considered impaired or intoxicated.

Further complicating the DWI issue is the fact that there is currently no roadside test that law enforcement can conduct specifically for drugged driving. As a catch-all, officers will still use the Standardized Field Sobriety Test (SFST) as a means to determine intoxication from other controlled substances their original intended use was for alcohol. Case law and studies that formed the scientific basis for SFST’s largely relied on data obtained through testing subjects who were under the influence of alcohol. While SFST’s can show evidence of intoxication from marijuana use other testing measures should be developed that specifically targets marijuana.

Currently, Minnesota has per se laws linked to DWI’s. This means that any amount of a controlled substance detected in a subject’s blood or urine collected during a DWI investigation coupled with a police officer’s observations of impairment is grounds for a DWI charge in Minnesota. This is in contrast to Minnesota’s alcohol-related DWI’s in that if the .08 BAC threshold is not met, most police officers choose to file lesser charges against the motorist instead of pressing the DWI charges.

There has yet to be a science-backed testing process that would provide a quantifiable number that shows impairment. Some states have opted for 5-nanograms of detected delta-9 tetrahydrocannabinol (THC) per milliliter of whole blood. This number satisfies the necessity for a quantifiable baseline number but hardly qualifies as evidence of impairment. Studies have shown that several factors play into the level of impairment separate from the amount of delta-9 detected in their blood. Body fat, regular use, and length of time from last use can all affect someone's level of impairment. Further, the standardized field sobriety testing (SFST) utilized in alcohol-related DWI's has been found to be unreliable testing process in marijuana related DWI's (RTI International, 2020). Drug recognition experts (DRE) within police departments have been utilized to bridge this gap in the lack of instrumental testing and street level testing. Much like SFST, DRE testing is strictly voluntary, so the emphasis will be on the arresting officer to articulate impairment if there is no other testing conducted. This places Minnesota in a position where DWI laws can remain the same, and it will be up to the arresting officer to articulate the probable cause for arrest as well as the warrant affidavit.

Technology has produced an instrument that allows for the detection of alcohol in a person's breath, but there has been no technology developed that allows for the same in the detection of marijuana, or any other drug for that matter. The science will need to play catch up in this aspect so that the burden isn't placed solely on a police officer's observations. While officer's observations may be the probable cause necessary to conduct the arrest more evidence is needed in order to prove beyond a reasonable doubt that a person is indeed impaired.

One solution to this that was presented in the 1970's was the introduction of Drug Recognition Experts (DRE). Their purpose was to be the bridge between initial observations of the officer on the street and the petition for a warrant for blood or urine. Case law has shown that

warrants can still be obtained without an evaluation from a DRE. Also, many police departments don't have the resources to devote to training and maintaining a DRE and have to defer back to the street officer's observations. Furthermore, DRE training is extremely expensive and are only hosted in select cities, typically in larger cities that have access to a large amount of drug users for training purposes. Due to this limitation, as of 2017 there are only 1,525 DRE's in the United States (International Association of Chiefs of Police [IACP], 2017). This means that DRE's account for less than 1% of total 650,000 police officers in the United States (Statista.com, 2022).

Minnesota stands to benefit from data garnered from other states that have studied the public service cost that could be seen with legalization. These could come in the form of increased costs to the criminal justice system, increase in health care costs that smoking causes, and increase in costs associated with juvenile access to marijuana. A study conducted in Washington state, which was one of the pioneering states to legalize recreational use, and funded by the DOJ found that there were savings for the criminal justice system in that minor marijuana cases no longer needed prosecution (Stohr et al., 2020). Concerns for an increase in traffic fatalities were also inconclusive based on the studies conducted in the various states that have legalized marijuana. Studies on marijuana's impact on overall crash numbers have not produced any data indicating a significant increase in crashes.

Hidden costs may be difficult to identify and document, especially early after legalization. Hidden costs could come from increases in adolescent use due to easy access. Adolescent use of marijuana has been linked to addiction, mental health issues, and decreases in educational attainment, all of which can have significant, long-term societal costs. Much like the approach that the government has taken to alcohol and tobacco, marijuana can also be taxed

through Pigouvian taxes, taxes that add costs to deter people from using a purchasing a product, that would deter some from marijuana use but also recoup some societal costs associated with marijuana use. California received over \$1 billion in tax revenues in 2021 from marijuana and has some of the strictest tax rules for marijuana in the country. Surprisingly, politicians in California have worked to reduce those taxes as marijuana business have argued they are too burdensome.

Law enforcement would have to work with the legislature on how to shape Minnesota's marijuana laws if they are ever to come to fruition. Further, law enforcement at all levels would also need to review how they would treat people who use marijuana, especially in cases where it is prescribed. On a local level, if Minnesota were to legalize marijuana, police departments would not have to modify their policies to ban marijuana use on and off duty. It would also ban both recreational and medicinal use even if it is prescribed by a doctor. Many police departments already ban its use even in states where marijuana is already legalized. This is due to marijuana's ability to remain in the system for days or even weeks after use. For officers involved in a critical incident where their blood is taken as evidence, having any amount of marijuana in their system would be cause for concern. Law enforcement also does not have any special privileges when it comes to carrying a firearm. Anyone carrying a firearm in Minnesota is prohibited by state statute 624.7142 from being under the influence while carrying. This coupled with per se laws for DWI could cause any police officer to be in violation of state statutes even if they legally used marijuana in their off-duty time.

In order to aid police officers in the detection of drugged driving, officers should be trained in Advanced Roadside Impaired Driving Enforcement (ARIDE). This type of training emphasizes extra roadside testing to detect impairment caused by illicit drugs and marijuana.

Many more DRE's will also be needed to aid arresting officers with the collection of evidence through physical testing of suspects. Currently, DRE training carries a significant price tag as well as approximately 40 hours' worth of active training. Training has typically been conducted in major cities on the west and east coasts and require the trainees to interact with actual drug users on the street to obtain certification. This makes DRE certification difficult to attain for many smaller departments and larger departments only invest enough for a handful of officers to be trained. In Dakota County, it is estimated to be under 10 officers that are fully certified to conduct DRE testing.

The author has on more than one occasion have had to deal with marijuana related DWIs and crashes. Drugged driving DWIs are extremely time-consuming and are often avoided by officers due to that fact, whereas in alcohol-related DWIs officers would go through the whole process and arrest, in drug driving DWIs officers find any way they can to get out of having to go through that process. If marijuana were to be legalized, the process would have to be streamlined. This could be done by having specialized DWI officers, or increasing the number of Drug Recognition Experts DRE's available to officers.

Ethical considerations

The ethical principles related to marijuana legalization can be broken down into three sub-categories. Each can overlap, but they do have isolated concerns related their specific field. The first is the medical field. As it relates to marijuana legalization, this category has received the most support and attention. The ethical issues with allowing for marijuana use by patients can cause doctors to violate their Hippocratic oath, and promote a drug that has legal consequences attached to it; marijuana has been studied but not to the same extent as other drugs, and other health-concerns related to marijuana use. The second field is the criminal justice field. The

obvious main concern is the conflicting Federal versus State laws. Lawyers in states that have legalized marijuana have to navigate their clients between the contradictory laws while also following their oath sworn for their particular state. The last field is the ethical principles related to the public. This field acknowledges that public acceptance of marijuana is gaining traction so continued enforcement of marijuana laws is problematic. Historically, marijuana laws have been particularly harsh especially when compared to other legal harmful products such as alcohol and tobacco. Society has to now deal with many currently incarcerated as well as released convicts that were originally convicted of marijuana related crimes, but those laws have since changed.

Minnesota's representatives have begun to review the legalization of marijuana for recreational use and has introduced a bill HF100 on 1/5/23, which seems to be the first step in full legalization (H.R. Resolution MN HF100, 2023–2024). The Minnesota Chiefs of Police (MCPA) and Minnesota Sheriff's Association (MSA) have presented a letter to Minnesota representatives against HF100 and cited three reasons for their opposing stance. Those reasons include, the bill ignoring the illegal drug trade, the bill coming before an adequate roadside test has been developed, and the bill comes after a recent new law that was passed to allow for edibles and beverages but lacked proper regulation and law enforcement input. It would seem that Minnesota is on the path to joining the many other states that have legalized marijuana for recreational use. The federal government has moved little beyond the introduction of a bill to The House of Representatives and has received little attention due to many other larger issues.

In the medical field, each doctor is required to swear the Hippocratic Oath. This oath covers many aspects of what doctors may face in their career and gives a broad ethical guideline to follow. Many versions exist today but most have adopted similar language in that “the physician pledges to prescribe only beneficial treatments, according to his abilities and

judgment; to refrain from causing harm or hurt; and to live an exemplary personal and professional life” (Britannica, 2022, para. 2). Breaking down this oath into parts, one could see the issues that physicians could face with prescribing or condoning the use of marijuana. The idea that marijuana provides only beneficial side effects can be a very subjective statement. First is the way in which marijuana is consumed. Smoking marijuana is the most common due to the tetrahydrocannabinol (THC) contained within marijuana reaching the bloodstream within minutes (Franciosi, 2016). The Center for Disease Control (CDC) (2020) has well documented the long-term health effects of smoking tobacco and other inhaled products. They even go as far as calling smoking a “disease” and include the figure of 41,000 deaths per year related to secondhand smoke. It would seem that the promotion of the use of marijuana for medical treatment is problematic itself but is further complicated if smoking or inhaling marijuana is allowed or promoted. Other forms of marijuana use include oral consumption, either by itself or contained in some other edible food or absorbed through the use of a cream or patch. Unlike inhalation, both of which have not shown any of the negative side effects but do have longer times until the effects of THC are felt. Using the sentence “refrain from causing harm or hurt” from the Hippocratic Oath can, again, be referenced when speaking about how marijuana is consumed.

Smoking and inhaling marijuana would undoubtedly cause more harm than good as opposed to some other form of marijuana use. However, the use of marijuana for treatment of terminally ill patients can complicate this matter. The idea of providing comfort and pain management would trump the negative health effects that smoking marijuana may cause. The caveat is that there is little to no hope for the patient to survive and therefore would make it unethical to deny these forms of treatments as opposed to administering them. Setting the health-

related effects aside, physicians also have the duty to follow the law when treating their patients. Some forms of the Hippocratic Oath do specifically state this, but some do not and use more generic language that implies following best practices. With marijuana's ambiguous legal status, with it being legal in some states but illegal under federal law, this can place physicians in a precarious position. This issue was summed up in an article for the Journal of Medical Ethics which stated "While it may be illegal to recommend cannabis for conditions other than those specified by state law, it is ethically justifiable for providers to do so if available evidence supports cannabis use for a particular patient's condition. Similarly, for conditions where the evidence of effectiveness remains equivocal, providers should not accept legality as the ethical foundation for recommending cannabis"(Glickman & Sisti, 2020, p. 229). It would further be complicated if their patients somehow experienced a medical issue where marijuana use was somehow related. Examples of this happening were not located; this is not to say that they have not or will not happen. There were 4 recommendations made by researchers to doctors considering prescribing marijuana to their patients. First, start with lower THC potency marijuana. Second, recommend against smoking marijuana. Third, counsel patients on where they source their marijuana and recommend using regulated suppliers. Fourth, pay attention to CBD content (Glickman & Sisti, 2020).

This leads to a similar predicament that criminal justice professionals face when dealing with marijuana. Following the same issues that physicians face, many criminal justice professionals swear oaths to protect and uphold the US Constitution and constitutions of their states as well as federal and state laws. When the laws are at odd ends, criminal justice professionals often side with following local or state laws as opposed to federal laws even though hundreds of years of case law indicates that states can only make the law more restrictive,

not less when compared to federal law. In the absence of law, states have the authority to do as they please. It is clear that the federal government has clear existing laws as it relates to marijuana. As states began legalizing marijuana, the Department of Justice (DOJ) initiated the policy of not prosecuting citizens in states that have legalized marijuana. The data on this policy in practice is mixed. Some would say this is a form of “decriminalization” as opposed to legalization. The distinction is that marijuana would still remain illegal but not enforced. This creates a whole new set of ethical issues due to the fact that federal marijuana charges include a host of other additional punishments such as the loss of Second Amendment rights, loss of access to public assistance and student loan(Sullum, 2022)s. Marijuana could be a legal substance to possess in a particular state but under federal law that same person could be sanctioned with the loss of assistance or even face a civil fine. Logically speaking, this is a difficult topic for anyone to defend. Ethically speaking, this creates two standards for citizens to live by and one of which they will constantly be in violation of if they choose to use marijuana.

Similarly, attorneys who are advising clients that run businesses in the marijuana industry also must carefully navigate the choppy waters between advising their clients and providing council that violates federal law. Attorneys who specialize in marijuana related law tiptoe a line where their counsel could in a way constitute aid and abet of drug trafficking. Likewise, banks also need to carefully review where their money is going and what it is being used for. Most banks have opted not to associate with any aspect of the marijuana industry for fear of violating federal law (Khan, 2021).

The last field to consider is the effects on the public. Much like the medical and criminal justice fields, the public sector will also be caught in between federal and state law. This is arguably the most egregious violation of the social contract. Whereas the other fields have access

to legal counsel to guide them through the various changes in laws, the public does not have the same level of access. Ethically speaking, this legal ambiguity violates all forms of ethical reasoning. If the law is unethical, then it should be repealed; if it is ethical then it should be enforced. Current federal law does neither and both. In some states it is enforced and others it is not. The original intent of state and federal laws associated with marijuana stemmed from legal paternalism, the need to protect the citizens from themselves by using the law (Pollock, 2021, p. 178). This ethical and logical reasoning again falls flat when it is compared to other forms of “self-harm”. Alcohol and tobacco have a lengthy history in our nation of being tolerated and often celebrated, both of which arguably have had much more of negative societal impact than marijuana ever has, and yet both remain legal. Further, opponents of marijuana legalization state that adolescents will have greater access to marijuana if it is legalized. While this argument is no doubt true, there will be an abundant amount more of marijuana in plain view; this argument also fails to address the fact that adolescents already have access to alcohol and tobacco.

The legalization of marijuana then opens the door to more harmful drugs also being legalized. The government does have a history of classifying drugs based on their harmful effects to the human body through “drug scheduling” from the Controlled Substance Act of 1971 (Drug Enforcement Agency [DEA], 1971). Placing more harmful and addictive drugs as Schedule 1 and tapering to less harmful and addictive drugs as Schedule 5. The framework is in place to allow for a review of all drugs and their societal effects if they were reviewed for legalization. The argument against their legalization is also presented in the same scheduling data. The legalization of other drugs would come at too great a cost to society. However, the use of this drug scheduling could also be used by marijuana legalization opponents as marijuana is still classified as a schedule one substance.

Society will also need to come to grips with the significant portion of convicts in jails and prisons for marijuana-related offenses. If marijuana were to be legalized, what would happen to persons convicted of marijuana crimes? Ethically speaking, a person could take one of two stances in this example. The first of which is to uphold the law and conviction at the time of the occurrence. This seems to be the standard practice of the criminal justice system. Changes in the law after a conviction has little to no bearing on how a convict should be treated now. This allows for clarity in the criminal justice system where cases would not need to be retried nor reviewed for any reason. Cases going forward would uphold the new law and previous convictions and sentences would stand. The second stance would be to review previous convictions to reflect the public's changing view on marijuana laws. This would be costly, extensive and could open the door to other cases unrelated to marijuana to also be reopened. While this may seem as if it is morally right and ethical to the convicted person, it creates a criminal justice system that will constantly need to retrospectively look for cases to correct "injustices" or changes in the laws.

This issue also presented itself in Minnesota when the Minnesota Supreme Court heard the case of *Musta v. Mendota Heights Dental Center*. *Musta* was granted a worker's compensation claim for a work-related injury and was prescribed medical marijuana by her doctor to treat her pain. Her employer denied paying for that form of treatment claiming they would be aiding and abetting in violating federal marijuana-controlled substance laws even though medical marijuana was legal in Minnesota. The court ruled in favor of the respondent that their funding of *Musta's* treatments would violate federal control substance laws (*Musta v. Mendota Height Dental Center*, 2021). This split in the law between the federal government and

states is already playing out in Minnesota even prior to the recreational use of marijuana being legalized.

A recent letter drafted by the Minnesota Chiefs of Police Association (MCPA) and the Minnesota Sheriffs Association (MSA) to members of the Minnesota House of Representatives regarding a proposed bill to legalize recreational marijuana use (HF100) made the argument against legalization with three main points.

1. HF 100 “blatantly ignores the realities of the illegal drug trade.” This point goes on to say that regulations must be in place prior to legalization so that enforcement can begin on day one of legalization.
2. The MSA and MCPA correctly points out that there is currently no roadside test for tetrahydrocannabinol (THC) and goes on to cite Colorado and Canada as examples of how the roads became more dangerous after legalization.
3. The MCPA and MSA were trying to avoid a “repeat of what happened last legislative session when lawmakers authorized the sale of certain edibles and beverages infused with THC.

Each of these points can be examined individually by starting with the first. The illegal drug trade has existed long before and will exist long after the legalization of marijuana. The concern seems to be associated with random citizens distributing marijuana without a license and how illegal sellers can undercut legal sellers. A comparison can be made to how alcohol is regulated, and the age restrictions associated with its production and distribution can also be applied to marijuana. Law enforcement shows little concern for current illegal “small dealers” so it stands to reason that they will be even less concerned when marijuana is made illegal. There is a public health concern associated with this argument that is not mentioned in the letter that

should be addressed in the name of accountability. This concern too can be quelled by following the precedent already established by alcohol regulation. So-called “bad batches” can be traced back to the source and quarantined so that it does not create a greater public health concern much like food recalls.

Secondly, a lack of a roadside test for THC impairment should and is a concern for the public. Broadening this point to encompass all drug impairments or so-called “drugged driving” shows that this argument isn’t just isolated to marijuana. Harder drugs are a much greater concern for law enforcement and the public when it comes to drugged driving. The fallback for any drugged driving conviction is officer’s personal observations coupled with a blood or urine test. While it does seem to be an inevitability that there will be an increase in Driving While Intoxicated (DWI) arrests case law, researchers, and enacted laws will dictate future law enforcement procedures regarding drugged driving just as it has with alcohol-related DWI’s. Law enforcement has been waiting for a roadside test for drug-related DWI’s for decades and thus far has not produced a sufficient test. Waiting for a test to be developed to legalize marijuana is not a sufficient ethical argument to make in opposition to legalization.

Lastly, the MCPA and MSA are hoping to avoid the ambiguity that the previous legalization of some THC-infused edibles and beverages has created for law enforcement. Curiously, the letter does not point out a solution or clarify their concerns except that more “training and funding” will be necessary to keep communities safe. What is clear is that when controversial laws are enacted or repealed, there is a period of legal ambiguity that is created while attorneys and trainers digest the law and bring law enforcement up to speed with the new normal. The change in the use of deadly force statute in Minnesota created a similar situation in which law enforcement was largely left on an island to navigate the new law. From a lawmaker's

perspective, this is a dereliction of duty to the citizens that they represent to not allow for time to train officers in the new changes. However, given enough time, law enforcement has little to no argument when it comes to legal ambiguity. Police officers often cite that very little in law is black and white. Officers often operate in the grey where applying textualized law to real-life situations requires an immense amount of discretion. Marijuana legalization will create whole new grey areas, many of which are outlined in this paper and many others that will be fleshed out as laws are inevitably put to the test through courts.

As someone in the criminal justice field, police officers have similar choppy waters to navigate as those discussed in this paper. Officers have been sworn to uphold the laws and constitution of Minnesota and the United States. Again, as it relates to marijuana, these laws are in conflict. Minnesota has not legalized marijuana for recreational use, but a recent law has circumnavigated full legalization by allowing edibles with tetrahydrocannabinol (THC). Further, muddying the waters for citizens. Bridging the gap between protecting citizens from self-harm and protecting citizens' freedoms has been a difficult balancing act for the government and its agents, and arguably it is getting more difficult with each new law. The Fourth Amendment searches will undoubtedly be challenged in court in the wake of any new marijuana legalization laws. The scent of marijuana is reasonable suspicion to conduct a search of a person or property but does not necessarily constitute a crime. Under federal law, the scent of marijuana would be grounds for reasonable suspicion that a crime is a foot. In states that have legalized marijuana, reasonable suspicion that a crime is a foot is now in doubt. Officers are required to tread lightly when using reasonable suspicion for searches and this matter is only further complicated by the fact that if marijuana is legal how can a search be justified based on reasonable suspicion of possession of marijuana alone?

A solution could be to pause any possession crimes above a certain threshold. That threshold can be decided on by working with other agencies, attorneys, and experts in this field. Perhaps the line for possession could be drawn between personal use and distribution which, again, could be decided upon by experts. The pause would remain in effect until the federal government clarified their laws that are in conflict with state laws, within reason. This would also be considered a form of decriminalization. This again leads to legal ambiguity and could even be viewed by some as judicial activism. This, however, is ethically justified in that the end result is to provide clarity to our citizens and protect the accused from the government. It is far better to allow criminals to go free than to take away the freedoms and rights of one innocent person. This policy would strictly be localized to marijuana. The public perception of marijuana is shifting, but the perception of other drugs is not. Respecting the citizens wishes to allow for greater marijuana acceptance while government laws play catch up will be the new policy. From a formalism standpoint, our duty is to the community and when there is doubt it should benefit the accused. This can be viewed from a utilitarian perspective as benefiting only a few marijuana users at the cost of the community that abides by both state and federal law. It is tough to argue against either perspective. Protecting the rights of individuals will always benefit the rest of society.

Considerations for Minnesota

The usual way of thinking about the law in the United States is that the laws at the federal level are supposed to be less restrictive and are broader. As you become more localized to the state and even city level, you find that the laws become more narrow, restrictive, and specific. The federal government has a set of laws and states can then adopt laws that are even more

focused and even more focused still at the city level. It is rare to see laws in certain states that allow for a certain activity that the federal government has deemed as illegal.

The possession and distribution of marijuana is one of those examples. With 27 states adopting laws, Minnesota included, that allow for the medicinal use of marijuana and 18 of those allowing for full recreational and medicinal use, the cultural shift seems to be largely leaning towards full legalization (The National Conference of State Legislatures [NCSL], 2022). This has placed law enforcement and the public in precarious position of being within their legal rights in one state but in violation of federal law.

From an administrator's perspective, there will be a natural balancing act between choosing to enforce federal laws, or at the very least cooperation with federal agents who are enforcing federal law, and protecting citizens of your state or city that under state law are engaging in a legal activity. There has also been a policy shift at the federal level as well in that the Department of Justice (DOJ) has taken the informal stance of not pursuing federal cases against individuals in marijuana cases where individuals were following state law (Mikos, 2020). This may provide some guidance, but it will be difficult to predict when the DOJ will choose to pursue a case due to unclear case law precedent or if there is a political change within the DOJ itself. Suffice it to say, these cases will be extremely rare, and many jurisdictions may never have to deal with this issue. Nonetheless, it should be considered as the consequences of not following federal law can be severe. An organization or state may no longer qualify for federal dollars, the head of state or the organization could face federal charges, or the entire state or organization could be subject to a decent decree with the DOJ, the severity of which will be dependent on the case.

Much more work will be needed to provide law enforcement with a viable solution beyond blood and urine test so that law enforcement can maintain the balance between public safety and the 4th Amendment. As Boldt notes, “While warrantless blood tests for alcohol related DUIs are currently unconstitutional, drugged driving may now make it an unreasonable expectation of privacy due to the exigencies of science” (Boldt, 2020, p. 1). Moreover, states will have to decide what a legal limit is for marijuana intoxication or impairment so that states that have legalized will have a baseline limit to follow instead of a zero tolerance. Six states, Illinois, Pennsylvania, Nevada, Ohio, Montana, and Washington State have legalized marijuana and have set the limit to drive between 1 and 5 nanograms of Delta 9 THC (Lenard, 2021). Delta 9 is a psychoactive substance that causes impairment. Colorado's law, as with many other states laws, does still allow for a DWI arrest at any BAC or impairment level so long as the impairment can be articulated by the officer (DUI, 2002/2022). Minnesota could follow those states leads and create an impairment level. If Minnesota chooses not to craft new language for an impairment limit then it can simply differ to its current per se law or zero tolerance. If the latter is chosen, it will come with a significant amount of testing in courts as to the reasoning behind setting a level.

Chapter 3: Conclusions

As the debate for marijuana legalization continues, states will have to grapple with the issues outlined in this paper. Minnesota in particular, will have the added benefit of learning from other states' mistakes and mimicking their successes. Given that each state has the ability to create its own laws within the confines of its constitutions, there are a wide array of paths to follow in both the public safety and health category as well as the ethical category.

Marijuana legalization presents a challenge for criminal justice practitioners and society. Momentum would dictate that legalization in Minnesota is not far off, so these conversations should be started now to give ourselves time to come up with the best strategy for how we will handle marijuana-related cases. Testing should be expanded so that impairment can be determined beyond initial observations. Observations made by an officer can be viewed as subjective by some and open to debate and criticism. Some would argue that is what the courts are for, but others would argue that alcohol-related DWIs have thresholds; why can't marijuana? We should also review how marijuana use is treated by clients who are already in the criminal justice system. The calming effects of marijuana have been proven by science, and there does seem to be a clear use case in the medical realm. Is there a use case in the recreational realm as well?

Ethical concerns as it relates to legal paternalism and particular oaths sworn by health and criminal justice professionals will need to be reviewed for continuity. Logically and ethically these arguments can be resolved if they are compared to how our society allows for alcohol and tobacco use. Medical practitioners will not have the added benefit of comparing marijuana to alcohol and tobacco due to the fact that both alcohol and tobacco will never be a prescribed substance for any medical treatments. It will be left to the medical community to draw

comparisons to other prescribed drugs to create ethical continuity in their sworn oaths to do no harm.

These are just a few examples of what some of the states that have legalized marijuana have faced. By no means is this an exhaustive list of all the issues that will present themselves if marijuana is legalized. Many more will no doubt arise as law enforcement continues to deal with the aftereffects of large legislative changes. For Minnesota, there is a benefit to not being the first to enact sweeping legislation. Minnesota can learn from others mistakes and benefit from the knowledge gained by other states experimenting in marijuana legalization. What is clear is there has been a misplaced fear and lack of knowledge that has surrounded the issue of marijuana. As leaders of law enforcement, it will be important to utilize that attained knowledge for the greater good. Armed with facts we can provide a better service to the people that we serve and respond to change when the people demand it.

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