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Dazed and Confused: Police Experiences Enforcing Oregon's New Marijuana Laws

Kris Henning, Ph.D. & Greg Stewart, MS.

Research Brief (February 2021)



Key Findings

- More than 90% of 301 officers/deputies surveyed for this research said that illegal shipping or transport of marijuana out of state has increased over the past three years.
- Nine out of ten officers/deputies report that driving under the influence of marijuana (DUI) has increased for adults and juveniles, and many requested additional resources to address this offense.
- 60-70% of officers/deputies report recent increases in people having a bad reaction to marijuana that results in a call to emergency responders.
- The majority (60%+) of people surveyed said that Oregon's cannabis laws make it difficult to determine when someone is breaking the law (e.g., growing, processing, distributing marijuana illegally; possessing an illegal quantity of marijuana).
- The majority (75%+) of officers/deputies surveyed believe the state's current marijuana legislation is poorly written and hard to interpret.
- Nine out of ten officers/deputies agreed that Oregon's marijuana laws need to be simplified.
- Many of the officers/deputies surveyed said it is difficult to collaborate with other agencies responsible for regulating cannabis in the state (e.g., OLCC, OHA, ODA).

Introduction

This research brief reports findings from a survey completed by 301 Oregon police officers and sheriff deputies in the latter half of 2020. The survey asked about their experiences enforcing the state's current marijuana laws and their perception on trends in marijuana-related public safety issues.

The project was supported in part by an Illegal Marijuana Market Enforcement (IMME) grant from the Criminal Justice Commission to Deschutes County. This grant program was created in 2018 by SB 1544 and was designed to assist local law enforcement agencies and district attorneys' offices in their efforts to address the illegal marijuana market in Oregon. Additional support for the research was provided by the Department of Public Safety and Standards and Training (DPSST), the Oregon Association of Chiefs of Police, and the Oregon State Sheriffs' Association. Finally, several law enforcement agencies directly participated by sending the survey to their employees. This includes the Bend Police Department (BPD), Redmond Police Department (RPD), Deschutes County Sheriff's Office (DCSO), and the Klamath County Sheriff's Office (KCSO).

The survey was conducted in two waves; the first wave focused on officers and deputies in Deschutes County. We worked with the county's major law enforcement agencies to distribute an email invitation to all of their sworn employees. This invitation asked the officer/deputy to complete a brief online survey regarding Oregon's current marijuana laws. These efforts generated 114 completed surveys, accounting for 37.9% of our total sample.

For the second wave we collaborated with DPSST, KCSO, and the state's two law enforcement associations to distribute a similar invitation to all of their members and advanced trainees. A total of 187 law enforcement employees participated in the second wave, comprising 62.1% of the sample.

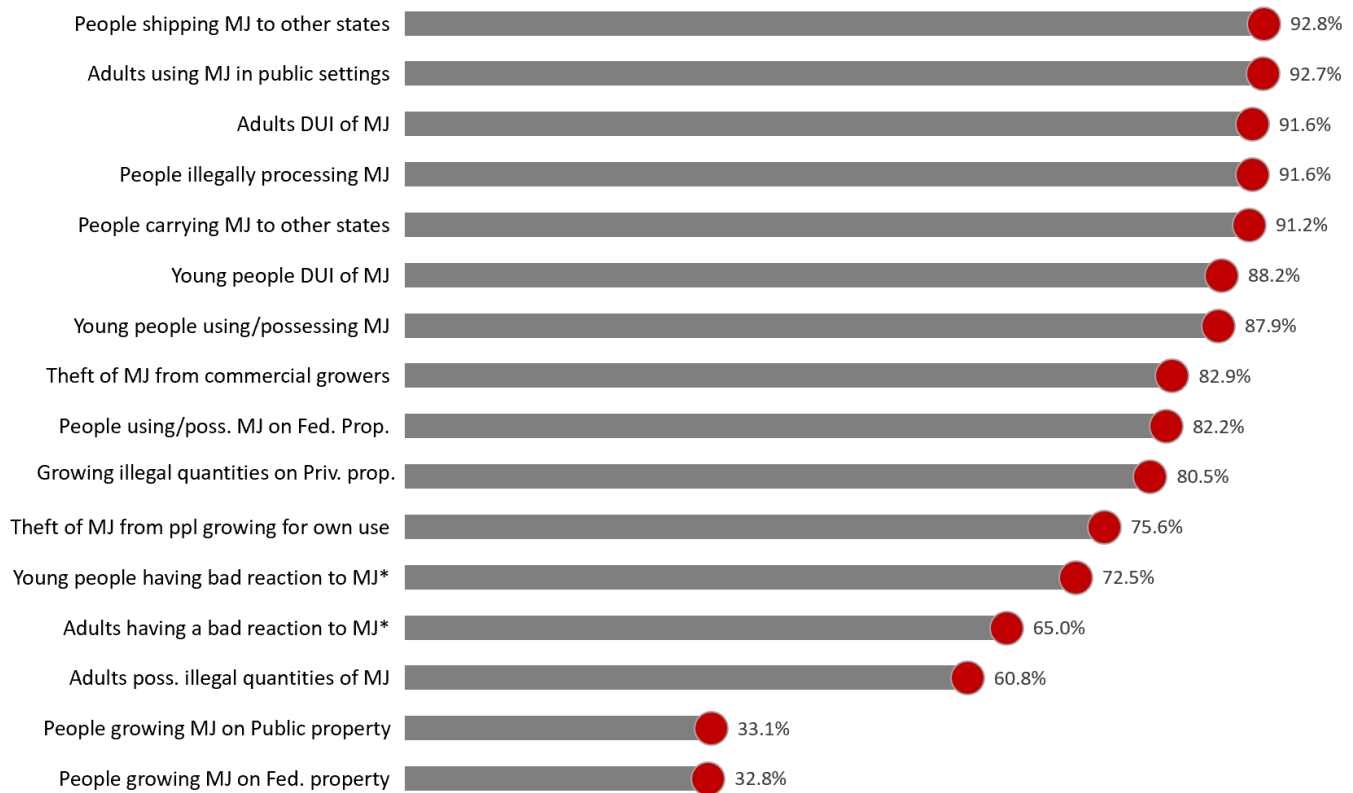
The majority of respondents had worked in local law enforcement for 11+ years (63.1%), were either an officer/deputy (52.0%) or Sgt./Lt. (24.5%), and most worked in patrol (65.2%).

Given the different recruiting strategies employed and disproportionate sampling in Deschutes County, we recommend a degree of caution in generalizing our findings to officers/deputies in the state as a whole. What follows are the main findings from the study and several recommendations based on these results.

Marijuana-Related Public Safety Trends

Trends in Marijuana (MJ) Related Problems

% Officers/Deputies Answering "Increased a little" or "Increased a lot"



*Reaction that results in a response by police, fire, or EMT (e.g., overdose, panic attack).

Note: Perceived trend over past three years. Excludes cases where respondent answered "Don't Know".

The first section of the survey assessed officers' perceptions about trends in marijuana-related activities that are of concern to law enforcement and the IMME grant program. The questions asked officers if these activities had, "Decreased a lot", "Decreased a little", "Stayed about the same", "Increased a little", or "Increased a lot" over the past three years. Respondents were also allowed to select, "Don't know." The latter responses were removed from the chart shown above.

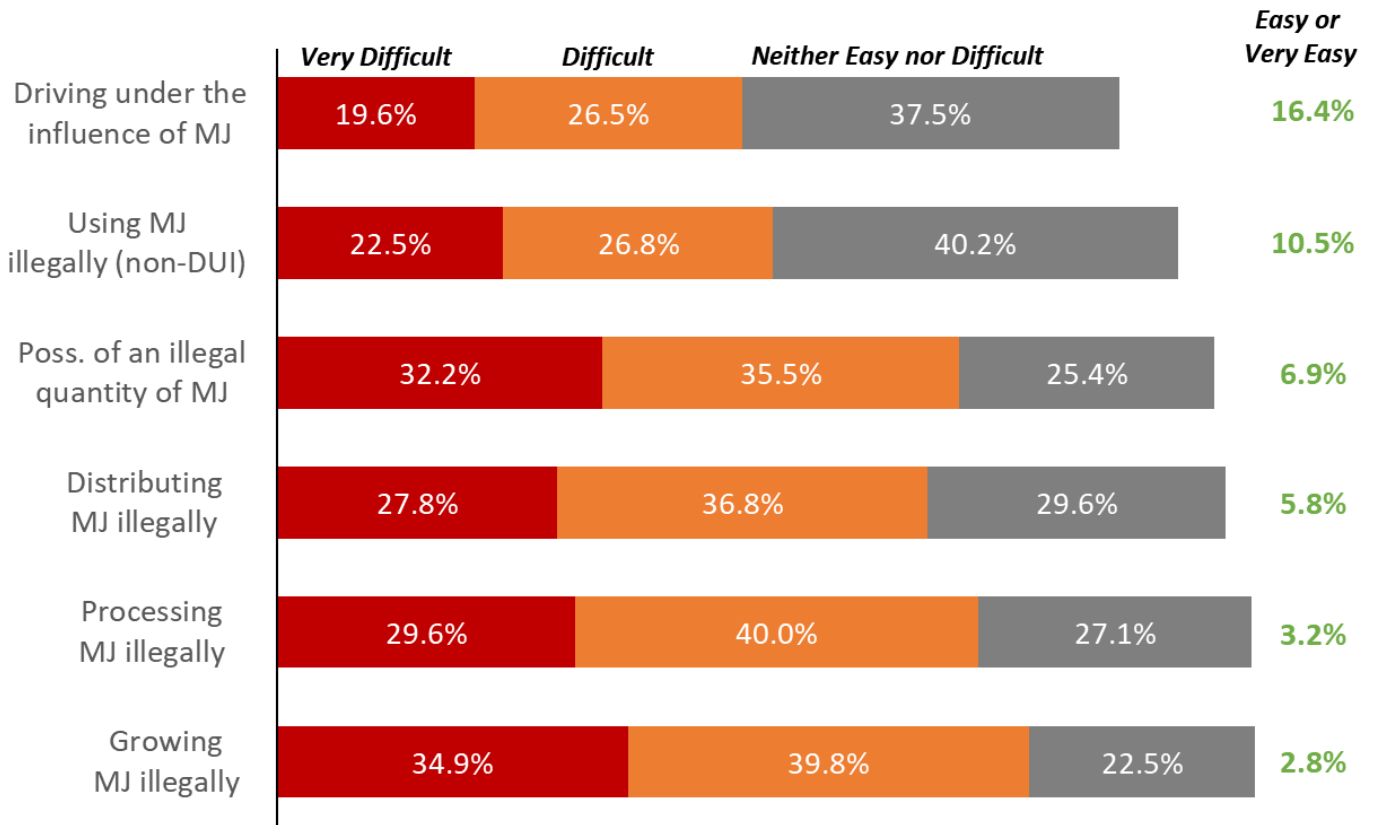
The vast majority of officers and deputies reported that people shipping or carrying marijuana to other states, both of which are targeted by the IMME grant program, had increased over time. Likewise, the majority of respondents said that use of marijuana in public by adults and driving under the influence of marijuana by adults and youth had all increased. Possession and use of marijuana by youth (under age 21) was also believed to have gone up. Finally, the vast majority of officers/deputies reported that illegal processing of marijuana for extracts, concentrates or liquids rose over the past three years.

A smaller majority of respondents reported increases in the following areas: theft of marijuana from commercial growers, using/possessing marijuana on Federal property, adults possessing illegal quantities of marijuana, people growing illegal quantities of marijuana on private property, and theft of marijuana from people growing for personal use. The officers/deputies surveyed also reported increases in youth and adults having a bad reaction to marijuana that resulted in a call to emergency responders (i.e., overdose, panic attack).

There were only two activities on our list that were rated by the majority of respondents as decreased or stayed about the same: growing marijuana on public property (e.g., city parks, schools, streets; state lands) and growing marijuana of federal land. Notably, 80.7% of all respondents answered "Don't know" to the latter question.

Difficulties Enforcing Oregon's Marijuana Laws

How Easy is it for Officers/Deputies in Oregon to Identify Marijuana Offenses



Our next set of questions were generated after hearing anecdotal reports from officers/deputies regarding the difficulties they experience while enforcing Oregon's current cannabis laws (i.e., recreational marijuana, medical marijuana, hemp). For the survey we asked whether the current state laws make it, "Very easy", "Easy", "Neither easy nor difficult", "Difficult", or "Very difficult" to identify when people are engaged in six specific acts that remain illegal. The chart above documents the officers/deputies' responses to these questions.

Starting at the bottom of the chart, 74.7% of the respondents said that Oregon's laws make it difficult to very difficult (referred to henceforth as difficult) to identify when people are growing marijuana illegally. Next, 69.6% of respondents said it is difficult to determine when someone is illegally processing marijuana for extracts, concentrates, or liquids. Roughly two-thirds of the officers/deputies said that it was difficult to determine when someone was illegally distributing marijuana (64.6%; e.g., selling, trading, bartering) or when someone possessed an illegal quantity of marijuana (67.7%). Smaller proportions of respondents

found it difficult to determine when people were using marijuana illegally in non-driving situations (49.3%) and when people were driving under the influence of marijuana (46.1%).

We should also note that only a very small percentage of respondents (2.8% to 16.4%) said that Oregon's current marijuana laws make it easy or very easy to determine when people have engaged in these six illegal activities.

After answering these questions officers/deputies were given the opportunity to explain in an open-ended format why Oregon's marijuana laws were difficult to enforce and what might be changed to make this easier. The 157 responses submitted were reviewed yielding four non-mutually exclusive themes. The themes and sample quotes are documented on the next two pages.

1 - Oregon's Current Marijuana Laws are Confusing and Poorly Written

In examining the narrative responses, the overwhelming consensus is that the state's current cannabis laws are confusing and poorly written. Over 75% of the respondents addressed this theme (see quotes below).

- "Laws were written to be confusing and difficult to enforce. If lawmakers are trying to get cops to not enforce marijuana laws, they're on the right track."
- "The amount allowed to possess varies from substance to substance. I cannot determine what is a legal amount or not, or whether or not the substance came for a licensed retailer. Additionally, the age differences and whether or not the items sold is for consideration or not makes determining whether or not a crime, violation, or nothing has occurred extremely difficult."
- "It is a poorly written law in the first place and there are numerous caveats within it. I have just started treating weed as if it is legal regardless of the amount."
- "Laws are convoluted and not designed around enforcement but rather frustrating law enforcement to give up on enforcement or feel unsure the seizure and enforcement of marijuana related laws."
- "Because there are two different rules to apply recreational and medical and then rules vary among those. It's crazy if Marijuana is legal why have a medical program."
- "The laws are extensive and not well written with Medical Marijuana sprinkled in. It would be easier to state Marijuana is either legal or illegal, not have certain amounts treated at different levels, which is also dependent upon people's age and whether or not they have Medical Marijuana cards and/or a grower's card. Way too convoluted."
- "The laws are too convoluted to comprehend. If we as law enforcement can't easily decipher the laws, how can we expect the citizens to be able to understand them?"

2 - Oregon's Marijuana Laws are Difficult to Enforce and Violators are not Prosecuted

The majority of officers/deputies surveyed said that some of Oregon's marijuana laws were difficult to enforce. Many also expressed concern about a lack of prosecution by District Attorneys.

- "Oregon has made it difficult to identify the line dividing lawful cannabis vs illegal cannabis use/distro/sales/etc. because there are so many technically 'lawful' uses or exceptions to otherwise illegal cannabis. Other than age minimums, there are few interactions that can be taken at face value and enforcement decisions must be researched prior to being enacted."
- "In most cases, it is not hard to develop probable cause for illegal use of marijuana, however certain situations are merely violations so probable cause is insufficient to enforce the law due to the fact it must be observed by LE to be enforced. It's causing a lot of negative reaction by public when the behavior is directly observed by citizens and [law enforcement] cannot do anything about it."
- "During roadside contacts it's difficult to discern a fictitious document stating the person can possess, travel, or distribute marijuana legally. It's also difficult to discern whether or not a person is transporting marijuana across state lines while roadside."
- "Getting local district attorneys to issue warrants/subpoenas can often be difficult as they frequently refuse to prosecute any marijuana related laws. Offenders often claim the product is hemp rather than marijuana which also makes it difficult to determine what the product is."
- "How the laws are written are very grey. They are so confusing DA offices will not even look at MJ cases. All MJ cases save DUI are no actioned in the two counties I work."
- "DAs commonly drop charges, or plea it down to such a minimal punishment, that it is not worth the danger it costs police to enforce the laws."
- "I find deputy district attorney's [sic] are hesitant to take on marijuana cases as they too cannot decipher the law. I find they (DDAs) don't pursue charges as it is 'legal'."
- "It also seems pointless to care about it when, in ___ County, even if someone has several hundred pounds there will be no prosecution. I would just prefer that it is legalized and then it is not an issue."

3 - Driving Under the Influence of Marijuana is Difficult to Prove and Prosecute

Respondents reported several challenges regarding marijuana-related DUIs. First, they were unaware of any successful enforcement efforts in the state related to this offense. Second, they perceive that prosecutors are unwilling to pursue these cases. Finally, they pointed to the need for additional resources to address DUIs involving marijuana.

- “Oregon DUII laws make it very difficult to get people driving under the influence of any intoxicating substance off the road. If lawmakers were really concerned about getting these people from killing innocent citizens, they will revamp the current DUII laws, including cannabis intoxication, to make it easier to conduct DUII investigations.”
- “There has not been a successful prosecution of a DUI involving marijuana that I have heard of in Oregon based on my last DUI training.”
- “Marijuana DUII is the most dangerous and most difficult to investigate/enforce.”
- “Because the local DAs office does not prosecute marijuana DUIs. I have yet to have a single marijuana DUI actually prosecuted before being dismissed by the DA's office.”
- “DUII are difficult to prosecute without a Drug Recognition Expert (DRE). There are too few DREs.”
- “My understanding is that marijuana DUII do not get prosecuted... generally.”
- “The laws change frequently and updates are hard to keep up with. A cannabis test for DUII (Like BAC for alcohol) would be of great value to public safety!”
- “DUII laws for MJ are difficult to get convictions due to no standardized limits for impairment.”
- “The other issue involving DUIs is that DUIs are inherently complicated and primarily civil in a majority of the investigation. There has been no updated procedure on how to deal with the DUI marijuana stuff without calling for a Drug Recognition Expert. DUIs inherently take hours to complete and you add calling a DRE into the mix and it doubles because of the amount of work.”

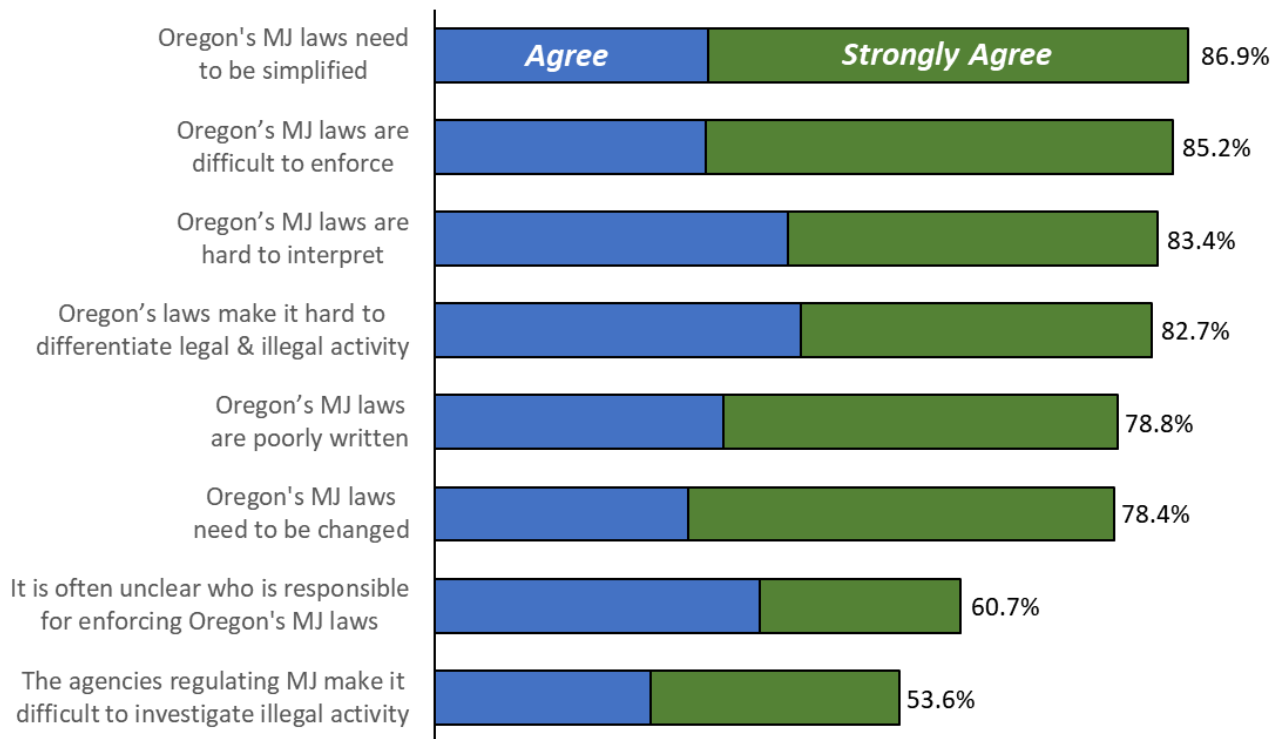
4 - Current Laws do not Prevent Illegal Activity or Protect Youth

Oregon voters approved Measure 91 in 2014, allowing recreational use of marijuana by adults over the age of 21. Officially known as the Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act, the stated purpose was to eliminate problems resulting from the illegal production and distribution of marijuana, including use by juveniles. Some of the officers/deputies surveyed believe that the current legislation fails to achieve these objectives.

- “Oregon's MJ laws are a joke. MJ is flowing out of the state to be sold in other states, just ask any officer or Trooper who works interdiction. The MJ processed now is not the same as years ago and is directly harming young children/teens/adults.”
- “As it pertains to DUII, it is difficult to explain to a jury why somebody is impaired by a substance they've been told doesn't produce impairment.”
- “The decriminalization of marijuana may be a contributing factor to other controlled substances being used whereby making it difficult to ascertain what substances are truly in play.”
- “People think because marijuana is technically legal, they have carte blanche to possess and smoke in public without reserve. It's a disaster.”
- “Teens really need education on the very real dangers of using it at their age. The dangers of addiction and potential mental health problems for teen users needs to be advertised a lot more.”
- “Laws are promoting a culture of telling people/youths its ok to use MJ and its even good/healthy for them.”

Opinions Regarding Oregon's Marijuana Laws

Opinions of Officers/Deputies Regarding Oregon's Current Marijuana Laws



Note: Remaining respondents answered "Neither agree nor disagree", "Disagree", or "Strongly disagree".

Eight additional survey items were added between the first and second sampling waves to explore opinions raised in the preliminary narrative comments. The items presented respondents with statements about Oregon's marijuana laws and asked if they, "Strongly disagree", "Disagree", "Neither agree nor disagree", "Agree", or "Strongly agree." A little more than one-half of the total sample (n = 169) answered these items.

Over 80% of the officers/deputies agreed or strongly agreed that Oregon's marijuana laws need to be simplified, that they are currently hard to interpret and difficult to enforce, and that differentiating legal from illegal marijuana activity is challenging. More than three-quarters (75%) agreed that the state's current marijuana laws are poorly written and need to be changed. Finally, a majority of officers agreed that it is often unclear who is responsible for enforcing marijuana laws and that the agencies regulating legal marijuana in Oregon make it difficult to investigate illegal activity. Regarding the latter, there are three primary agencies responsible for regulating cannabis: the Oregon Liquor Control Commission (recreational marijuana), the Oregon Health Authority (medical marijuana), and the

Oregon Department of Agriculture (hemp). Narrative comments highlighted confusion created by regulatory overlap and poor oversight by these agencies.

- "The incompetence of OLCC and getting consistent answers when you are able to get a hold of someone. They have failed miserably in their ability to regulate and work in good partnerships with local law enforcement."
- "Growers are licensed by the OLCC but grow outputs are not tracked and compared against sales to legal distributors. Intake by legal distributors is not tracked and compared against sales/destruction. This allows otherwise legal growers to overproduce. This overproduction is then sold to out of state, black market, distributors. When law enforcement approaches a grower there is no way to determine what portion of their output is legal and what is overproduction. Growers have many ways of concealing their production and sales of the overproduction."

Summary & Recommendations

As suggested by our findings and the title for this report (*Dazed and Confused*), police officers and deputies in Oregon are struggling to understand and actively enforce the state's remaining prohibitions involving marijuana. Where once there was a clear distinction between legal and illegal activity, there is now complex, many would say poorly written, policy that is difficult to implement in the field.

The current authors' recent work with Deschutes County's IMME grant team provides confirmation of these difficulties. Efforts to develop simple flow charts, "cheat sheets" and other educational materials to help people determine what is illegal in the state have proven extremely difficult. Determining whether a given marijuana possession is illegal, for example, depends on a myriad of factors, including the amount of the substance, the form (e.g., dried leaf vs. edible vs. concentrate), the THC level, the source (private grow vs. licensed retailer), where the person is at the time (private vs. public vs. federal property), who the person is (juvenile vs. adult), and whether the substance is meant for recreational or medical use. Similar complexity exists for other marijuana-related activities (e.g., production, processing, transport, distribution, public use).

The state's decision to empower three separate agencies (OLCC, OHA, ODA) with regulating legal cannabis further complicates the job of local law enforcement. Some of the existing laws make it difficult to collaborate with these agencies when police/deputies investigate marijuana violations. Likewise, some of the people surveyed for this report were concerned about poor oversight of the legal cannabis market and a lack of clarity regarding enforcement responsibilities.

In summary, the current research highlights the need for Oregon's policy makers to clarify and simplify the role of law enforcement in the era of legalized cannabis. Efforts in this regard would clearly benefit police, but also responsible users, growers, and distributors of marijuana-related products who themselves navigate the state's existing legal complexities. Finally, clarifying and improving the state's cannabis policies may help Oregon live up to the stated objectives for Measure 91. This includes the elimination of the illegal marijuana market, stopping the diversion of marijuana to other states, reducing access to the substance among youth, preventing DUI, and the effective prioritization of law enforcement resources to enhance public safety.

RECOMMENDATIONS

1. **Simplify Oregon's cannabis laws with regard to enforcement** - There was an overwhelming consensus among the responding law enforcement officers that the current laws are confusing and poorly written. As a result, these laws are very difficult to enforce. Fixing this issue should be a priority for state lawmakers. Confusing laws do not benefit law enforcement, the public, or public safety.
2. **Provide resources to address marijuana-related DUI** - Some of the problems surrounding DUI enforcement that are documented in this report are technical in nature (i.e., the need for a standardized impairment test); others appear to be related resources and training (i.e., shortage of drug recognition experts). The state can help address this by allocating additional resources to marijuana-related DUI, which most law enforcement officers believe is on the rise.
3. **Support collaboration between agencies** – Many of the officers/deputies surveyed perceived a lack of commitment to prosecuting marijuana-related cases. Others reported difficulties working with the state agencies responsible for regulating legal cannabis, particularly OLCC. Legislators should look for ways to enhance collaboration between agencies as a means of discouraging illegal activity that harms our community and law-abiding cannabis businesses.
4. **Expand research on the impact of marijuana legalization** – The state's move to legalize recreational marijuana may have benefits. There is also the potential for unintended consequences. The state should carefully study the impact of changes to substance-related policies by investing in more research on these issues.

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