

Police Enforcement of Cannabis Changes Since Legalization

Michael A. Hoffman, Esq.
The Hoffman Centers, P.C.

Sgt. Michael Kelly #243
Jackson Twp Police Department
President of the NJ DRE Association

Happy Halloween

WE WERE TRYING
TO GET HOME
BEFORE THE
EDIBLES KICKED IN.

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Who are these guys?

Michael A. Hoffman, Esq.

- Immediate Past Chair, NJSBA Municipal Court Practice Section
- 2020 NJSBA Municipal Court Practice Award Recipient
- Executive Board Member, NJSBA Cannabis Law Committee
- 20+ years of practice as a municipal defense attorney

Sergeant Michael S. Kelly

- Jackson Police Department for 20 years
- Certified and Trained DRE for 15 years.
- Certified DRE Instructor for 7 years
- Taught Drug impairment in Connecticut, Massachusetts, Delaware, Virginia and NJ
- President of NJ DRE Association
- Masters Degree in Criminology
- Several Awards for DWI Enforcement

Issues We Will Be Discussing

- **Laws and Issues Regarding Public Consumption**
- **The Particular Problem - Possession or Consumption by those under the age of 21 (20-18 and under 18)**
- **Driving while Intoxicated/Impaired**
 - **(State v Olenowski)**
- **Law Enforcement Regarding Unregulated Product**

Police Enforcement of Laws

Public Consumption

Changes Since Legalization

- Whatever laws, rules, restrictions or ordinances existed with regard to smoking or vaping of tobacco now apply to cannabis consumption.
- Whatever laws, rules, restrictions or ordinances existed with regard to public intoxication/impairment, regardless of the substance, still apply (*in special circumstances*).
- The odor of cannabis alone is not enough to justify probable cause to search of a person/vehicle.
- It is illegal to approaching and questioning an adult or juvenile based on the odor.
- All Cannabis Paraphernalia is LEGAL, smoking, vaping, etc.

New Jersey Cannabis Law

- **Adults: 21 and Over**

- Able to possess up to 6 oz
 - 6oz = 84 to 168 blunts or 504 joints
- Able to smoke in designated areas
- DWI laws still apply. Cannot smoke and drive
 - DRE Evaluation, 7 month lost of DL

- **Adults: 18 to 21 yrs old**

- Not legal and cannot possess
- Written Warning (no tracking system)
- DWI Applies, (Same as Above)

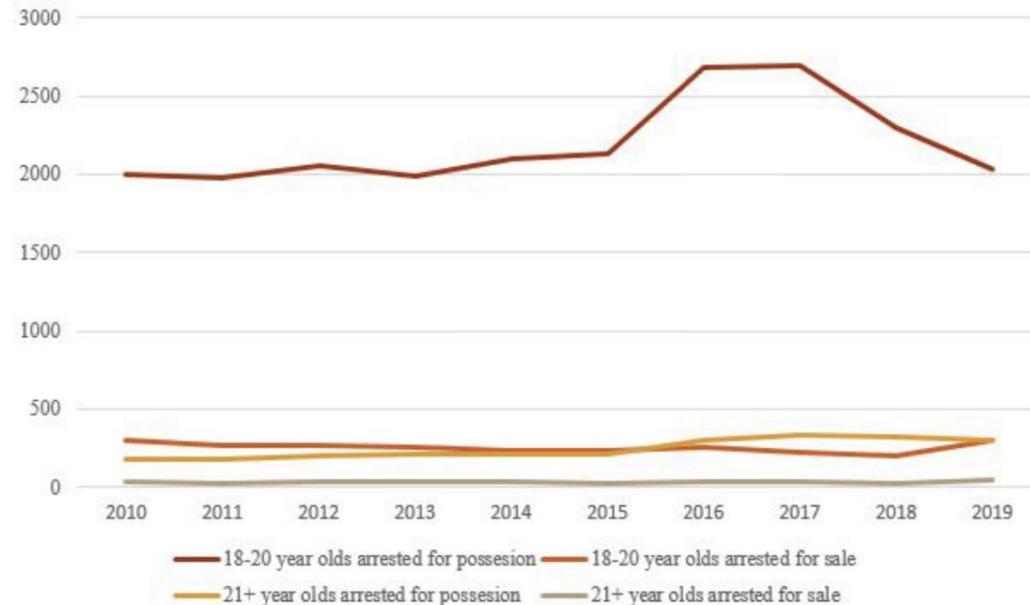
Changes Since Legalization

- Penalties for possession of Cannabis by those under 21 (20-18 years old):
 - Written warning for 1st, 2nd and so on.. “Offense”
 - Written warning and referral for services for 3rd+ - NO CENTRALIZED SYSTEM
 - ***Under 18 has parental notification attached to each written warning***
- Search and Seizure
 - The odor of cannabis is not enough to initiate a search for cannabis
 - Seizure of contraband permitted- if unlicensed to possess
 - Individuals under 21 are not CAPABLE of CONSENTING to a search for cannabis
- Penalties for Officers for perform an illegal search
 - **3rd Degree offense for violation of Civil Rights**
 - Review of the Body-Worn Camera involved in any search by a special panel

Rutgers Newark Legalization Impact Study Baseline Report Feb 2022

<http://policylab.rutgers.edu/wp-content/uploads/2022/02/NJSPL-Cannabis-Feb2022.pdf>

Figure 3.9: Cannabis-Related Arrest Rates per 100,000 Population (NJ), by Age (2010-19)



Source: Uniform Crime Reports, Federal Bureau of Investigation. <https://crime-data-explorer.fr.cloudexplorer/crime/arrest>.

**A Real World
Example -**

**In and Around
Six Flags
Great Adventure**



Police Enforcement of Laws

Driving Under the Influence

Changes Since Legalization

TECHNICALLY - NONE

- Current State of the **Law on Impairment/Intoxication Detection**
 - **State v. Bealor** - with the exceptions of Alcohol AND Cannabis, where police have enough training to provide expert testimony on Cannabis impairment
- However - **State v. Olenowski** - The Scientific Reliability of Drug Recognition Expert/Evaluators under consideration by NJ Supreme Court
 - From September through January - Experts from State/Defense testified before a special Master
 - Each part of the 12 Step Drug Influence Evaluation being studied for scientific reliability
- **Judge Lisa Suggestions:** The DRE Process is Scientifically Reliable.
 - Currently waiting on final decision by NJ Supreme Court
- **Another Part of the Law:** Legalization permits Workplace Impairment Recognition Experts (WIRE)

So what is being done!!

Additional Drug Impairment and DWI Classes

- **DID class** - Basic one day drug impairment class
- **SFST School** - Basic Standardized Field Sobriety Test school
- **ARIDE** - Two day Drug Impairment and Proficiency in Standardized Field Sobriety Test
- **Drug Recognition Expert School** - total of 152 hours of training. Split between Pre-School (16), Seven Day (56), Field Certification (80).

Police Enforcement of Laws

Unregulated Cannabis Products

Changes Since Legalization

- Definitions of Cannabis v. Marijuana - LEGAL
 - 6 Ounces for personal use
 - The “Homegrown” lobby - pros and cons
- Additional Concerns for Local Police
 - Sales masked as “gifting” / unregulated sales-
 - AG’s Office of Consumer Protection
 - Police Officers as Revenue Agents
 - Traffic around retail locations
 - Crime involving retail locations - banking issues creating cash businesses
 - Dealing with CBD, Delta-8, Delta-10 THC, THC - 0, Exo THC.. and so on.
 - THC products. Edible, Food, Drinks, Additives, Strengths, New forms of impairment. Marijuana Bars/Lounges
 - Increase of DWI and Overdoses (high dosages and Synthetics)

Farmer Bill 2018

- Removed Hemp as defined as Cannabis and derivatives of cannabis with low THC (0.3) levels
- Classified as Dietary Supplements
- Products
 - CBD, CBN, Delta 8, Delta 10, THC - O, THC - P, HHC, HHC-P, HHC-O
 - All show signs of impairment
 - Not Regulated
 - Easy purchase at any gas station or head shop

**Thanks for
Listening!!!**

Questions?

Contact The Hoffman Centers, P.C.:

Michael A. Hoffman, Esq.

PO Box 2294

Vineland, NJ 08362

Hoffmanlawmah@gmail.com

Direct Phone - 609-774-3084

WWW.THCSponge.COM



Thank you for your time!

Any additional questions or training please feel contact me.

Sgt. Michael S. Kelly

Email: mkellydre@gmail.com

Cell: 732-312-2135

Work: 732-928-1111 x 5243

Quiz Question # 1 -

In any situation, who is legally allowed to determine whether someone is under the influence of cannabis to the point of intoxication?

- A. A trained Drug Recognition Expert**
- B. A confirmatory laboratory test.**
- C. A board certified physician with a blood toxicology screen.**
- D. No One.**

Quiz Question # 2 -

How much Cannabis/Marijuana and related products or paraphernalia may a person under 21 carry at any time?

- A. Because of the de minimis consequences to the individual, and potential consequences to the officer, it doesn't matter.
- B. Up to 6 ounces, out of plain view, for personal use.
- C. None, for any reason.

Quiz Question # 3 -

What differences exist between public smoking/vaping of cannabis v. tobacco?

- A. Cannabis may only be consumed indoors, in private areas of non-public housing.**
- B. There are none. Smoking/vaping restrictions don't distinguish the consumed material.**
- C. Smoking/vaping of cannabis is not permitted if it can be smelled.**