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Few marijuana offenders in prison

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By Julie Grace



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In 2019, only 0.23% of all Wisconsin prison admissions were for marijuana cases that did not include more serious crimes.¹

That means just 21 of the 9,128 people who were sentenced to prison in 2019 were guilty of only a marijuana offense or combination of such offenses, including possession, manufacture and intent to deliver. And of those 21 cases, only three were first-time offenders.

Gov. Tony Evers recently proposed legalizing recreational marijuana and said it would provide more state revenue, create jobs and reduce criminal justice system costs.

In order to determine potential savings in the criminal justice system, the Badger Institute partnered with Court Data Technologies — a Madison firm that analyzes Wisconsin court data — to examine whether judges sentenced individuals convicted of marijuana offenses to prison or jail or neither.

Sentences to jail — by definition less than a year — were more common than sentences to prison but were still relatively rare. Statewide, 651 people were sentenced to jail for marijuana offenses in 2019.²

Unfortunately, because statewide jail data is unavailable, we cannot compare jail admissions for marijuana convictions as a percentage of total jail admissions.

It is clear, however, that very few marijuana cases

charged in circuit court — only 16% — result in either jail or prison time.

Fifteen percent of all cases charged solely with marijuana possession result in a jail or prison sentence. Twenty-six percent of all possession with intent to deliver cases charged and 23% of all manufacture/deliver cases charged result in a jail or prison sentence.

Assuming sentences are only for one year, cost savings to the prison system would be around \$1 million.³

Cost savings within the jail system are more difficult to estimate because of different county rates, but the state rate for reimbursement to counties is \$60 a day per inmate.⁴

The Badger Institute has not yet attempted to estimate the cost savings in other parts of the criminal justice system — in police departments, prosecutors' offices and courtrooms — that would result from legalization or decriminalization of marijuana.

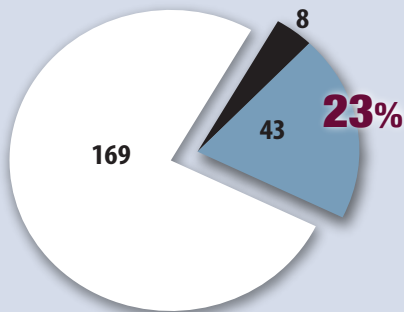
Nor did we attempt to answer the subjective question of whether efforts spent arresting and prosecuting marijuana offenders are worthwhile given the general reluctance of circuit judges to incarcerate them.

More serious drug charges involving heroin, cocaine and methamphetamines do result in prison time. In 2019, there were 2,847 prison admissions for cases involving any type of drug (31% of all admissions,

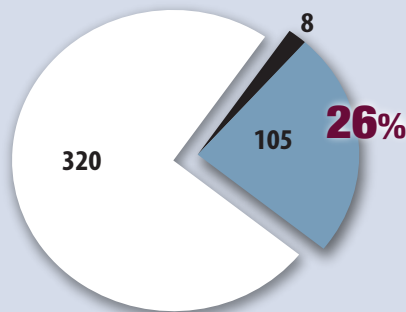
Wisconsin marijuana-only cases 2019

● Sentenced to jail ● Sentenced to prison ● Charged but no prison/jail*

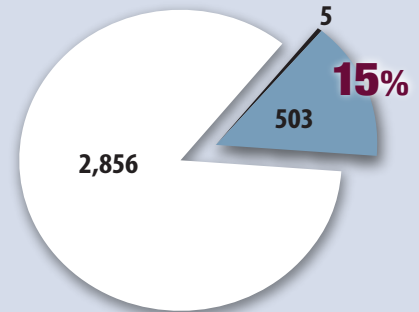
Manufacture/deliver: 220



Possession with intent to deliver: 433



Possession: 3,364



*This includes all marijuana-only cases where charges were filed but were dropped, dismissed or sentenced to something other than jail or prison.

according to the Department of Corrections) and 1,938 cases where a drug charge was the most serious charge (21% of admissions, according to the DOC).⁵

Many local municipalities — including Wisconsin's largest cities, Milwaukee and Madison — already have decriminalized marijuana possession to some extent, so many marijuana cases in those cities would not be prosecuted in circuit court. In Milwaukee, for instance, if a person is found possessing 25 grams or less of marijuana, he or she is issued a citation and fined \$50 but is not charged with a crime. Other cities that have decriminalized marijuana possession include Appleton, Eau Claire, Green Bay and Racine.

In Milwaukee in 2019, there were 603 marijuana possession charges in municipal court and 103 in juvenile court. Those charged would receive jail time only if a bench warrant was issued because they failed to pay a fine or complete community supervision.⁶

Other court initiatives such as deferred prosecution

agreements and diversion programs may result in dropped charges — and therefore bring no jail or prison time — for marijuana offenses, but these also vary by county. Charging practices, prosecution and even local ordinances for marijuana offenses vary among the state's 72 counties.

While Wisconsin's prisons are overcrowded, legalizing recreational marijuana would have little impact on space or costs since few low-level marijuana offenders are occupying cells.

In essence, municipal policies and few sentences that result in prison or jail have led to a de facto decriminalization of marijuana use throughout much of the state.

About the author



Julie Grace is a Badger Institute policy analyst.

Endnotes

¹ Our data includes statewide admissions to state prison and jails but does not include data on the federal system or revocations. We include cases where there were only marijuana charges.

² We focused on 2019 data instead of 2020 because of decreased court activity due to COVID-19 last year.

³ According to the Department of Corrections, incarceration costs are \$35,735 a year per male and \$41,121 per female. Since just 21 people were sentenced to prison for marijuana only, that would be a cost savings of at least \$750,435 (assuming they were all men who served only a year).

⁴ <https://docs.legis.wisconsin.gov/statutes/statutes/302/27>

⁵ <https://doc.wi.gov/DataResearch/InteractiveDashboards/DAIAdmissions2000to2019.pdf>

⁶ <https://city.milwaukee.gov/ImageLibrary/User/municourt/ChargesFiled2019byNumber.pdf>