



WSIC Analytical Note

April 27, 2018

The Wisconsin Statewide Intelligence Center (WSIC) has developed this Analytical Note to draw awareness to the illegality of the possession and sale of CBD products in the state of Wisconsin.

60-Second Survey: *The WSIC is constantly working to improve the quality and relevancy of our products. We encourage recipients of this product to provide feedback (both positive and negative) via the following link: <https://www.surveymonkey.com/r/WSICAnalyticalReport>.*

The Possession and Sale of Cannabidiol (CBD) in Wisconsin

(U) Executive Summary

(U) Cannabidiol (CBD) is an active cannabinoid chemical found in the marijuana plant.ⁱ Unlike the main psychoactive cannabinoid in marijuana, tetrahydrocannabinol (THC), CBD does not produce intoxication.ⁱⁱ CBD frequently takes the form of CBD oil, capsules, sprays, lotions, balms, “edibles,” or “vapes”^a and has been sold in stores nationwide and online.ⁱⁱⁱ However, CBD oil and other CBD products, with or without THC, are illegal to possess or distribute within the state of Wisconsin except for patients with a doctor’s certification in very limited circumstances.

(U) Background

(U) Cannabidiol (CBD) is one of more than 80 active cannabinoid chemicals in the marijuana plant.^{iv} Unlike the main psychoactive cannabinoid in marijuana, tetrahydrocannabinol (THC), CBD does not produce euphoria or intoxication.^v

(U) Interest in the potential therapeutic effects of CBD has been growing rapidly, partially in response to media attention surrounding the use of CBD oil in young children with intractable seizure disorders including Dravet syndrome and Lennox-Gastaut syndrome.^{vi} Additionally, pre-clinical research has shown CBD to have a range of effects that may be therapeutically useful, including anti-seizure, antioxidant, neuroprotective, anti-inflammatory, analgesic, anti-tumor, anti-psychotic, and anti-anxiety properties. CBD might also be useful in the treatment of substance abuse disorders.^{vii} While there are promising preliminary data, rigorous clinical studies are still needed to evaluate the clinical potential of CBD for specific conditions.^{viii}

^a “Vapes,” also known as vaporizers, are devices used to convert active ingredients in plant material, or other substances, into vapor for the purposes of inhalation.

(U) CBD frequently takes the form of CBD oil, capsules, sprays, lotions, balms, “edibles,” or “vapes.”^{ix} CBD is frequently sold in health food stores across the nation, including Wisconsin, and online.^x Several production methods exist to extract and isolate CBD from the marijuana plant.^{b,xi} Each can result in various amounts of THC being present.^{xii} A highly efficient purification process can remove essentially all of the THC.^{xiii} Quality producers of CBD goods will have the product tested by a private third-party laboratory to verify the concentration of THC and CBD as well as other components.^{xiv} These producers may provide a certificate of analysis to the customer to verify the product components and their concentration.^{xv}



(U) Source: Channel 3000



(U) Source: CBS News



(U) Source: verifiedcbd.com



(U) Source: verifiedcbd.com

(U) The distinction over intoxication and THC’s explicit mention in the central drug control law in the U.S. – the Controlled Substances Act – has led to a variety of interpretations about what is legal and what is illegal.^{xvi} For example, in Wisconsin, some stores have been selling versions of CBD for more than three years.^{xvii} These vendors claim that the version of CBD they sell is legal because it is derived from industrialized hemp and contains less than 0.3% THC, making it by their interpretation, legal under the 2014 Farm Bill.^{c, xviii}

^b Typically, the highest levels of CBD are present in the buds and flowers of the marijuana plant, which also has the highest levels of THC. Source: Wisconsin State Crime Laboratory

^c The 2014 Farm Bill defines industrial hemp as having less than 0.3% THC. However, it also indicates that it can only be used for research purposes and in accordance with a state-run program. Therefore production and distribution of CBD

(U) The Drug Enforcement Administration (DEA) considers CBD a Schedule 1^d substance illegal in all circumstances, whether it is derived from a marijuana plant or a hemp plant and any sale of CBD products across state lines is still illegal regardless of the individual laws in that state.^{xxix} On April 19, 2018, a Food and Drug Administration (FDA) panel of scientists and doctors voted 13-0 to recommend approval of a CBD-based drug, Epidiolex, for use in the treatment of epilepsy (specifically Dravet and Lennox Gastaut syndromes).^{xxx} A final decision on the drug by the FDA is expected in June 2018 and will make Epidiolex the first FDA approved drug derived from a cannabis plant. ^{xxxi} If approved, the DEA will need to reschedule CBD away from a Schedule 1 substance before it can be sold. ^{xxii}

(U) It is important to highlight that the safety and purity of non-regulated CBD is still unknown.^{xxiii} Over the past several years, the FDA has issued several warning letters to firms that market unapproved new drugs that allegedly contain CBD.^{xxiv} As part of these actions, FDA has tested the chemical content of cannabinoid compounds in some of the products, and many were found to not contain the levels of CBD they claimed to contain.

(U) Other instances have proven more serious. In February 2018, police in North Carolina arrested two men on illegal drug charges for allegedly possessing bottles labeled as “CBD oil” but which actually contained a combination of an illegal synthetic substance.^{xxv} The arrests came after police and fire agencies noted a spike in emergency responses to Cabarrus County high schools, including at least one overdose. ^{xxvi} In April 2018, a local law enforcement agency (Madison, Mississippi) reported that teenagers vaping specific types of “CBD oil” (“Galaxy” and “Green Mist”) resulted in a significant drop in blood pressure causing the individuals to pass out and be transported to the hospital.^{xxvii} It is unclear if these products contained actual pure CBD oil or were mislabeled as was the case in North Carolina.



(U) Source: Facebook

(U) In addition, the Army Public Health Center issued a Public Health Alert after 60 patients with medical conditions potentially related to vaping products marketed as containing CBD oil were seen at Womack

even from industrialized hemp is still illegal under the 2014 Farm Bill. Source: USDA - <https://nifa.usda.gov/industrial-hemp>.

^d Schedule 1 drugs, substances, or chemicals are defined as drugs with no currently accepted medical use and a high potential for abuse. Source: DEA

Army Medical Center, Fort Bragg, North Carolina, and the Naval Medical Center at Camp Lejeune, North Carolina.^{xxviii} The alert warns that although pure CBD has not yet been associated with adverse health effects. CBD vape oils may contain synthetic cannabinoids, concentrated THC, and/or other hazardous compounds in addition to, or in place of, CBD oil.^{xxix} Further, many vape oil brands do not disclose that they may contain illegal and/or potentially hazardous substances to include synthetic cannabinoids.^{xxx}

(U) Legality of CBD in Wisconsin

(U) In April 2017, Governor Scott Walker signed a bill to legalize the use of CBD with a prescription in very limited cases. However, since that time, there has been much confusion amongst consumers, store owners, law enforcement, and prosecutors regarding the legality of CBD in the state of Wisconsin.^{xxxi}

(U) Wisconsin law flatly prohibits the distribution and possession of any CBD product containing THC. There are no exceptions to this prohibition. If the CBD product does not contain THC, then Wisconsin law similarly prohibits distribution and possession, but there are two very limited exceptions to this rule.^{xxxii}

(U) First, a physician or pharmacy may distribute CBD (without THC) if they are specifically operating under (1) an investigational drug permit issued by the federal FDA and (2) approval by the Wisconsin Controlled Substances Board. See Wis. Stat. s. 961.34(2). Wisconsin law allows this narrow type of distribution after FDA and Board approval only if the CBD is used for treatment of seizure disorders and the particular type of CBD does not contain THC. See Wis. Stat. 961.38(1n).^{xxxiii}

(U) Second, an individual may possess CBD (without THC) if they also possess a certification issued by a physician. This certification must include as follows: (1) a date of issue no more than one year before the date of possession, (2) the name, address, and telephone number of the physician, (3) the name, address, and phone number of the patient, and (4) a certification that the patient possesses the CBD to treat a medical condition. See Wis. Stat. s. 961.32.^{xxxiv}

(U) Individuals or retailers distributing or possessing CBD (without THC) without authorization are subject to the following penalties^{xxxv}:

- **(U) Distribution or Possessing CBD without THC.** If the CBD does not contain THC, and the person or business does not have permission as described above, then distribution and possession would violate Wis. Stat. 961.38(1n) and may be subject to a forfeiture punishable by no more than \$200 under Wis. Stat. s. 939.61(1).^{xxxvi}

(U) The following significant penalties could apply to Individuals or retailers who distribute or possess CBD products containing THC:^{e, xxxvii}

^ePure CBD should never, by definition, contain THC. Because of the various manufacturing processes, however, retail CBD products (including those sold in Wisconsin stores) have been found to contain measurable levels of THC. Source: Wisconsin State Crime Laboratory.

- **(U) Possession of CBD Containing THC.** If the CBD contains a reportable amount of THC, then prosecutors could charge the possession under Wis. Stat. s. 961.41(3g)(e). Penalties range from an unclassified misdemeanor (\$1,000 fine and/or up to six months in jail) to a Class I Felony (\$10,000 fine and/or up to three years six months in prison), depending on whether it is a first conviction for a drug crime.^{xxxviii}
- **(U) Distribution of CBD Containing THC.** If the CBD contains a reportable amount of THC, then prosecutors could charge the delivery or possession with intent to deliver THC under Wis. Stat. s. 961.41(1)(h) or (1m)(h). Depending on the quantities involved, penalties range from a Class I Felony (\$10,000 fine and/or up to three years six months in prison) to a Class E Felony (\$50,000 fine and/or up to fifteen years in prison).^{xxxix}

(U) Outlook

(U) Based on the increasing popularity and continued confusion and debate over the legality of CBD, the presence and sale of the product in Wisconsin stores will likely continue. In fact, retailers in Wisconsin have explicitly stated their confusion over the legality of CBD in Wisconsin, especially when approached by CBD vendors who indicate sale is legal within the state.^{xl} Therefore, consumers, store owners, law enforcement, and prosecutors should be informed both of the illegality of CBD, and of the dangers non-regulated products sold in stores as pure CBD pose to customers.

Sources

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(U) Reporting Notice:

(U) The public should contact law enforcement via 9-1-1 when an immediate response is needed regarding suspicious activity for any type of crime, including terrorism. To report suspicious or criminal activity that does not pose an immediate threat to public safety, citizens can contact law enforcement using a non-emergency number, call 1-877-WIWATCH (1-877-949-2824), or go to www.wiwatch.org and submit an online report.

For Administrative Purposes Only:

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