MARIJUANA DELIVERY: ADDRESSING CONCERNS AND PUBLIC POLICY ISSUES

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Despite the growing retail legality of marijuana, states and counties are outlawing delivery. This stems from several concerns such as certifying the age of the buyer, impaired driving and accidents, violent robbery of delivery vehicles, local variation in regulations, and illegal imposters in the market. There are obvious desirables of marijuana delivery as well such as preventing impaired persons from driving to get more product, helping mobility-debilitated medical patients, and allowing persons who live in cities that ban dispensaries to still have access to a legal product in the state. Delivery of marijuana is currently legal in some California counties, Oregon, Nevada, and Canada. This paper briefly reviews the regulatory history of alcohol delivery and how it relates to marijuana, reviews research on the issues described above, and provides public policy discussion for each issue.

HISTORY OF REGULATION

Marijuana delivery is part of a larger direct-to-consumer market that has a long history of state and federal regulation. These laws date back to 1890 with the Wilson Act, which gave states the authority to regulate intoxicating liquors, and was significant as one of the first federal legislative changes that gave alcohol distinct regulations from other articles of the Interstate Commerce Clause.[1]

For decades afterward, the three-tiered system—which requires manufacturers to sell to wholesalers, who then sell to retailers—effectively made direct-to-consumer shipping impossible, especially across state lines. That is until California created a reciprocity law in 1986 that allowed California wineries to ship to other states as long as the inverse was allowed as well. States that held out were challenged in the Supreme Court decision in *Granholm vs Heald,* which ruled that it was unconstitutional to treat in-state and out-of-state liquor products differently, forcing most states to adopt lenient direct shipping laws.[2]

The advent of third party providers (TPPs)—firms that market and sell the wine but do not distribute and therefore do not need a winery license—has opened the market up even further. Large and small wineries across the United States have benefited greatly from this transformation, now possessing the ability to grow unique and fine wines safely in the knowledge that there will be an online market for their product without having to set up their own online marketing and sales operation. Today, some 89% of Americans have access to delivered alcohol.[3]

A good starting point for marijuana delivery regulations would be to transfer current alcohol and third-party provider laws to licensed marijuana businesses. Colorado's Amendment 64 is the closest law to this end, stating that the intent of the law is to regulate marijuana like alcohol, but it provides no legally binding effect. Ultimately, with changes to federal code, interstate marijuana delivery would work just like alcohol. However, states will have to deal with intrastate issues that arguably would not be solved even with interstate shipping agreements.

States and locales face the decision of whether to permit marijuana delivery services within their respective jurisdictions. Currently, most legal states have allowed cities and counties to place outright bans on marijuana dispensaries and deliveries. Some major concerns of these groups are the ability of companies to verify age and not serve underage customers, the possibility of impaired driving, possible inconsistencies within the law, violent robbery of delivery vehicles, and imposter companies. This paper demonstrates how many of these concerns are not new phenomena and can be addressed by a combination of free market forces and an appropriate governing environment that should make outright bans unnecessary.

AGE VERIFICATION AND YOUTH USE

There is a concern that underage youth will gain access to regulated marijuana as a result of delivery by bypassing age verification requirements. Since legalization is new, there is minimal evidence regarding the impact of legalization on teen use specifically.

Nonetheless, a careful study concluded that legalization in states that allow delivery, such as Oregon, has not been associated with greater prevalence of teen use compared to the period preceding legalization, although teens who had already tried marijuana prior to legalization did increase usage slightly.[4] In all legal states, the body of literature and data suggest that legalization has had no impact on the prevalence of teen use.[5] It logically follows that delivery itself is likely not to blame for any apparent increases in youth marijuana use.

Age verification is a legitimate concern in expanding the marijuana delivery market and fortunately has mostly been dealt with by the alcohol industry. In the age of the internet, a common solution is to require government ID at the time of purchase and time of delivery, something that already happens in most marijuana businesses. Delivery itself presents no unique risk beyond current practices, as any person of age could currently walk into a retail store to buy alcohol or marijuana and give it to minors outside the store. Distribution to minors could still remain a criminal activity even with legal delivery. Packages should be clearly labeled as marijuana products and display warnings for minors. States can and do take even more extreme steps like requiring detailed delivery records, GPS tracking, underage marijuana training that highlights the risks of underage use, and extensive training requirements for delivery drivers so they adhere to regulations strictly. Ultimately, however, delivery is simply an extension of a standard point-of-sale transaction and any attendant consequences on teenage use are unlikely to change based upon the availability of delivery services.

IMPAIRED DRIVING AND ACCIDENTS

There is a concern that permitting marijuana delivery will expand access to marijuana and therefore result in more impaired driving. The same data and logic that apply to youth use also apply to impaired driving. While determining the actual level of impairment from marijuana use can be difficult, there is no discernible increase in marijuana-related accidents or fatalities in legalized states, including those with delivery.[6] Again, while there is no research that attempts to directly connect the availability of marijuana delivery services to an increase in impaired drivers or accidents, the current research captures delivery states and finds no increase in traffic accidents.

Beyond the empirical evidence, there is little theoretical reasoning as to why delivery would increase the rate of impaired driving. It is at least equally as plausible that delivery will keep already impaired individuals from driving to purchase more product. As many states have banned the use of marijuana in public, delivery may encourage more consumers to consume in the safety of their homes without ever having to leave. States could take further steps to ensure that delivery drivers are not impaired while making deliveries, like requiring regular drug tests of drivers.

VIOLENT CRIME

Another major concern surrounding delivery is the robbery of delivery vehicles.[7] Colorado Governor Hickenlooper has notably opposed marijuana delivery for this very reason, claiming that having drivers going around the city with *any* amount of marijuana is “just a hazard.”[8] The main concern is that delivery vehicles, flush with cash and marketable product, represent an easy target for violent criminals.

Los Angeles police agree with Governor Hickenlooper that delivery would be a hazard, stating that delivery vehicles will be carrying at least $10,000 in cash, making them premier robbery targets.[9] A popular third-party provider (TPP) website called Weedmaps says that representation is misleading, “A delivery service isn’t a big truck with cannabis leaves painted all over it, ringing a bell and driving around the neighborhood.”[10] According to Weedmaps, marijuana delivery works nearly exactly the same as food delivery services. Regular street vehicles with unarmed drivers discreetly bring limited amounts of product directly to the doorstep. For example, many marijuana-legal states have regulated the marking on marijuana delivery vehicles to avoid identification. Other crime-related concerns may be legitimate but are not difficult to alleviate through various measures.

First, most recreational marijuana-legal states, including Colorado, Washington, California and Oregon, limit recreational purchases to a maximum of one ounce of flower.[11] These restrictions are especially important for delivery so that drivers are not overloaded with product or cash. A simple calculation will show the $10,000 number cited by Los Angeles police to be likely overstated given these regulations. Suppose one driver delivers 10 orders at once (an unlikely occurrence given the time it would take for each delivery and that food delivery drivers typically only carry one to two orders for efficiency purposes.[12]) all of the maximum of one ounce of flower. While prices vary from state to state and are changing, one ounce costs approximately $250.[13] At the end of the run the driver would be carrying $2,500—75% less than the estimated $10,000 per vehicle. The haul would be even less if the product itself was robbed, as black-market prices are generally lower than prices for legal products. At these levels, marijuana drivers represent no more of a target than retail dispensaries, ATMs, food trucks, dry cleaners, or farmers markets.

Calculating the inverse at the $10,000 estimate reveals that every driver would be delivering ($10,000/$250) 40 ounces of marijuana per run. Most orders fall short of the one-ounce maximum, however, and so it remains highly unlikely that a delivery driver would ever have as much as $10,000 in their possession.

Second, some states (and private company policies) dictate some form of cash management practice that limits the amount of cash carried and/or protects that cash in a lockbox. Nevada specifically limits the number of deliveries a driver is permitted to make on a single trip. Similar measures will likely be adopted voluntarily by marijuana companies not willing to subject themselves to the risk of robbery. States could also take a more heavy-handed approach by mandating cash handling procedures.

Third, detailed research between delivery and crime is lacking, but just as with the other issues surrounding delivery, we have several years of data available for legal delivery states. The data show that marijuana legalization has either no effect or a negative effect on property crime, marijuana-related offenses, and violent crime rates.[14] In other words, legalization actually resulted in fewer property and violent crimes alongside the obvious reduction in marijuana related charges. The causal relationship is not firmly established, but one of the theoretical explanations is that criminals are much more likely to commit theft and violent robbery for illegal goods that cannot be reported to police. Legalizing marijuana reduces the incentive for crime because the victim can open a formal legal investigation. Making marijuana a legal and popular consumer good in the United States removes it from illegal dealers and gangs, resulting in far fewer people being placed in dangerous situations.

Of course, robberies will still happen and it would be logically easy (but error ridden) to attribute these crimes to legalization as delivery becomes more prominent, yet even dating back to the 1990s there is no empirical evidence that the presence of marijuana delivery leads to increased crime. Marijuana delivery has technically been illegal in California but has existed widespread in practice since the passage of the first medical marijuana laws in the late 1990s.[15] California has seen declining property and violent crime rates since this period, suggesting that marijuana delivery does not lead to large spikes in violent crime.[16] If marijuana deliveries were associated with greater crime, California would have seen large spikes in violent crime while these quasi-legal delivery services operated.

LOCAL DISPENSARY BANS AND PATCHWORK LAWS

While some counties have legally banned retail dispensaries in their jurisdictions, most states have provided an exemption for delivery services into those areas, particularly for medical patients. Common practice in recreational marijuana states, as mentioned above, is to sell only to consumers aged 21 and over and to limit retail purchases to one ounce. Marijuana delivery makes enforcement of these regulations more complex due to the mobile nature of the service. State departments should work together as well as with private companies to create an efficient and consumer-friendly solution that respects individual privacy.

The marijuana delivery company Eaze has attempted to solve this problem by requiring a valid address and medical card, when relevant, to place an order, and then checking for a matching 21 and over ID or upon delivery.[17] However, this requires cooperation between all delivery order processors, the state regulatory agency, and local regulators, and currently can take up to hours to verify one order.[18] An even more onerous approach found in California and Nevada requires that all delivery vehicles be equipped with a GPS system.[19]

All that is necessary is that the processor verify that the purchaser meets state and local requirements, something that could be automated with better state technology and data-sharing capabilities.[20] For example, any delivery order processors could register with the state and gain limited access to state and local databases that are pre-configured to work with delivery processors to verify the eligibility of a purchaser across many potential areas, such as age, medical status, local jurisdictional laws and more. These checks can be done at the time of purchase and if the databases are properly organized and communicating in real time, can be executed in just seconds instead of hours.

A state pre-emption on local bans on delivery will greatly reduce private compliance costs but represents a heavy-handed approach from the states, as California has recently experienced. In April of 2019, over a dozen California cities sued the state's Bureau of Cannabis Control (BCC) to overturn such regulation. The cities argue that local control extends to prohibiting marijuana sales originating in other cities from being transported or delivered to their jurisdictions. But there is no relevant example where lawful purchases can be banned by municipalities, excepting uniquely dangerous substances like explosives. Since private marijuana possession and cultivation is now lawful in the state, the best analogy again is from alcohol, where the law allows purchases remotely from licensed businesses and deliveries anywhere (with ID verification). Notably, virtually all emerging innovations in online servicing use an interjurisdictional contract model that is outright incompatible with municipal bans. The state has also argued that it has regulatory jurisdiction because it funds the public roads in question. California's nascent legal marijuana market cannot remain functional under such an onerous ban, as the cities' approach only undermines further development. Protecting remote delivery provides a balanced policy mix, as the state will still allow locales to ban retail stores; however, still allowing for delivery helps ensure that consumers won't turn to the black market in those areas. Better equipped state technology and cooperation with private firms could make the consumer experience and regulation as seamless as the retail experience has been.

IMPOSTER SYNDROME

The state of Nevada is struggling with the issue of illegal delivery services posing as legal services on various websites.[21] Encrypted websites make personal identification difficult and do not require official business licenses to register on the website. The result is that illegal actors can register hundreds of different illegal businesses online without ever divulging any personal information for law enforcement to pursue.

Private companies like Leafly.com are solving this problem by requiring official business identification to register on the website for sales.[22] States could legally mandate third-party apps like leafly.com to require this information and then consistently monitor websites for businesses operating without a license. The state could take further advantage of this coordination by requiring consumers to enter the business identification number at the time of purchase as well. A lighter approach would be an educational campaign to help consumers identify illegal websites posing as legal services.

Policymakers should consider that price is often the main concern of consumers in this space, and Nevada is among the highest priced in the nation, with prices still rising.[23] Legal regimes that impose production costs both directly, like taxes, and indirectly, like regulations, serve to raise legal prices and thus make the black market more attractive.

For example, Nevada places a 15% excise tax at wholesale, another 10% excise tax at retail, and another 6%–8% of regular sales tax, potentially raising the end price by up to 38% in some areas.[24] Nevada also imposes a costly fee on cultivators to fund a relatively strict mandatory lab testing regime to test for aspergillus, a low-risk but potentially disease-causing fungi that can grow in plants like marijuana but has yet to be causally associated with marijuana smoking and disease, as we also commonly breathe aspergillus.[25] Some estimates suggest that 40% of product fails quality standards, significantly raising the price of wholesale marijuana.[26] A cultivation license also requires a $30,000 initial fee and a recurring $10,000 fee.[27]

Nevada restricts outdoor grows, which would be difficult given climate conditions regardless, but which also limits supply in a state where indoor growers constantly battle humidity and temperature issues.[28] Any and all barriers to supply, such as high taxes and various regulations, not just limits on cultivation, contrast with rapidly expanding demand to result in high prices. When shopping online, unwitting consumers can be drawn to illegal sites advertising lower prices because they face no such tax or regulatory requirements. Imposter syndrome will continue to be a problem in delivery states where, mostly due to tax and regulatory requirements, retail marijuana is significantly more expensive than black market marijuana.

CONCLUSION

In many ways delivery is an extension of legalization itself—it simply makes marijuana more accessible. However, there is little reason to suggest that any of the social and economic costs potentially associated with legalization are exacerbated to any extent by allowing delivery services. There is scant evidence that marijuana delivery will increase teen use, increase violent crime, or put more impaired drivers on the road. States will have to find a way to deal with patchwork law-making, such as improved coordination with providers or state supremacy on the issue. Imposter syndrome is only a problem to the extent that retail prices remain higher than black market prices due to taxes and regulations. Overall, delivery will increase access for both medical and recreational patients, and help to eliminate the black market without dragging along the falsely associated social costs.

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For more on cannabis policy, see reason.org/topics/drugpolicy

ENDNOTES

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