

'Drug driving' on the rise in Macomb and Michigan



Michigan Traffic Safety Resource Prosecutor Kenneth Stecker of the Prosecuting Attorneys Association of Michigan, speaks to the Traffic Safety Association of Macomb County. (Macomb Daily staff photos)

The cat left the bag on legalized marijuana use in the state in Michigan in 2008.

Since then, with the statewide passage of the Michigan Regulation and Taxation Marijuana Act in 2018, use of medical and recreational marijuana has jumped in the state, making the roads more dangerous as motorists drive under the influence, making prosecution of "drug drivers" more difficult for law enforcement.

That was the theme of Kenneth Stecker, a Michigan Traffic Safety Resource Prosecutor of the Prosecuting Attorneys Association of Michigan, who spoke to the Traffic Safety Association of Macomb County on Thursday at the Michigan Intermediate School District in Clinton Township.

In 2014, THC, the active ingredient in marijuana, was the top drug found in motorist drug driving blood testing in the state of Michigan at 56% of the cases. In 2018, it was again the top drug in blood testing, with drugs found in Xanax second and fentanyl third, as opiate use continues to become a growing problem in Michigan.

Komorn Law PLLC
30903 Northwestern Hwy. Suite 240
Farmington Hills, Mi 48334
Phone (800) 656-3557 · Fax (855) 456-6676

www.KomornLaw.com

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"This comes from our recreational marijuana act. This is what it's all about in our state right now," Stecker said, who spent much of his career prosecuting drunk driving offenses.

In 2008, voters passed the Michigan Medical Marijuana Act, allowing for a private patient and primary care system that is still in play today, allowing users to possess 12 plants and 2.5 ounces.

In 2016 came the Medical Marijuana Facilities Licensing Act, which licensed processors and growers.

In 2018, voters passed the Michigan Regulation and Taxation Marijuana Act. Although the act makes no mention of recreational use, Stecker said that's what it was all about. It allows for 12 plants and 2.5 ounces of recreational marijuana to use or give away. The act will be implemented in December 2019.

Stecker said from 2003 to 2010, it was very easy for prosecutors and police to investigate marijuana driving cases. They only had to show two elements: that the motorist was driving and that they had THC (tetrahydrocannabinol, the key psychoactive ingredient in marijuana) or TCOOH (the metabolic intermediate of THC). According to [quora.com](https://www.quora.com), following consumption, THC is metabolized (oxidized) in the liver into THC-COOH. However, unlike THC, THC-COOH is not psychoactive itself. The half life of THC-COOH inside body varies from several days to several weeks depending upon the quantity consumed.

THC-COOH is the key metabolite used to detect Marijuana consumption during blood or urine test. It was a strict liability crime.

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But in 2010, a Michigan Supreme Court decision ruled TCOOH is not a Schedule 1 drug and would not be included in the detection process. After the court ruling, prosecutors had to show that the suspect was driving and contained THC. But detecting THC only is much more difficult.

In 2013, the state Supreme Court came down with another ruling regarding medical marijuana patients and driving. After that ruling, police and prosecutors had to show three elements for those drivers -- they are driving, have THC in the blood, and are under the influence. The language they relied on is same that is in the recreational marijuana act. Stecker said state's strict liability, zero-tolerance law has been undercut.

And, Stecker said, proving THC is in the blood is difficult.

"I get a lot of questions about this. People say the marijuana stays in your blood, and 60 days later you can be convicted of a crime. If they're using every day, sure the THC is in their blood every day. But you have to show the active ingredient, THC is in the blood at the time they are driving," he said. "But THC dissipates quickly through the blood pretty rapidly. It's not like alcohol where the more you drink, the number goes up. With marijuana, the THC is dissipating very quickly through the blood. Police need to officially, promptly get the blood."

Stecker said scientific studies show people smoking marijuana often have about 50-80 nanograms of THC in their blood after taking their last puff. In 30 minutes, it drops 8%. In an hour, it goes down to 5-6 nanograms. After 90 minutes, quite often the time blood is taken, it's down to 2-3 nanograms.

Changes in marijuana laws have meant law enforcement has needed to be proactive and change their field sobriety tactics quickly to keep up.

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Trained drug recognition experts (DREs) can now test saliva at the scene. Twenty-five nanograms of THC in the saliva is equivalent to one nanogram in the blood, Stecker said. And results can be obtained in five minutes. Stecker said Michigan is the only state in the country that has laws allowing for roadside testing of oral fluids or saliva.

"Everything is changing. It's always the will of the people," Macomb County Sheriff Anthony Wickersham said. "From a law enforcement perspective, what we did 20 years ago, what we did five years ago and what we did last year is changing. So we have to change with it. We're fortunate, we have one Certified Drug Recognition Expert, we have another one in training."

Wickersham added his department needs to retrain all of its deputies who are on the road, teach them what signs to look for and how to put good cases together.

"It's not as simple as driving and you've got THC in your system. That was real easy," the sheriff said. "Now we have to articulate on the field sobriety side, on the driving side in making sure we are getting blood and proving our cases. But this is going to be a lot more time consuming, getting everybody up to speed. We're still going to have a lot of deputies that don't believe marijuana should be legal, and it's harder for them at times to say, kind of like alcohol, will they can have it and we're just going to let it go. It's a real paradigm shift in our operation and in our enforcement from the marijuana side."

Wickersham said the county has seen an increase in marijuana-impaired driving, primary from recreational users as opposed to medical users. He said he sees bigger problems on the horizon as more communities allow commercial growing centers and retail operations. He also sees groups popping up like MADD (Mother Against Drunk Driving) to raise awareness about driving while impaired by marijuana and the use of designated drivers.

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His hope is that his department is given more funding to train more deputies in the costly, time consuming process of becoming a certified DRE and arresting those driving under the influence of marijuana.

"It was a lot easier with the PBT (portable breath tester for alcohol) training. It was a four-hour block of training on the instrument," he said. "In oral fluid, you have to be a DRE and get specialized training. That takes weeks of training. So how do I get all of my deputies on the road doing traffic enforcement trained? It's very costly, very time consuming. But that's what they're going to need to make our roadways safer. From my wish list, I'd like to see more dollars coming to get people trained up."

Editor's note: Regarding the disparity in spellings of the word marijuana in this and other similar reports, The Macomb Daily opts to use the more common "marijuana" version. The state act regulating the drug uses the less common "marihuana" spelling.

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