



The
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James M. Jeffords Center's
Vermont Legislative Research Service



Marijuana Decriminalization

A 2010 found that approximately 17.4 million people in the United States had used marijuana “within the past month.”¹ Due to the large number of marijuana users, several states have introduced and passed decriminalization legislation. Decriminalization refers to when a state reduces the penalty for possessing a small amount of marijuana to a fine rather than imprisonment.² Under decriminalization, the trafficking, selling, and distribution are still illegal and incur criminal penalties; only possession is affected by decriminalization. While some states have passed decriminalization and two states—Colorado and Washington—legalized marijuana in 2012 via ballot measure, the federal government still recognizes the full criminal sanctions for marijuana outlined in the Controlled Substances Act of 1970.³

States that have moved toward decriminalization have stated several reasons for the change in policy. The most prominent reasons are to save money and time. Such costs include those associated with police and corrections. If marijuana were decriminalized, it is argued, the criminal justice system could reallocate resources to other public safety concerns.⁴

¹ United States Department of Health and Human Services, “Results from the 2010 National Survey on Drug Use and Health: Summary of National Findings,” Substance Abuse and Mental Health Services Administration Center for Behavioral Health Statistics and Quality, last modified September 2011, accessed September 26, 2012, <http://www.samhsa.gov/data/NSDUH/2k10NSDUH/2k10Results.htm#Ch2>.

² Emilee Mooney Scott, “Marijuana Decriminalization,” State of Connecticut General Assembly: Office of Legislative Research, last modified May 5, 2010, accessed September 26, 2012, <http://cga.ct.gov/2010/rpt/2010-R-0204.htm>.

³ United States Food and Drug Administration, “Controlled Substances Act, Title 21: Food and Drugs - Chapter 13: Drug Abuse Prevention and Control - Subchapter 1: Control and Enforcement,” United States Department of Health and Human Services, last modified June 11, 2009, accessed September 26, 2012, <http://www.fda.gov/regulatoryinformation/legislation/ucm148726.htm>.

⁴ James Austin, “Rethinking the Consequences of Decriminalizing Marijuana,” The JFA Institute, last modified November 2005, accessed October 1, 2012, http://www.jfa-associates.com/Marijuana_Study.pdf, p. 2 (The JFA Institute is a non-profit organization that provides non-partisan research on the causes of crime and the justice system’s responses to crime and offenders. JFA’s policy recommendations are disseminated through research reports, criminal justice and criminology periodicals, books, and seminars. JFA has worked for various federal, state, and local government agencies; including but not limited to the U.S. Department of Justice, Bureau of Justice Assistance, and states such as: Florida, Kansas, Nevada, Texas, Ohio, Rhode Island, and Alaska. Funding for the institute’s endeavors come from foundations, federal agencies, and grants through state governments).

Decriminalization & Legalization Legislation

Currently, 13 states have a decriminalization policy for individual possession of small amounts of marijuana. These include Alaska, California, Connecticut, Colorado, Maine, Massachusetts, Minnesota, Mississippi, Nebraska, New York, North Carolina, Ohio, and Oregon.⁵ Furthermore, marijuana was legalized in 2012 via ballot measure in the states of Colorado and Washington. Below are several examples of decriminalization and legalization legislation that have been passed.

Oregon

In October of 1973, Oregon became the first state to decriminalize the possession of marijuana, changing the charge of the possession of less than one ounce of marijuana from a criminal to civil offense. This constitutes a specific \$650 fine for the violation.⁶ Unlawful possession of marijuana is still considered a class C misdemeanor if the possession occurs in a “public place” that is within 1,000 feet of property comprising a public or private schools, primarily attended by minors.⁷ Public place is defined as,

a place to which the general public has access and includes, but is not limited to, hallways, lobbies and other parts of apartment houses and hotels not constituting rooms or apartments designed for actual residence, and highways, streets, schools, places of amusement, parks, playgrounds and premises used in connection with public passenger transportation.⁸

On Election Day 2012, Oregon citizens voted on Ballot Measure 80, also known as the Oregon Cannabis Tax Act. The Oregon Cannabis Tax Act would have legalized marijuana in the state of Oregon, but in an extremely regulated manner. This measure did not pass.⁹

Colorado

Prior to Election Day 2012, Colorado had passed marijuana decriminalization legislation with very lenient penalties. Individuals cited for possession of up to two ounces of marijuana would only be charged with a class two petty offense. This carries a mandatory fine of \$100 with the possibility of up to 15 days in jail.¹⁰ All this changed on November 6, 2012 when citizens voted

⁵ Emilee Mooney Scott, “Marijuana Decriminalization.”

⁶ Oregon State Legislature, “475.864: Unlawful Possession of Marijuana,” last modified 2011, accessed October 15, 2012, <http://www.leg.state.or.us/ors/475.html>.

⁷ Oregon State Legislature, “475.864: Unlawful Possession of Marijuana.”

⁸ Oregon State Legislature, “Note 1: 161.015,” last modified 2011, accessed October 24, 2012, <http://www.leg.state.or.us/ors/161.html>.

⁹ Oregon Secretary of State, “State Ballot Measure No. 80,” last modified November 13, 2012, accessed November 13, 2012, <http://www.oregonvotes.gov/results/2012G/645489344.html>.

¹⁰ Colorado State Legislature, “Colorado Revised Statutes: Title 18 Criminal Code, Article 18. Uniform Controlled Substances Act of 1992, Part 4. Offenses and Penalties,” last modified 2012.

to approve Measure 64 on the Colorado ballot legalizing marijuana. Marijuana will now be taxed and individuals 21 years and older will be able to purchase marijuana, similar to alcohol, from state regulated facilities.¹¹ Under this new law citizens may possess, purchase, or use up to one ounce of marijuana. They may also possess, grow, cultivate, and travel (within state borders) with up to six marijuana plants as long as no more than three are mature.¹²

California

California has a decriminalization policy toward the possession of marijuana for personal use. The California Health Code states that individuals who possess one ounce or less of marijuana are guilty of an infraction punishable by a fine of no more than \$100.¹³ Those who possess one ounce or more of marijuana are still guilty of a misdemeanor criminal offense and subject to a fine of up to \$500 with the possibility of up to six months in county jail.¹⁴

Massachusetts

In 2008, “An Act Establishing a Sensible State Marijuana Policy” was passed.¹⁵ This act changed state law so that possession of one ounce or less of marijuana would result in a civil fine of \$100 and the forfeiture of any and all marijuana. Violators would incur no criminal penalties or jail time. A civil offense for possession does not result in the loss of student financial aid, public housing assistance or other forms of public assistance including unemployment benefits. Moreover, possession bears no disqualification sanctions of a driver’s license.¹⁶ The aforementioned penalties apply to minors as well, with an extended caveat that the offender completes a drug awareness program.¹⁷ Possession of greater than one ounce of marijuana will result in a \$500 fine with the possibility of up to six months jail time at the house or corrections.¹⁸

¹¹ Mason Tvert and Brian Vicente, “Article 18: Section 16. Personal Use and Regulation of Marijuana,” last modified June 03, 2011, accessed November 6, 2012,

<http://www.sos.state.co.us/pubs/elections/Initiatives/titleBoard/filings/2011-2012/30Final.pdf>, p. 1.

¹² Mason Tvert and Brian Vicente, “Article 18: Section 16. Personal Use and Regulation of Marijuana,” p. 8.

¹³ Health and Safety Code, “Section 11357: B,” State of California, accessed November 6, 2012,

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=hsc&group=11001-12000&file=11357-11362.9>.

¹⁴ Health and Safety Code, “Section 11357: C.”

¹⁵ Chief Justice Lynda M. Connolly, “Possession of Marijuana after January 2, 2009,” Trial Court of the Commonwealth: District Court Division, last modified December 31, 2008, accessed September 26, 2012, <http://www.mass.gov/courts/courtsandjudges/courts/districtcourt/trans1005possession-of-marihuana.pdf>, p. 1.

¹⁶ Commonwealth of Massachusetts, “General Laws: Chapter 94C Section 32L,” last modified 2012, accessed September 26, 2012, <http://www.malegislature.gov/Laws/GeneralLaws/PartI/TitleXV/Chapter94C/Section32L>.

¹⁷ Commonwealth of Massachusetts, “General Laws: Chapter 94C Section 32M,” last modified 2012, accessed September 26, 2012, <http://www.malegislature.gov/Laws/GeneralLaws/PartI/TitleXV/Chapter94C/Section32M>.

¹⁸ Commonwealth of Massachusetts, “General Laws: Chapter 94C Section 34,” last modified 2012, accessed September 26, 2012, <http://www.malegislature.gov/Laws/GeneralLaws/PartI/TitleXV/Chapter94C/Section34>.

Washington

Washington statutes state that the possession of 40 grams (1.4 ounces), or less, of marijuana is considered a misdemeanor criminal offense. The penalty for the first offense is a \$250 fine. Any subsequent offenses warrant a \$500 fine. Possession of more than 40 grams will result in a felony charge and a mandatory minimum sentence of 24-hours in jail.¹⁹ This year a citizen initiative, 502,²⁰ was placed on the ballot, and voted on November 6, 2012. Initiative 502 was passed into law, and will legalize the production, possession, delivery, distribution and sale of marijuana. The bill authorizes the State Liquor Control Board to regulate and tax marijuana for those 21 and older.²¹ The marijuana would be sold at state licensed stores. Initiative 502 went into effect until December 6, 2012. The new initiative also requires a new driving under the influence limit policy, by the means of a blood test; however, the exact numbers on this have yet to be determined and state officials should have them decided on by December 6, 2012.²²

Impact of Decriminalization

In 2003, there were approximately 755,000 marijuana arrests. That number increased over 250% from 1970 when there were an estimated 188,682 general marijuana arrests. Of the 13.6 million annual arrests made in the United States, however, only 613,986 are for marijuana possession and constitute four percent of the total police and court systems workload.²³

In Massachusetts, decriminalization of marijuana has brought about a change in case law regarding search and seizure by law enforcement officers. Prior to the passage of the decriminalization law the “faint odor” of brunt marijuana established both reasonable suspicion of criminal activity and probable cause to believe that contraband or evidence of a crime was present.²⁴ In 2011, this changed when the Massachusetts Supreme Judicial Court (SJC) handed down their decision in *Commonwealth v. Cruz*. The SJC reasoned that since prior Massachusetts search and seizure cases required an element of criminality, the odor of brunt marijuana no longer meets the reasonable suspicion standard for a search.²⁵ Since marijuana itself only

¹⁹ Washington State Legislature, “RCW 69.50.4014,” last modified 2003, accessed October 2, 2012, <http://apps.leg.wa.gov/rcw/default.aspx?cite=69.50.4014>.

²⁰ Washington State Code Reviser’s Office, “Initiative Measure No. 502,” last modified January 2011, accessed October 15, 2012, <http://sos.wa.gov/assets/elections/initiatives/i502.pdf>.

²¹ Brian Zylstra, “Marijuana Petition Signatures Roll In,” Washington Secretary of State, last modified December 29, 2011, accessed October 2, 2012, <http://blogs.sos.wa.gov/FromOurCorner/index.php/2011/12/marijuana-measure-petitions-roll-in/>.

²² Washington State Code Reviser’s Office, “Initiative Measure No. 502,” last modified January 2011, accessed October 15, 2012, <http://sos.wa.gov/assets/elections/initiatives/i502.pdf>.

²³ James Austin, “Rethinking the Consequences of Decriminalizing Marijuana,” p. 6.

²⁴ Beth Lidington, “Criminal Procedure—The Impact of Marijuana Decriminalization on Searches and Seizures in Massachusetts—Commonwealth v. Cruz,” *Suffolk University Law Review* 45:243 (2011), http://www.law.suffolk.edu/highlights/stuorgs/lawreview/Volume_45/upload/12-Lidington_Comment_PDF.pdf, p. 245.

²⁵ Beth Lidington, “Criminal Procedure—The Impact of Marijuana Decriminalization on Searches and Seizures in Massachusetts—Commonwealth v. Cruz,” p. 248.

represents infractionary conduct (a civil violation) it is illegitimate for law enforcement officers to assume suspicion of a criminal activity.²⁶

The Office of Legislative Research for the State of Connecticut has researched whether decriminalization has saved money. They found that there are few studies on budgetary effects that exist.²⁷

In Seattle, Washington a ballot initiative passed in 2003 and mandated that the police department and district attorney made marijuana offenses, relating to personal use, the lowest municipal priority.²⁸ As a consequence of this mandate there has been citywide reductions in the number of marijuana-related incidents referred from the police department to the district attorney's office and a reduction in the number of individuals charged with marijuana-related offenses.²⁹ Therefore, the respective departments have had to denote fewer resources to this specific aspect of enforcement.

State and Federal Law Conflict

At the federal level marijuana is classified as a Schedule I Substance. Schedule I Substances are considered to have a high potential for dependency with no accepted medical use, making distribution of marijuana a federal offense. As a consequence, the distribution of marijuana is a federal offense. With regard to marijuana law and policy, federal law has supremacy over any state enacted statute. In a 2008 memorandum, President Obama made marijuana enforcement a low priority and strongly urged federal prosecutors to comply with individual state laws when prosecuting those distributing or possessing marijuana for medical reasons.³⁰

One example of federal law supremacy took place in Arizona during 1996. Arizona voters attempted to pass a ballot initiative, which allowed doctors to prescribe marijuana legally to patients whose illness might benefit from medical marijuana. The federal government shut down this ballot measure as marijuana is a Schedule I Substance; thus, making it illegal for doctors to prescribe it. For this reason, Arizona changed legislation so that marijuana could not be referred or recommended by doctors to those patients who may medically benefit from it, because federally it is a Schedule I Substance.³¹

²⁶ Beth Lidington, "Criminal Procedure—The Impact of Marijuana Decriminalization on Searches and Seizures in Massachusetts—Commonwealth v. Cruz," p. 251.

²⁷ Soncia Coleman, "Criminal Justice Cost Savings Associated With Marijuana Decriminalization," State of Connecticut Office of Legislative Research, last modified February 17, 2010, accessed November 2, 2012, <http://cga.ct.gov/2010/rpt/2010-R-0052.htm>.

²⁸ Soncia Coleman, "Criminal Justice Cost Savings Associated With Marijuana Decriminalization,"

²⁹ Soncia Coleman, "Criminal Justice Cost Savings Associated With Marijuana Decriminalization,"

³⁰ National Conference of State Legislatures, "State Medical Marijuana Laws."

³¹ National Conference of State Legislatures, "State Medical Marijuana Laws," last modified October 2012, accessed November 5, 2012, <http://www.ncsl.org/issues-research/health/state-medical-marijuana-laws.aspx>.

Potential Impact of Decriminalization in Vermont

In 2010, marijuana accounted for 60.9% of all drug arrests in Vermont during that year.³² According to one projection made during the year 2000, expenditures related to marijuana prohibition cost the state of Vermont seven million dollars. During this same year, there were 632 arrests for marijuana possession and 65 arrests for the sale of marijuana.³³ Thus, prohibition of marijuana may have substantial fiscal impacts for the state.

Currently in Vermont, the criminal penalty for adults possessing one ounce or less of marijuana is a maximum sentence of six months in prison or a fine of up to \$500.

In 2011, Vermont Representative Jason Lorber filed H. 427, a bill proposing a reduction in the penalties for adults possessing less than one ounce of marijuana. Under this bill, a person 21 years of age or older possessing one ounce or less of marijuana would be assessed a civil fine of no more than \$150 in lieu of a criminal charge. If a person possesses more than one ounce of marijuana it continues to constitute a criminal offense.³⁴

On February 11th and 12th of 2012, Public Policy Polling conducted a mechanized poll, randomly sampling 1,086 Vermonters of voting age on their opinions regarding marijuana and decriminalization. Public Policy Polling is a private company that conducts polls for businesses, political organizations, politicians, unions, and consultants. Their purpose is to measure and track public opinion in an affordable way. This poll was sponsored and paid for by Marijuana Policy Project (MPP), which is a non-profit group that advocates for the legalization of marijuana.³⁵ According to Matt Simon, a legislative analyst for MPP, the polling questions used by Public Policy Polling were designed by MPP.³⁶

The results of this poll are displayed in Figure A below,³⁷ and indicate that a majority of the Vermonters polled would support a change in the law that would reduce the penalty for those with simple possession of marijuana. The poll also indicates that an overwhelming majority of those polled support medical marijuana.³⁸

On November 6, 2012, Burlington city voters voiced their opinion on the legalization of marijuana via an initiative public advisory vote to gain public sentiment. Based on preliminary

³² Vermont Department of Public Safety, "2010 Vermont Crime Report," Vermont Criminal Information Center, accessed October 16, 2012, http://vcic.vermont.gov/crime_statistics/crime_report/2010.

³³ Daniel Egan and Jeffrey A. Miron, "The Budgetary Implications of Marijuana Prohibition," in *Pot Politics: Marijuana and the Costs of Prohibition*, ed. Mitch Earleywine, (New York: Oxford University Press, 2007), p. 23.

³⁴ Vermont State Legislature, "H.427, Bill as Introduced," The Vermont Legislative Bill Tracking System, last modified 2011, accessed September 26, 2012, <http://www.leg.state.vt.us/database/status/summary.cfm?Bill=H.0427&Session=2012>.

³⁵ Marijuana Policy Project, "Mission and Vision Statement," last modified 2012, accessed November 13, 2012, <http://www.mpp.org/about/mission-statement.html>.

³⁶ Matt Simon, Legislative Analyst for Marijuana Policy Project, telephone conversation on November 7, 2012.

³⁷ Marijuana Policy project, "Vermont Survey Results," sent electronically by Matt Simon on November 7, 2012.

³⁸ Marijuana Policy project, "Vermont Survey Results."

results over 70% of Burlington voters voted in favor of legalizing, regulating, and taxing all cannabis and hemp products.³⁹

Conclusion

Approximately one fourth of all states have adopted a policy of decriminalization toward marijuana. Inevitably, this legislation reduces individual possession from a criminal to civil offense resulting in a fine. The fine can be equated to a simple traffic violation. One argument made in favor of decriminalization is that state resources are freed up for focus of other areas of public concern. Since decriminalization laws are fairly new, there have not yet been concrete research studies assessing their economic impact and effects on the states. Massachusetts' decriminalization law has changed law enforcement officers' ability to cite the smell of marijuana as evidence of a criminal act and consequently changed that right to search and seizure. Further impacts of such laws will only come with time to assess their validity.

This report was completed on January 9, 2013 by Michael Gibson, Olivia Peterson, and Liam Walsh under the supervision of Associate Director Kate Fournier and Professor Anthony Gierzynski.

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Disclaimer: This report has been compiled by undergraduate students at the University of Vermont under the supervision of Professor Anthony Gierzynski. The material contained in the report does not reflect the official policy of the University of Vermont.

³⁹ City of Burlington, "Unofficial Election Results," last modified November 7, 2012, accessed November 7, 2012, http://burlingtonvt.gov/uploadedFiles/BurlingtonVTgov/Departments/Clerk-Treasurers_Office/Elections/UnofficialResults-2011-11-06.pdf, p. 3.

Vermont Survey Results

<p>Q1 Current Vermont law provides for a jail term of up to six months and a fine of up to \$500 for simple possession of marijuana. Would you support or oppose a change in the law to provide for a fine of up to \$150 without jail time for those who possess an ounce or less of marijuana for personal use?</p> <p>Support 63% Not Sure 8%</p> <p>Oppose 29%</p>	<p>Q6 If you are a woman, press 1. If a man, press 2.</p> <p>Woman 51%</p> <p>Man 49%</p>
<p>Q2 Would you be more or less likely to vote for your state legislator if he or she voted to replace the current criminal penalties for possession of an ounce of marijuana with a fine of up to \$150, or would it not make a difference to you?</p> <p>More Likely 52% No Difference 21%</p> <p>Less Likely 25% Not Sure 2%</p>	<p>Q7 If you are a Democrat, press 1. If a Republican, press 2. If you are a member of the Progressive party, press 3. If you are an independent or a member of another party, press 4.</p> <p>Democrat 39%</p> <p>Republican 23%</p> <p>Progressive Party 2%</p> <p>Independent/Other 36%</p>
<p>Q3 Under current Vermont state law, it is legal for people who have cancer, AIDS, and other serious illnesses to use and grow marijuana for medical purposes, as long as their physicians approve. Within a year, qualified patients will also be able to obtain marijuana from one of four regulated not-for-profit dispensaries. Overall, do you support or oppose this law?</p> <p>Support 75% Not Sure 7%</p> <p>Oppose 18%</p>	<p>Q8 If you are 18 to 34 years old, press 1. If 35 to 49, press 2. If 50 to 64, press 3. If you are 65 or older, press 4.</p> <p>18-34 14%</p> <p>35-49 28%</p> <p>50-64 38%</p> <p>65 or older 20%</p>
<p>Q4 Which do you believe is safer: marijuana or alcohol?</p> <p>Marijuana is safer 42% They are the same 32%</p> <p>Alcohol is safer 15% No opinion / Don't know 10%</p>	<p>Q9 What region of Vermont do you live in? For Chittenden County, press 1. For Southern Vermont, press 2. For Central Vermont, press 3. For Northeast Vermont, press 4. For Northwest Vermont, press 5.</p> <p>Chittenden County 23%</p> <p>Southern Vermont 22%</p> <p>Central Vermont 35%</p> <p>Northeast Vermont 14%</p> <p>Northwest Vermont 6%</p>
<p>Q5 Would you support or oppose changing Vermont law to tax and regulate marijuana similarly to alcohol, where stores would be licensed to sell marijuana to adults 21 and older?</p> <p>Support 47% Undecided 12%</p> <p>Oppose 42%</p>	

February 11-12, 2012
Survey of 1,086 Vermont voters

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Figure A: Vermont Public Opinion Poll Regarding Marijuana Decriminalization

Source: Marijuana Policy Project, "Vermont Survey Results," sent electronically by Matt Simon on November 7, 2012.