

¹ Due to two states 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.

States that have moved toward decriminalization have stated several reasons for the change in policy. The mos

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. 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. Lawful 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 school, 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 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.

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.

Colorado

Prior to Election Day 2012, Colorado had passed marijuana decriminalization legislation with

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. Under this new law citizens may possess, purchase, or use up to one ounce of marijuana. They may also possess, grow, cultivate, and (within state borders) with up to six marijuana plants as long as no more than three are mature.

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. 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.

Massachusetts

In 2008, "An Act Establishing a Sensible State Marijuana Policy" passed. 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. The aforementioned penalties apply to minors as well, with an extended caveat that the offender completes a drug awareness program. 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/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=11001000&file=11357-1362.9>

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/trans1005possessionofmarihuana.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 6,²² 2012.

Impact of Decriminalization

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 mandated that the police department and district attorney make marijuana offenses relating to personal use the lowest municipal priority.²⁸ As a consequence of this mandate there have 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 devote 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.

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://c.ga.ct.gov/2010/rpt/2010R-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->

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.³⁴ During this same year, there were 632 arrests for marijuana possession and 85 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 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 1st 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 nonprofit 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 and indicate that a majority of the Vermonters polled would support a change in the law (a) and would

results over 70% of Burlington voters voted in favor of legalizing, regulating, and taxing all cannabis and hemp products.³⁸

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 impact of such laws will only come with time to assess their validity.

This report was completed on January 9, 2016 by Michael Gibson, Olivia Peterson, and Liam Walsh under the supervision of Associate Director Kate Fournie 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/UnofficialResults11-11-06.pdf, p. 3.

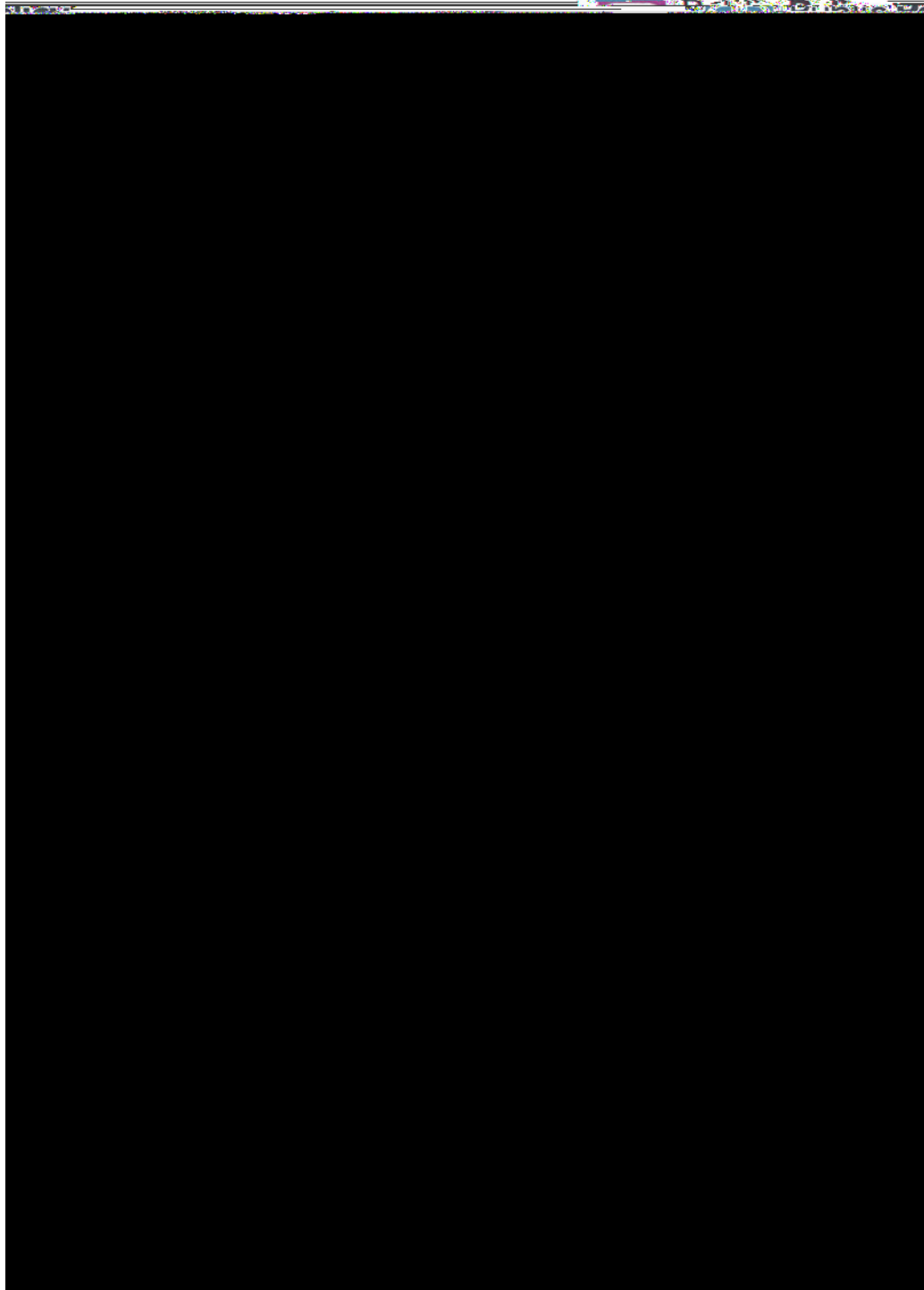


Figure A: Vermont Public Opinion Poll Regarding Marijuana Decriminalization

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