

**Model Legislation:  
Rice University's Baker Institute and  
the South Texas College of Law  
Drug Policy Collaboration 2013**

Part 1 of 8: Decriminalization Statutes

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The following is one of several collections of model statutes produced by the legislation class at South Texas College of Law (STCL) during the spring 2013 semester. The class was offered in collaboration with Rice University's Baker Institute. Students attended lectures on drug policy, legislation, and statutory interpretation conducted by Dru Stevenson, J.D., STCL professor and Baker Institute Scholar; Nathan Jones, Ph.D., Alfred C. Glassell III Postdoctoral Fellow in Drug Policy; and William Martin, Ph.D., Harry and Hazel Chavanne Senior Fellow in Religion and Public Policy and director of the Baker Institute's Drug Policy Program. Each student completed a project addressing one aspect of marijuana legalization or postlegalization regulation through a model statute or ordinance. Links to each of the model statutes can be found at [bakerinstitute.org/model-legislation-2013](http://bakerinstitute.org/model-legislation-2013). Neither the Baker Institute nor the South Texas College of Law endorse any particular policy. The model legislation has not undergone editorial review by the Baker Institute.

## **Introduction to This Collection**

By Dru Stevenson, J.D., Helen and Harry Hutchins Research Professor, South Texas College of Law, and Baker Institute Scholar

Marijuana legalization is virtually synonymous with decriminalization in the popular vernacular, just as “repeal” once meant merely the undoing of alcohol prohibition. Of course, outright prohibition of alcohol actually yielded to an elaborate regulatory framework for intoxicating beverages, including labeling requirements, a strict licensing regime for wholesalers and retailers, special taxation, age requirements, driving limitations, and various presumptions about civil and criminal liability for actions undertaken in conjunction with consumption. We expect marijuana “legalization” to follow a legal trajectory similar to that of alcohol and tobacco, both of which overlap with marijuana in important ways, and both of which are the subject of numerous regulations, rules, and restrictions. The obvious first step, however, is decriminalization. Decriminalization can take two basic tracks: allowing medical use (the narrower but more popular view) and allowing recreational use.

The model statutes that follow generally follow the latter course – decriminalizing recreational use of marijuana, subject to various limitations. The first section has statutes entirely focused on removing the criminal liability for most recreational possession or use of marijuana. For states considering decriminalization, these would have the most relevance, at least in the immediate future.

A subsequent compilation will present what we have dubbed “recriminalization” statutes. In anticipation of general decriminalization, these are measures to ensure that there will be ongoing criminal liability for certain uses of marijuana that pose a continuing risk to public health or safety, such as consumption in conjunction with driving a vehicle, or using the temporary mental impairment from marijuana intoxication as an excuse for other illegal behavior. Please note that the decriminalization statutes may contain a few retained-criminalization provisions, and the recriminalization statutes may contain cursory decriminalization provisions – the sorting follows the overall focus of each model statute.

Each proposed statute includes commentary explaining the policy rationale for specific provisions or verbiage. Ultimately, legislators could choose from various provisions, cobbling together components from each proposal to make a new statute. The proposed statutes, however, have internal coherence in their form, flow, and terminology, so they appear here as coherent, freestanding individual proposals. Most of the statutes focus heavily on defining terms; statutory definitions are often dispositive when courts interpret and apply the laws in individual cases. The advantage of attached commentary is that it can become part of the legislative history, to which courts often turn when seeking the interpretation of ambiguous terms or phrases.

## STATUTE 1

### Section 001 - Purpose and findings.

(a) IN THE INTEREST OF THE EFFICIENT USE OF LAW ENFORCEMENT RESOURCES, ENHANCING REVENUE FOR PUBLIC PURPOSES, AND INDIVIDUAL FREEDOM, THE USE OF MARIJUANA SHOULD BE LEGAL FOR PERSONS TWENTY-ONE YEARS OF AGE OR OLDER AND TAXED IN A MANNER SIMILAR TO ALCOHOL SO THAT:

(I) INDIVIDUALS WILL HAVE TO SHOW PROOF OF AGE BEFORE PURCHASING MARIJUANA;

(II) SELLING, DISTRIBUTING, OR TRANSFERRING MARIJUANA TO MINORS AND OTHER INDIVIDUALS UNDER THE AGE OF TWENTY-ONE SHALL REMAIN ILLEGAL;

(III) DRIVING UNDER THE INFLUENCE OF MARIJUANA SHALL REMAIN ILLEGAL;

(IV) LEGITIMATE, TAXPAYING BUSINESS PEOPLE, AND NOT CRIMINAL ACTORS, WILL CONDUCT SALES OF MARIJUANA; AND

(V) MARIJUANA SOLD IN THIS STATE WILL BE LABELED AND SUBJECT TO ADDITIONAL REGULATIONS TO ENSURE THAT CONSUMERS ARE INFORMED AND PROTECTED.

(b) IN THE INTEREST OF ENACTING RATIONAL POLICIES FOR THE TREATMENT OF ALL VARIATIONS OF THE CANNABIS PLANT, INDUSTRIAL HEMP SHOULD BE REGULATED SEPARATELY FROM STRAINS OF CANNABIS WITH HIGHER DELTA-9 TETRAHYDROCANNABINOL (THC) CONCENTRATIONS.

(c) TO ENSURE CONSISTENCY AND FAIRNESS IN THE APPLICATION OF THIS SECTION THROUGHOUT THE STATE AND THAT, THEREFORE, THE MATTERS ADDRESSED BY THIS SECTION ARE, EXCEPT AS SPECIFIED HEREIN, MATTERS OF STATEWIDE CONCERN.

### Comments

- 1) Amendment 64 to the Colorado Constitution, also called “the treat marijuana like alcohol act of 2012” influenced this Bill. Licensed marijuana shops shall not sell to any person under the age of twenty-one. Furthermore, operators of licensed marijuana shops shall request identification from every patron that appears to be under the age of thirty-five. This measure is similar to the tobacco and alcohol laws because it is in the interest of the state to protect citizens. State tobacco and alcohol laws shall apply if an operator of a licensed marijuana shop fails to request identification of someone under the age of

twenty-one, or sells marijuana to someone under the age of twenty-one. Chapter 106 of the Texas Alcoholic Beverage Code imposes a class A misdemeanor on a person who sells alcohol to a minor. However, it is not a criminal offense if a minor falsely represents himself to be 21 years old or older by displaying an apparently valid proof of identification that contains a physical description and photograph consistent with the minor's appearance, purports to establish that the minor is 21 years of age or older, and was issued by a governmental agency.

- 2) This bill does not decriminalize the possession, consumption, or the growth of marijuana for citizens less than twenty-one years of age because of public policy issues. Although states like Connecticut and Delaware require marijuana users to be eighteen or older, their laws apply to the medicinal use of marijuana - not recreational use. Washington and Colorado, the first two states decriminalizing recreational use of marijuana, set the age of consumption at twenty-one. Setting the age requirement at twenty-one prevents high-school age children from having easy access to marijuana. Based on recent studies that indicate the human brain does not stop developing until the age of twenty-three for women and twenty-five for men, some advocate setting the age requirement at twenty-three years old or higher. These studies indicate that heavy consumption of marijuana during the years of brain development may permanently reduce one's Intelligence Quotient (IQ). Although this is a real concern, the required age to consume alcohol is twenty-one. Alcohol is a stronger intoxicant than marijuana and can quickly lead to death and destruction of property. Studies also indicate that heavy, long-term drinking can damage the liver.<sup>1</sup> It makes no sense to impose an age restriction over the age of 21 because the state would facilitate a larger marijuana black market and forgo tax revenue.
- 3) Decriminalizing marijuana will reduce the number of arrestable offenses in this state. However, private prisons vehemently oppose the decriminalization of marijuana because such measures will drastically affect their revenue. The Corrections Corporations of America (CCA) owns and operates more for-profit private prisons than any other company in the United States. CCA stated in its 2010 financial report that decriminalization of certain activities could adversely affect the demand for their facilities and services. Specifically, CCA mentioned changes with respect to drugs and controlled substances that could affect the number of persons arrested, convicted, and sentenced. To hedge against states decriminalizing marijuana, CCA recently earmarked \$250 million to purchase or manage government-owned corrections facilities.<sup>2</sup> These contracts guarantee a minimum ninety-percent occupancy rate over the next 20 years. Since 2001, CCA's revenue increased by 88 percent, consistently generating over \$1 billion per year. CCA invested portions of their revenue in strategic gaming of the political system, such as lobbying politicians and making direct campaign contributions to state judges. It is because of the efforts of private prisons that policies such as three-strike laws exist, which has led to a huge increase in the incarceration rate.<sup>3</sup> Decriminalizing marijuana strips private prisons of easy income.

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<sup>1</sup> <http://pubs.niaaa.nih.gov/publications/aa63/aa63.htm>

<sup>2</sup> <http://big.assets.huffingtonpost.com/ccalletter.pdf>.

<sup>3</sup> [http://www.justicepolicy.org/uploads/justicepolicy/documents/gaming\\_the\\_system.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/gaming_the_system.pdf)

- 4) This Bill will decrease expenditures on law enforcement. According to the Federal Bureau of Investigation's (FBI) Uniform Crime Reports, law enforcement nationwide made an estimated 12,408,899 arrests in 2011.<sup>4</sup> An estimated 1,531,251 arrests were for drug abuse violations, more than any other violation. Arrests made for simple possession of marijuana tops the list, accounting for over 43 percent of all drug related arrests, while the combined arrests for possession of heroin, cocaine, and 'other dangerous narcotics' merely amounts to 34 percent. Experts estimate that police arrest someone for possession of marijuana every 42 seconds. With fewer non-violent offenders entering the criminal justice system, resources may focus on rehabilitating violent offenders. Spending on corrections has increased 72 percent since 1997, to \$74 billion in 2007. Jeffrey Miron and Katherine Waldock from the CATO Institute estimate that decriminalizing marijuana allows the federal and state governments to reduce expenditure on law enforcement by \$8.7 billion.<sup>5</sup>
- 5) This Bill will generate income tax and sales taxes for the local and federal government. However, marijuana should be taxed like tobacco and alcohol, because too high of a sin tax will force the market underground. Jeffrey Miron and Katherine Waldock from the CATO Institute estimate that marijuana sales taxes will generate \$8.7 billion nationally.<sup>6</sup> Marijuana sales taxes added to the reduction in law enforcement amounts to \$17.4 billion the government could save.
- 6) Licensing of concealed weapons is a big issue in states with liberal gun control laws. Section 411.187 of the Texas Government Code currently states the Department of Public Safety (DPS) shall suspend the concealed handgun license (CHL) of anyone charged with the commission of a class B misdemeanor offense or equivalent offense. Furthermore, § 411.117 of the Texas Government Code prohibits 'chemically dependent persons' from obtaining a CHL. The statute defines chemically dependent person as "an individual who has been convicted two times within the 10-year period preceding the date on which the person applies for a license of an offense of the grade of Class B misdemeanor or greater that involves the use of alcohol or a controlled substance as a statutory element of the offense." The second amendment provides for the right to bear arms. However, the state may limit the extent to which people may bear arms as a valid exercise of its police power. The state has valid fears against people carrying concealed weapons while under the influence of marijuana. The law regarding concealed carry of a weapon shall not change to include marijuana smokers. However, the state cannot use evidence of the simultaneous possession of a firearm and marijuana within one's home as an enhancement.
- 7) Arrests made because of suspended driver's licenses play a large role in the high recidivism rate. Section 521.372 of the Texas Transportation Code requires an automatic 180-day suspension of a driver's license upon final conviction of a drug offense. The automatic suspension applies even if police arrest the citizen for possessing a personal

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<sup>4</sup> <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/persons-arrested/persons-arrested>

<sup>5</sup> <http://www.cato.org/sites/cato.org/files/pubs/pdf/DrugProhibitionWP.pdf>

<sup>6</sup> <http://www.cato.org/sites/cato.org/files/pubs/pdf/DrugProhibitionWP.pdf>

amount of marijuana within his home. Although section 521.241 of the Texas Transportation Code allows one to apply for an occupational driver's license, this law is unnecessarily harsh because most Texans rely on their personal motor vehicles as transportation. Many citizens find themselves driving with a suspended license anyway. Driving with a suspended license is a class B misdemeanor and carries with it a maximum confinement of 180 days in county jail. Decriminalizing the possession of marijuana will make a tremendous impact on drivers keeping their licenses and staying out of the penal system.

- 8) Many argue that driving under the influence of marijuana is not nearly as dangerous as driving under the influence of alcohol; therefore, driving under the influence of marijuana should be treated less severely than driving under the influence of alcohol. Others argue that driving under the influence should not be a crime at all. Although marijuana may be safer than alcohol, it is still an intoxicant. A study by the University of Adelaide reports that marijuana **impairs one's ability to maintain a lateral position on the road.**<sup>7</sup> **However, the study indicates that marijuana users perceive that they are impaired and tend to slow down, whereas drunk drivers do not realize the extent of their impairment.** Unlike portable breath tests for alcohol, there is no easily available way to determine whether someone is impaired from recent pot use. Most convictions for drugged driving currently are based on police observations, followed later by a blood test.<sup>8</sup> Law enforcement should continue their current policies on drugged driving.

- 9) **Although this bill decriminalizes marijuana, there is nothing preventing employers from discriminating against the employees that consume marijuana recreationally. However, two states, Arizona and Rhode Island have written protections for medical marijuana users directly into their statutes. Those statutes make it illegal for an employer to discriminate against a person in hiring or termination based upon the person's status as a medicinal marijuana user, or following a positive test for marijuana metabolites. However, these protections do not apply when federal law explicitly prohibits the use of marijuana because** employers are under a duty imposed by the Occupational Safety and Health Act to provide a safe work place for all employees.<sup>9</sup> Some argue that employers cannot discriminate against marijuana smoking employees because of the right to privacy. However, **drug screening is an acceptable and reasonable invasion of privacy.** Studies have shown that marijuana-using employees are more prone to accidents, injuries, and absenteeism. If the worker is in a safety-sensitive position, marijuana use is not a reasonable option. If the worker must be licensed in accordance with federal law to perform duties such as commercial driving, marijuana use is not an option at all. Furthermore, marijuana users have a stigma of being lazy, partially due to the nature of marijuana and how marijuana tends to make people lethargic. As employers, productivity is essential to the successful operation of a business and knowing whether a potential employee consumes marijuana could be a deal breaker.

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<sup>7</sup> <http://norml.org/library/item/marijuana-and-driving-a-review-of-the-scientific-evidence#Crash>

<sup>8</sup> [http://www.huffingtonpost.com/2012/11/15/with-pot-legal-police-wor\\_n\\_2136034.html](http://www.huffingtonpost.com/2012/11/15/with-pot-legal-police-wor_n_2136034.html)

<sup>9</sup> <http://www.dritoday.org/feature.aspx?id=510>

- 10) The marihuana Tax Act of 1937 was the first federal law restricting hemp production.<sup>10</sup> This act required growers, importers, and processors of hemp to register and pay taxes. The Controlled Substance Act of 1970 further restricted industrial hemp production by categorizing any product containing THC as a Schedule I drug, regardless of narcotic content level or use. As a result, the federal government strictly regulates the cultivation of all industrial hemp. Hemp production requires a permit from the Drug Enforcement Administration (DEA). Permits are issued at the sole discretion of the DEA and require the applicant's adherence to strict security protocols. This bill decriminalizes the growth, cultivation, and use of industrial hemp because of its many uses. Major uses of industrial hemp include paper products, textiles, molded plastics, food, and medicines.<sup>11</sup>

## **SECTION 420 – DECRIMINALIZATION OF PERSONAL QUANTITIES OF MARIJUANA.**

NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE FOLLOWING ACTS ARE NOT UNLAWFUL AND SHALL NOT BE AN OFFENSE OR BE A BASIS FOR SEIZURE OR FORFEITURE OF ASSETS FOR PERSONS TWENTY-ONE YEARS OF AGE OR OLDER:

(a) POSSESSING, USING, DISPLAYING, PURCHASING, OR TRANSPORTING MARIJUANA ACCESSORIES OR ONE OUNCE OR LESS OF MARIJUANA.

(b) POSSESSING, GROWING, PROCESSING, OR TRANSPORTING NO MORE THAN SIX MARIJUANA PLANTS, WITH THREE OR FEWER BEING MATURE, FLOWERING PLANTS, AND POSSESSION OF THE MARIJUANA PRODUCED BY THE PLANTS ON THE PREMISES WHERE THE PLANTS WERE GROWN, PROVIDED THAT THE GROWING TAKES PLACE IN AN ENCLOSED, LOCKED SPACE, IS NOT CONDUCTED OPENLY OR PUBLICLY, AND IS NOT MADE AVAILABLE FOR SALE.

(c) TRANSFER OF ONE OUNCE OR LESS OF MARIJUANA WITHOUT REMUNERATION TO A PERSON WHO IS TWENTY-ONE YEARS OF AGE OR OLDER.

(d) CONSUMPTION OF MARIJUANA, PROVIDED THAT NOTHING IN THIS SECTION SHALL PERMIT CONSUMPTION THAT IS CONDUCTED PUBLICLY OR IN A MANNER THAT ENDANGERS OTHERS.

(e) ASSISTING ANOTHER PERSON WHO IS TWENTY-ONE YEARS OF AGE OR OLDER IN ANY OF THE ACTS DESCRIBED IN PARAGRAPHS (a) THROUGH (d) OF THIS SUBSECTION.

### Comments

- 1) The consumption of marijuana, whether smoked, vaporized, or eaten will remain illegal in public. Enforcement agencies should narrowly construe the term “public.” Examples of a public place include, but are not limited to schools, churches, restaurants, parks, parking lots, and malls. The goal of this statute is to promote public safety while

<sup>10</sup> <http://www.uky.edu/Ag/NewCrops/introsheets/hemp.pdf>

<sup>11</sup> <http://www.hort.purdue.edu/newcrop/ncnu02/v5-284.html>

affording individuals greater freedoms. Therefore, it is not a crime to smoke marijuana on one's private property, even if members of the public are able to see. For example, one who smokes inside an apartment with the windows open is not in violation of the law. Likewise, the person who smokes a marijuana cigarette on a lawn-chair outside is not in violation of the law. However, driving on a public roadway while consuming marijuana is an example of consumption that endangers others.

- 2) Subsection b requires marijuana growers to keep their plants in an enclosed, locked space. Marijuana grown in a greenhouse or in a closet with a lock will adequately meet the requirements of this bill. Subsection b prohibits marijuana growers from growing openly or publicly. This means that the grower must keep the marijuana plants out of plain-sight. However, the grower does not have to keep secret the fact that he is growing marijuana. The goal of this section is to deter people from stealing marijuana plants. The added safeguard of a locking mechanism protecting the marijuana should prevent the flow of legal marijuana into the black market.
- 3) This Bill decriminalizes the possession of up to one ounce of marijuana. One ounce of marijuana contains approximately twenty-eight grams. The average marijuana cigarette contains a half-gram to three-quarters of a gram. Thus, a person possessing an ounce of marijuana will be able to roll approximately twenty marijuana cigarettes. Therefore, it is unnecessary to decriminalize possession of more than one ounce of marijuana. The goal of this Bill is afford individuals greater freedoms while thwarting black market drug dealers.

## STATUTE 2

1. LEGAL POSSESSION- LEGAL POSSESSION WILL MEAN CONSCIOUS DOMINION AND CONTROL OVER ANY TYPE OF MARIJUANA, MARIJUANA PRODUCTS, OR ANY DERIVATIVE THEREOF, BY A PERSON OVER THE AGE OF 21 FOR PERSONAL USE, WITHOUT A LICENSE, TOTALING 60 GRAMS OR LESS.

2. ILLEGAL POSSESSION- ILLEGAL POSSESSION WILL MEAN CONSCIOUS DOMINION AND CONTROL OVER ANY TYPE OF MARIJUANA, MARIJUANA PRODUCTS, OR ANY DERIVATIVE THEREOF, IN ANY AMOUNT, BY A PERSON UNDER THE AGE OF 21. FOR PERSONS WHO ARE UNLICENSED BUT OVER THE AGE OF 21, POSSESSION OF MORE THAN 60 GRAMS AT ANY TIME WILL BE CONSIDERED ILLEGAL POSSESSION. ILLEGAL POSSESSION OF MARIJUANA IS A MISDEMEANOR AND MANDATES A FINE, WITHOUT THE POSSIBILITY OF IMPRISONMENT.

3. MARIJUANA- MARIJUANA WILL MEAN ALL PARTS OF THE PLANT OF THE GENUS CANNABIS WHETHER GROWING OR NOT, THE SEEDS THEREOF, THE RESIN EXTRACTED FROM ANY PART OF THE PLANT, AND EVERY COMPOUND, MANUFACTURE, SALT, DERIVATIVE, MIXTURE, OR PREPARATION OF THE PLANT, ITS SEEDS, OR ITS RESIN, INCLUDING MARIHUANA CONCENTRATE. THIS DEFINITION DOES NOT INCLUDE INDUSTRIAL HEMP OR SYNTHETIC CANNABIS, NOR DOES IT INCLUDE FIBER PRODUCED FROM THE STALKS, OIL, SEEDS OF THE PLANT, STERILIZED SEED OF THE PLANT WHICH IS INCAPABLE OF GERMINATION, OR THE WEIGHT OF ANY OTHER INGREDIENT COMBINED WITH MARIJUANA TO PREPARE TOPICAL OR ORAL ADMINISTRATIONS, FOOD, DRINK, OR OTHER PRODUCT.

4. MARIJUANA PRODUCTS- MARIJUANA PRODUCTS WILL MEAN CONCENTRATED MARIJUANA PRODUCTS OR ANY DERIVATIVE THEREOF THAT IS COMPRISED OF MARIJUANA AND OTHER INGREDIENTS AND IS INTENDED FOR USE OR CONSUMPTION, INCLUDING BUT NOT LIMITED TO, EDIBLES, OILS, BUTTERS, OINTMENTS, AND TINCTURES.

5. PERSON- PERSON WILL MEAN ANY NATURAL PERSON WHO IS A CONSUMER OR USER OF MARIJUANA.

6. LOCALITY- LOCALITY WILL MEAN A COUNTY, MUNICIPALITY, OR CITY AND COUNTY.

7. PROHIBITED POSSESSION AREAS (PPA) - PROHIBITED POSSESSION AREAS WILL MEAN SPECIFIC PLACES AND SETTINGS WHERE POSSESSION OF ANY AMOUNT OF MARIJUANA IS ILLEGAL FOR ANY PERSON. THESE PARTICULAR AREAS INCLUDE BUT ARE NOT LIMITED TO SCHOOLS, COURTHOUSES, GOVERNMENT BUILDINGS, BANKS, OR OTHER BUILDINGS OR AREAS SIMILARLY SITUATED BUT NOT LISTED. ANY PERSON IN POSSESSION OF MARIJUANA IN A PROHIBITED POSSESSION AREA WILL BE GUILTY OF A MISDEMEANOR AND SUBJECT TO A FINE GREATER OR

EQUAL TO THE FINE SET FORTH FOR ILLEGAL POSSESSION, WITHOUT THE POSSIBILITY OF IMPRISONMENT.

8. PUBLIC CONSUMPTION- PUBLIC CONSUMPTION WILL MEAN ANY USE OF MARIJUANA IN ANY FORM, REGARDLESS OF THE AMOUNT CONSUMED OR USED IN AN AREA CONSIDERED TO BE A PPA OR A PUBLIC PLACE SUCH THAT THE PUBLIC OR AN APPRECIABLE AMOUNT OF THE PUBLIC HAS FREE ACCESS, INCLUDING BUT NOT LIMITED TO PUBLIC SIDEWALKS, STREETS, AND PUBLIC PARKS. ANY CONSUMPTION OF MARIJUANA IN THESE AREAS WILL MANDATE A FINE, WITHOUT THE POSSIBILITY OF IMPRISONMENT.

9. PUBLIC INTOXICATION (MARIJUANA) - PUBLIC INTOXICATION WILL MEAN A PERSON WHO APPEARS IN A PUBLIC PLACE WHILE INTOXICATED TO THE DEGREE THAT THE PERSON IS VISIBLY INTOXICATED. MARIJUANA BASED PUBLIC INTOXICATION IS A MISDEMEANOR AND MANDATES A FINE, WITHOUT THE POSSIBILITY OF IMPRISONMENT.

10. OPEN CONTAINER MARIJUANA (OCM)- OPEN CONTAINER MARIJUANA (OCM) WILL MEAN POSSESSION OF ANY PARAPHERNALIA COMMONLY ASSOCIATED WITH THE CONSUMPTION OF MARIJUANA OR MARIJUANA PRODUCTS THAT READILY EVIDENCES RECENT USE OF MARIJUANA. OCM IN A PUBLIC PLACE IS A MISDEMEANOR AND MANDATES A FINE, WITHOUT THE POSSIBILITY OF IMPRISONMENT.

## COMMENTARY

**1. Legal Possession- Legal Possession will mean conscious dominion and control over any type of Marijuana, Marijuana products, or any derivative thereof, by a person over the age of 21 for personal use, without a license, totaling 60 grams or less.**

*Commentary:* The definition of Legal Possession is necessary to establish parameters for those who consume or plan to consume Marijuana, as well as those who enforce and interpret the law. Conscious dominion or control means the person possesses Marijuana or Marijuana Product(s) as they would possess any other personal property similar in weight and size. Any possession of Marijuana, Marijuana Products, or any derivative thereof by a Person under the age of 21 is illegal, regardless of amount. The age of 21 is established as the legal age of possession based on the notion that possession of Marijuana should procedurally be modeled as closely to alcohol regulation, an already established legal structure for the possession of a similar intoxicant in terms of its recreational use. The choice of age 21 is significant for a number of reasons. By making the age of legal possession 21, there is more deterrence in terms of access and first time use. Theoretically, those who have reached the age of 21, as opposed to 18 for instance, are more readily in a position to make an educated decision in terms of responsible use. By establishing

the legal age of possession at 21, the goal is limit access to members of society who are still impressionable and therefore are hypothetically more inclined to make irresponsible decisions.

The choice of 60 grams or less as an amount for legal possession without the need for a license is not arbitrary. Generally speaking, Marijuana is sold by gram increments for personal use. In terms of higher grade, or Hydroponic Marijuana, a person could possess for personal use 3.5 grams known as “eighths”, 7 gram “quarters”, a 14 gram “half”, or a 28 gram “zip” or “zone” (1 ounce) at any given time. 3.5 grams will last an everyday Marijuana user anywhere from 3-5 days and should be viewed in the context of a 6 pack of beer or a bottle of wine in terms of its consumption and use. In comparison, an ounce of Hydroponic Marijuana should be viewed as a keg of beer, or an amount that would be necessary to entertain a group of 15-25. Another common form of Marijuana that a person could be in possession of is “shwag” or brick Marijuana, also commonly referred to as “reggie”, which is markedly less potent than Hydroponic Marijuana. Given the reduction of potency, this type of Marijuana is considerably less effective than the aforementioned Hydroponic Marijuana. As a result, larger amounts are possessed for personal use. When purchased, common increments for Shwag Marijuana almost exclusively begin with quarters, rarely if ever being sold in lesser amounts. In comparison to Hydroponic Marijuana, a half of shwag would likely last an everyday Marijuana user 3-5 days. Up to two ounces would be necessary to entertain a group of 15-25. Given the reduction in potency, it would not be uncommon to find a regular user of Shwag Marijuana to be in possession of up to two ounces at any given time.

In terms of potency generally, it should not be a relative factor when determining what is considered Legal or Illegal Possession. It does nothing to establish whether a Person is in Legal Possession or not. For example a minor found to be in possession of a 12-pack of beer is subject to the same penalty as they would be if they were in possession of a 750 ml bottle of vodka ( the assumption being beer is significantly less potent than vodka). A person in possession of cocaine is considered to be in possession whether he possesses cocaine that is cut with baking soda or Fishscale cocaine. The fact that a person possesses a more or less potent version of a drug doesn't not negate or enhance the act of possession.

The home cultivation or growing of Marijuana is included in the definition of Legal Possession. Persons who are growing Marijuana can at no time yield more than the 60 gram limitation set forth in this definition. Buds still attached to the plant are not included in yield. What is important to note about growing Marijuana is the number of plants are not a regulation concern because people's ability to grow cultivate Marijuana vary greatly. Similar to an individual's ability to grow vegetables in their backyard, not all growers of Marijuana will end up with the same output. For this reason, it is unnecessary to regulate the number of plants. Rather, it is more important to regulate the amount of actual consumable Marijuana a person possesses.

The term Legal Possession or Illegal Possession should be interpreted on a “per person” basis. That is, the 60 gram limit is per person, not a collective total. For example Person B is a passenger in Person A's vehicle. Person A is pulled over for speeding. If Person A is in possession of 59 grams and Person B is in possession of 5 grams, neither is in violation of the 60 gram possession limit defined herein.

Distribution (with or without remuneration), of any Marijuana totally less than 60 grams will be considered a de minimis transfer and part of Legal Possession. Generally speaking,

Marijuana is used in social settings and for this reason, Marijuana designated for personal use often changes hands in amount between friends and acquaintances.

Marijuana paraphernalia, or any equipment or material which is used or intended to be used to cultivate or consume Marijuana are all considered part of Legal Possession based on the notion that if this model definition were to be included in a state bill, it should be used in the context of decriminalization. If personal use of Marijuana is decriminalized, the paraphernalia necessary to cultivate and consume it should be implicit within that.

In terms of Marijuana Products, weight to determine Legal Possession is determined based on the amount of Marijuana necessary to create the product. For example, if a person possesses a Marijuana brownie, the determination of whether possession of the brownie is legal would depend on the amount of Marijuana used to make the brownie. This information should be found on the packaging. If the Marijuana product is homemade, the determination will be made based on commercial products similar in fashion.

**2. Illegal Possession- Illegal Possession will mean conscious dominion and control over any type of Marijuana, Marijuana Products, or any derivative thereof, in any amount, by a person under the age of 21. For Persons who are unlicensed but over the age of 21, possession of more than 60 grams at any time will be considered Illegal Possession. Illegal Possession of Marijuana is a misdemeanor and mandates a fine, without the possibility of imprisonment.**

*Commentary:* The definition of Illegal Possession is necessary to establish what amount of possession is considered illegal and as a result dictates a penalty. It is the choice of a state that may choose to adopt this definition to decide which state agency will administer the fines, or whether that state will establish a separate state agency to administer such fines.

Any Person who is *under* the age of 21 will be subject to the fine established, regardless of the amount of Marijuana they possess. This age restriction is established to specifically deter youths from using Marijuana, similar to the efforts used to deter youths from the use of alcohol. By setting a legal age of use, access to such products become more difficult for those considered to be underage. This can limit the potential for dependent or abusive consumption or use. In fact, according to an August 2012 study conducted by the *Proceedings of the National Academy of Sciences*, dependent use of Marijuana before the age of 18 was associated with lasting harm, whereas the same study showed those who started using Marijuana after the age of 18 did not exhibit the same effects.

It will be considered to be Illegal Possession if a Person individually possesses more than 60 grams based on the notion that 60 grams or less is generally associated with personal use. *See commentary discussing Legal Possession.* Possession of more than 60 grams indicates either a significant personal dependency or intent to sell or distribute for profit. This is not to say the act of Illegal Possession regulates the act of sale and distribution. Regardless of other penalties a Person may concurrently be subject to when engaging in unlicensed sale, in terms of Illegal Possession, if a Person possesses more than 60 grams that Person will be subject to the fine set forth herein, regardless of intent.

What is considered to be Illegal Possession under this definition is a fineable offense, and should never result in imprisonment. While possession of more than 60 grams is considered illegal under this definition, it should be treated as a speeding offense would be. One goal when regulating the speed limit like Marijuana possession is to reduce the chance of hazardous effects to the driver, or in the case of Marijuana, to the consumer. If the driver chooses to speed, he or she is reminded that speeding can be hazardous by having to pay a fine. Applying this to Marijuana possession, when a Marijuana consumer is in possession of more than 60 grams, they should be reminded with the administration of a fine, that more than 60 grams without a license is considered to be more than is necessary for personal use, and therefore could be hazardous.

**3. Marijuana- Marijuana will mean all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marihuana concentrate. This definition does not include industrial hemp or synthetic cannabis, nor does it include fiber produced from the stalks, oil, seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with Marijuana to prepare topical or oral administrations, food, drink, or other product. (Source: Heavily derived from Colorado Amendment 64, passed November 6, 2012)**

*Commentary:* It is necessary to define Marijuana to understand what is and is not being regulated in terms of the cannabis plant. Marijuana includes any part of the cannabis plant that is consumable or usable by a Person. Sticks and stems that do not have an appreciable amount of Marijuana on them are not to be included as part of the weight. Sticks and stems are generally seen as unusable by Marijuana users and therefore should not be included when considering what is and is not legal possession.

Marijuana is referred to by a number of names, all of which are considered to be versions or variations of Marijuana as it is defined herein. Some common terms include but are not limited to “pot” “dope”, “weed”, “chron”, “chronic”, “dro”, “hydro”, “do-do”, “bud”, “sticky”, “sticky-icky”, “green”, “reggie”, “regular”, “shwag”, “dank”, “beast”, “beasters”, “bush”, “doja”, “endo”, “indo”, “ganga”, “grass”, “kill”, “kush”, “mary jane”, “nug/s”, “nuggets”, “mota”, “reefer”, “skunk”, and “tree/s”.

Marijuana as it is defined herein does not include synthetic cannabis also known as but not limited to “K2”, “Spice”, or “Herbal Incense”. Synthetic cannabis differs from Marijuana in its in composition and effect on its users. Synthetic cannabis is made up of a combination of herbs and synthetic chemicals which is then manufactured for consumption. Though the drug is marketed as a Marijuana alternative, its effects are significantly different and can be life threatening. (Source: Some information concerning synthetic cannabis and its composition were derived from <http://www.livescience.com/6149-fake-weed-real-drug-k2-causing-hallucinations-teens.html>)

**4. Marijuana Products- Marijuana Products will mean concentrated Marijuana products or any derivative thereof that is comprised of Marijuana and other ingredients and is intended for use or consumption, including but not limited to, edibles, oils, butters, ointments, and tinctures. (Source: Heavily derived from Colorado Amendment 64, passed November 6, 2012)**

*Commentary:* This definition is necessary due to the wide variety of ways in which a Person can consume or use Marijuana. When enforcing and interpreting the law, it is important to understand what is considered to be a Marijuana Product so that the law can be properly applied. A Marijuana Product is generally considered to be any derivative of Marijuana, or a product that contains Marijuana. The different varieties of Marijuana Products include but are not limited to Marijuana oil, Marijuana butter, food products and sweets containing Marijuana, Marijuana liquids, as well as pre-rolled or pre-packaged Marijuana blunts, cigarettes, or joints. *See Commentary on Legal Possession for guidance when determining Legal Possession of Marijuana Products.*

**5. Person- Person will mean any natural person who is a consumer or user of Marijuana.**

*Commentary:* This definition is important to establish who would possibly be subject to these model definitions if adopted. Note this definition is meant to define consumers who use Marijuana for personal use and not legal entities. Any legal entity formed or actively engaged in the process or manufacture of Marijuana must obtain a license from the appropriate licensing board either established or designated within its state. These same entities would be subject to commercial Marijuana product and sales laws that should be established in agreement with any criminal law that a state adopts.

A Person must be at least 21 years of age to be considered of legal age to use or consume Marijuana. *See the definition of Legal Possession generally.* The only distinction made for those Persons under the age of 21 is that *any* amount of possession of Marijuana or Marijuana Products is considered illegal, without exception.

**6. Locality- Locality will mean a County, Municipality, or City and County. (Source: Entirely derived from Colorado Amendment 64, passed November 6, 2012)**

*Commentary:* It is necessary to include the definition of Locality to illustrate that there are a number of entities within a state that are responsible for enforcing and administering any adopted legislation.

Local entities such as counties, municipalities, and cities have the discretion and autonomy to further regulate the use and consumption of Marijuana within its jurisdiction. If a state were to adopt any portion of these model definitions as part of its own legislation, Localities within that state should be free to add additional restrictions. For example a Locality may announce itself as “dry”, like many Localities currently do when regulating alcohol. Localities should be free to enhance restrictions as they are most in touch with the local citizenry and local way of life. If a Locality determines its citizens would benefit from greater restrictions that Locality should be free to modify the guidelines set forth in this model legislation

accordingly. While a Locality is free to tighten restrictions, a Locality should not lessen or reduce the standards set forth by this model legislation as this legislation and these definitions are intended to serve as part of model Marijuana legislation and illustrate a *minimum* standard of requirements.

**7. Prohibited Possession Areas (PPA) - Prohibited Possession Areas will mean specific places and settings where possession of any amount of Marijuana is illegal for any Person. These particular areas include but are not limited to schools, courthouses, government buildings, banks, or other buildings or areas similarly situated but not listed. Any Person in possession of Marijuana in a Prohibited Possession Area will be guilty of a misdemeanor and subject to a fine greater or equal to the fine set forth for Illegal Possession, without the possibility of imprisonment.**

*Commentary:*

This definition is necessary to establish where Marijuana possession is never allowed. By defining restricted areas of possession users and consumers are aware of where any amount of Marijuana, even an amount that would ordinarily fall under the parameters of Legal Possession, would be unacceptable.

There are a number of areas than can be deemed PPA's by an individual Locality based on specific characteristics of the Locality. A Locality is free to determine which areas will be considered PPA's with the exception of those areas which will always be considered a PPA's regardless of Locality: Schools, Government Buildings, Courthouses, and Banks. Those that are not automatically designated as a PPA and would like to apply to be designated may do so by applying for a permit with the same state agency created or designated to administered fines for Marijuana based offenses. A Locality should consider the following guidelines when deciding which areas to deem as Prohibited Possession Areas: Areas or buildings where 1) children and family may gather, 2) is in relation to government business, 3) a religious based setting, or 4) a place of private business. Generally speaking, where the possession of alcohol would be considered to be inappropriate or restricted, the possession of Marijuana should also be restricted.

The punishment that is mandated for Persons found to be in possession of Marijuana in a PPA must meet or exceed the penalty for Illegal Possession. Like alcohol, there are certain places where possession of Marijuana is unacceptable. The intent of this definition is to establish settings where possession of Marijuana is still illegal, regardless of the amount possessed. For example, protecting the sanctity of a school, church, or business setting for instance, is of paramount importance and trumps the right to Legal Possession. If Marijuana is possessed in theses restricted areas, the Person must be subject to a significant penalty to deter the perception that because Marijuana possession is now legal to a certain degree, users and consumers are free to possess the drug anywhere without restriction. While this is a significant violation it is only subject to a monetary fine. Imprisonment for possession of something that is considered to be legal, at least in some context, would be a disproportionate penalty based on the offense.

**8. Public Consumption- Public Consumption will mean any use of Marijuana in any form, regardless of the amount consumed or used in an area considered to be a PPA or a public place such that the public or an appreciable amount of the public has free access, including but not limited to public sidewalks, streets, and public parks. Any consumption of Marijuana in these areas will mandate a fine, without the possibility of imprisonment.**

*Commentary:* This definition is important for users, consumers, and those tasked with enforcing the law to be aware of when and where consumption is allowed. Consumption of Marijuana in areas that are public or PPA's should be disallowed, the idea being that Marijuana, though legal in some contexts, should *only* be used or consumed by a Person in a private setting on private property. The private property should be an interior structure, with Marijuana only being used or consumed within the confines of that structure. A Person's backyard to their home or a Person's private property is not considered a public place. The Public Consumption restriction will also apply to Marijuana consumed in an environment such as a car for instance, which is generally understood to be private property and would meet all the requirements of being an interior structure, but is parked in an area where Public Consumption is not allowed.

In order to respect each Person's individual autonomy, Marijuana should not be allowed to be consumed in an area where a non-Marijuana user would also generally frequent. Consumption or use in the context of this definition means smoking Marijuana and not consuming Marijuana Products in terms of edibles and the like. If a Person is in consumption of a Marijuana Product that is intended to be eaten and not smoked the Person may still be subject other violations, but will not be subject to a penalty for Public Consumption.

The fine set forth for Public Consumption does not include other Marijuana offenses that may be committed concurrently. Each offense will be charged separately and in addition to any other offense, Marijuana related or not, that may be committed at the same time. For example a 20 year old student at a local community college is in possession of 3 grams of Marijuana. Bored with school, the student decides to walk the grounds and smoke a Marijuana pipe. While smoking, the student is approached by the police. The student at this point has committed 4 misdemeanors including Illegal Possession, possession at a PPA, Public Consumption, and Public Intoxication (assuming the student had consumed enough to be intoxicated) and should be subject to penalties for each offense, without exception.

**9. Public Intoxication (Marijuana) - Public Intoxication will mean a Person who appears in a public place while intoxicated to the degree that the Person is visibly intoxicated. Marijuana based Public Intoxication is a misdemeanor and mandates a fine, without the possibility of imprisonment. (Partially derived from Texas Penal Code, Title 10, Chapter 49-Intoxication and Alcoholic Beverage Offenses)**

*Commentary:* The definition of Public Intoxication is necessary to establish the notion that any visible Marijuana based intoxication in public will be considered illegal. Because intoxication in terms of Marijuana is not the same for all consumers, some more quickly intoxicated than others, it is necessary for law enforcement to understand what should be considered visible intoxication. A significant amount of discretion is given to a law enforcement officials in this setting when

determining whether a Person is intoxicated to a level sufficient to be considered Public Intoxication. The following are factors that should be considered, as well as facts specific to the scene, before making a determination: redness and squinting of eyes, dryness of mouth, and slow reactions. The finding that a Person is Publically Intoxicated is rebuttable. The Person may challenge the finding by submitting to a blood test within 2 hours of an arrest. If the Person is found to be under the legal limit established for Marijuana DWI in a state, that Person will not be subject to the penalty established for Public Intoxication.

**10. Open Container Marijuana(OCM)- Open Container Marijuana (OCM) will mean possession of any paraphernalia commonly associated with the consumption of Marijuana or Marijuana Products that readily evidences recent use of Marijuana. OCM in a public place is a misdemeanor and mandates a fine, without the possibility of imprisonment.**

*Commentary:* The definition of OCM is necessary to establish that any possession of paraphernalia used to consume Marijuana, that evidences recently immediate use or partially consumed Marijuana is illegal and subject to a penalty. OCM is similar to the Open Container laws many states enforce in terms of alcohol and should be interpreted as such. For example, if a Person possesses a Marijuana pipe that is warm or has ash inside the bowl, this should be considered an OCM similar to an empty beer can. If a Person possesses a Marijuana pipe and there is partially burnt Marijuana inside the bowl, this should be considered an OCM similar an open beer can that has been partially consumed. If a Person possesses a Marijuana pipe, but there is no evidence of recent use, that Person will not be in violation of this model definition. General resin build up that may be located on Marijuana paraphernalia like a Marijuana pipe is not included as evidence of recent use.

It should be noted that Open Container Marijuana is different than Public Consumption. A Person guilty of Public Consumption must be in the specific act of smoking Marijuana. A Person guilty of OCM on the other hand, does not have to necessarily be in use or consumption when they are approached by law enforcement, if recent use can be proven. Any possession of recently consumed Marijuana Products that can reliably be evidenced also would be subject to this definition but it should be noted that proof of recent use of Marijuana Products such as edibles is extremely difficult to establish. Wrappers or the like, of previously used Marijuana or Marijuana Products do not necessarily evidence recent use. This definition only applies to possession of an OCM in public, and does not govern possession of an OCM in a motor vehicle.

*Note from the Author: The aforementioned definitions were created as model templates and can be revised based on specific state needs. It must be noted, that any state which plans to introduce Marijuana possession legislation, must consider a number of issues not accounted for within the definitions included here. In any type of comprehensive legislation, a more complex legal structure would have to be created to account for issues including but not limited to DWI, open container when in a motor vehicle , theft, a licensing regime for possession over 60 grams, commercial sale and consumer protection issues, commercial manufacturing, commercial distribution over 60 grams, and a taxation structure.*

**STATUTE 3**

(NOTE this contains a STATE MODEL STATUTE followed by a MODEL MUNICIPAL ORDINANCE)

A BILL TO BE ENTITLED

**AN ACT**

**FOR A BETTER TOMORROW**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. SECTION 481.1161, HEALTH AND SAFETY CODE, IS AMENDED BY AMENDING SUBSECTION (B) AND ADDING SUBSECTIONS (C) AND (D) TO READ AS FOLLOWS:

(B) AN OFFENSE UNDER THIS SECTION IS:

- (1) A CLASS C MISDEMEANOR IF THE AMOUNT OF CONTROLLED SUBSTANCE, SPECIFICALLY LIMITED TO MARIJUANA OR SYNTHETIC MARIJUANA, IS, BY AGGREGATE WEIGHT, INCLUDING ADULTERANTS OR DILATANTS, ONE OUNCE OR LESS, EXCEPT AS PROVIDED BY SUBSECTION (D);
- (2) A CLASS B MISDEMEANOR IF THE AMOUNT OF THE CONTROLLED SUBSTANCE POSSESSED IS BY AGGREGATE WEIGHT, INCLUDING ADULTERANTS OR DILATANTS, TWO OUNCES OR LESS BUT MORE THAN ONE OUNCE;
- (3) A CLASS A MISDEMEANOR IF THE AMOUNT OF THE CONTROLLED SUBSTANCE POSSESSED IS, BY AGGREGATE WEIGHT, INCLUDING ADULTERANTS OR DILATANTS, FOUR OUNCES OR LESS BUT MORE THAN TWO OUNCES;
- (4) A STATE JAIL FELONY IF THE AMOUNT OF THE CONTROLLED SUBSTANCE IS, BY AGGREGATE WEIGHT, INCLUDING ADULTERANTS OR DILUTANTS, FIVE POUNDS OR LESS BUT MORE THAN FOUR OUNCES;
- (5) A FELONY OF THE THIRD DEGREE IF THE AMOUNT OF THE CONTROLLED SUBSTANCE POSSESSED IS, BY AGGREGATE WEIGHT, INCLUDING ADULTERANTS OR DILUTANTS, 50 POUNDS OR LESS BUT MORE THAN 5 POUNDS;
- (6) A FELONY OF THE SECOND DEGREE I THE AMOUNT OF THE CONTROLLED SUBSTANCE POSSESSED IS, BY AGGREGATE WEIGHT, INCLUDING ADULTERANTS OR DILUTANTS, 2,000 POUNDS OR LESS BUT MORE THAN 50 POUNDS; AND

(7) PUNISHABLE BY IMPRISONMENT IN THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE FOR LIFE OR FOR A TERM OF NOT MORE THAN 99 YEARS OR LESS THAN 5 YEARS, AND A FINE NOT TO EXCEED \$50,000, IF THE AMOUNT OF THE CONTROLLED SUBSTANCE POSSESSED IS, BY AGGREGATE WEIGHT, INCLUDING ADULTERANTS OR DILUTANTS, MORE THAN 2,000 POUNDS.

(C) A PEACE OFFICER, AUTHORIZED BY STATE OR MUNICIPALITY, MAY HAVE THE DISCRETION TO ISSUE A CITATION UNDER SUBSECTION (B)(1) FOR FIRST-TIME OFFENDERS.

(D) IT IS NOT AN OFFENSE UNDER THIS CODE TO BE IN POSSESSION OF MARIJUANA OR SYNTHETIC MARIJUANA IF:

- a. USE HAS BEEN PRESCRIBED BY A QUALIFYING MEDICAL PHYSICIAN; AND
- b. THERE IS WRITTEN CERTIFICATION BY THE QUALIFYING PHYSICIAN; AND
- c. THE INDIVIDUAL IS IN POSSESSION OF NO MORE THAN THE PRESCRIBED AMOUNT.

SECTION 2. SEC. 481.121, HEALTH AND SAFETY CODE, IS AMENDED BY AMENDING SUBSECTION (B) TO READ AS FOLLOWS:

(B) AN OFFENSE UNDER SUBSECTION (A) IS:

(1) A CLASS C MISDEMEANOR IF THE AMOUNT OF MARIJUANA POSSESSED IS ONE OUNCE OR LESS.

(2) A CLASS B MISDEMEANOR IF THE AMOUNT OF MARIHUANA POSSESSED IS FOUR OUNCES OR LESS BUT MORE THAN ONCE OUNCE;

(3) [~~2~~] A CLASS A MISDEMEANOR IF THE AMOUNT OF MARIHUANA POSSESSED IS FOUR OUNCES OR LESS BUT MORE THAN TWO OUNCES;

(4) [~~3~~] A STATE JAIL FELONY IF THE AMOUNT OF MARIHUANA POSSESSED IS FIVE POUNDS OR LESS BUT MORE THAN FOUR OUNCES;

(5) [~~4~~] A FELONY OF THE THIRD DEGREE IF THE AMOUNT OF MARIHUANA POSSESSED IS 50 POUNDS OR LESS BUT MORE THAN 5 POUNDS;

(6) [~~5~~] A FELONY OF THE SECOND DEGREE IF THE AMOUNT OF MARIHUANA POSSESSED IS 2,000 POUNDS OR LESS BUT MORE THAN 50 POUNDS; AND

(7) [~~6~~] PUNISHABLE BY IMPRISONMENT IN THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE FOR LIFE OR FOR A TERM OF NOT MORE THAN 99 YEARS OR LESS THAN 5 YEARS, AND A FINE NOT TO EXCEED \$50,000, IF THE AMOUNT OF MARIHUANA POSSESSED IS MORE THAN 2,000 POUNDS.

SECTION 3. SECTION 481.126(A), HEALTH AND SAFETY CODE, IS AMENDED TO READ AS FOLLOWS:

(A) A PERSON COMMITS AN OFFENSE IF THE PERSON:

(1) BARTERS PROPERTY OR EXPENDS FUNDS THE PERSON KNOWS ARE DERIVED FROM THE COMMISSION OF AN OFFENSE UNDER THIS CHAPTER PUNISHABLE BY IMPRISONMENT IN THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE FOR LIFE;

(2) BARTERS PROPERTY OR EXPENDS FUNDS THE PERSON KNOWS ARE DERIVED FROM THE COMMISSION OF AN OFFENSE UNDER SECTION 481.121(A) THAT IS PUNISHABLE UNDER SECTION 481.121(B)(6) [~~481.121(B)(5)~~];

(3) BARTERS PROPERTY OR FINANCES OR INVESTS FUNDS THE PERSON KNOWS OR BELIEVES ARE INTENDED TO FURTHER THE COMMISSION OF AN OFFENSE FOR WHICH THE PUNISHMENT IS DESCRIBED BY SUBDIVISION (1); OR

(4) BARTERS PROPERTY OR FINANCES OR INVESTS FUNDS THE PERSON KNOWS OR BELIEVES ARE INTENDED TO FURTHER THE COMMISSION OF AN OFFENSE UNDER SECTION 481.121(A) THAT IS PUNISHABLE UNDER SECTION 481.121(B)(6) [~~481.121(B)(5)~~].

SECTION 4. SECTIONS 481.134(C), (D), (E), AND (F), HEALTH AND SAFETY CODE, ARE AMENDED TO READ AS FOLLOWS:

(C) THE MINIMUM TERM OF CONFINEMENT OR IMPRISONMENT FOR AN OFFENSE OTHERWISE PUNISHABLE UNDER SECTION 481.112(C), (D), (E), OR (F), 481.113(C), (D), OR (E), 481.114(C), (D), OR (E), 481.115(C)-(F), 481.116(C), (D), OR (E), 481.1161(B)(5), (6), OR (7) [~~481.1161(B)(4), (5), OR (6)~~], 481.117(C), (D), OR (E), 481.118(C), (D), OR (E), 481.120(B)(4), (5), OR (6), OR 481.121(B)(5), (6), OR (7) [~~481.121(B)(4), (5), OR (6)~~] IS INCREASED BY FIVE YEARS AND THE MAXIMUM FINE FOR THE OFFENSE IS DOUBLED IF IT IS SHOWN ON THE TRIAL OF THE OFFENSE THAT THE OFFENSE WAS COMMITTED:

(1) IN, ON, OR WITHIN 1,000 FEET OF THE PREMISES OF A SCHOOL, THE PREMISES OF A PUBLIC OR PRIVATE YOUTH CENTER, OR A PLAYGROUND; OR

(2) ON A SCHOOL BUS.

(D) AN OFFENSE OTHERWISE PUNISHABLE UNDER SECTION 481.112(B), 481.113(B), 481.114(B), 481.115(B), 481.116(B), 481.1161(B)(4) [~~481.1161(B)(3)~~], 481.120(B)(3), OR 481.121(B)(4) [~~481.121(B)(3)~~] IS A FELONY OF THE THIRD DEGREE IF IT IS SHOWN ON THE TRIAL OF THE OFFENSE THAT THE OFFENSE WAS COMMITTED:

(1) IN, ON, OR WITHIN 1,000 FEET OF ANY REAL PROPERTY THAT IS OWNED, RENTED, OR LEASED TO A SCHOOL OR SCHOOL BOARD, THE PREMISES OF A PUBLIC OR PRIVATE YOUTH CENTER, OR A PLAYGROUND; OR

(2) ON A SCHOOL BUS.

(E) AN OFFENSE OTHERWISE PUNISHABLE UNDER SECTION 481.117(B), 481.119(A), 481.120(B)(2), OR 481.121(B)(3) [~~481.121(B)(2)~~] IS A STATE JAIL FELONY IF IT IS SHOWN ON THE TRIAL OF THE OFFENSE THAT THE OFFENSE WAS COMMITTED:

(1) IN, ON, OR WITHIN 1,000 FEET OF ANY REAL PROPERTY THAT IS OWNED, RENTED, OR LEASED TO A SCHOOL OR SCHOOL BOARD, THE PREMISES OF A PUBLIC OR PRIVATE YOUTH CENTER, OR A PLAYGROUND; OR

(2) ON A SCHOOL BUS.

(F) AN OFFENSE OTHERWISE PUNISHABLE UNDER SECTION 481.118(B), 481.119(B), 481.120(B)(1), OR 481.121(B)(1), (B)(2), OR (C) IS A CLASS A MISDEMEANOR IF IT IS SHOWN ON THE TRIAL OF THE OFFENSE THAT THE OFFENSE WAS COMMITTED:

(1) IN, ON, OR WITHIN 1,000 FEET OF ANY REAL PROPERTY THAT IS OWNED, RENTED, OR LEASED TO A SCHOOL OR SCHOOL BOARD, THE PREMISES OF A PUBLIC OR PRIVATE YOUTH CENTER, OR A PLAYGROUND; OR

(2) ON A SCHOOL BUS.

SECTION 5. ARTICLE 14.06(D), CODE OF CRIMINAL PROCEDURE, IS AMENDED TO READ AS FOLLOWS:

(D) SUBSECTION (C) APPLIES ONLY TO A PERSON CHARGED WITH COMMITTING AN OFFENSE UNDER:

(1) SECTION 481.121, HEALTH AND SAFETY CODE, IF THE OFFENSE IS PUNISHABLE UNDER SUBSECTION (B)(2), (B)(3), OR (C) [~~(B)(1) OR (2)~~] OF THAT SECTION;

(1-A) SECTION 481.1161, HEALTH AND SAFETY CODE, IF THE OFFENSE IS PUNISHABLE UNDER SUBSECTION (B)(2) OR (B)(3) [~~(B)(1) OR (2)~~] OF THAT SECTION;

(2) SECTION 28.03, PENAL CODE, IF THE OFFENSE IS PUNISHABLE UNDER SUBSECTION (B)(2) OF THAT SECTION;

(3) SECTION 28.08, PENAL CODE, IF THE OFFENSE IS PUNISHABLE UNDER SUBSECTION (B)(1) OF THAT SECTION;

(4) SECTION 31.03, PENAL CODE, IF THE OFFENSE IS PUNISHABLE UNDER SUBSECTION (E)(2)(A) OF THAT SECTION;

(5) SECTION 31.04, PENAL CODE, IF THE OFFENSE IS PUNISHABLE UNDER SUBSECTION (E)(2) OF THAT SECTION;

(6) SECTION 38.114, PENAL CODE, IF THE OFFENSE IS PUNISHABLE AS A CLASS B MISDEMEANOR; OR

(7) SECTION 521.457, TRANSPORTATION CODE.

SECTION 6. SECTION 15(A)(1), ARTICLE 42.12, CODE OF CRIMINAL PROCEDURE, IS AMENDED TO READ AS FOLLOWS:

(1) ON CONVICTION OF A STATE JAIL FELONY UNDER SECTION 481.115(B), 481.1151(B)(1), 481.116(B), 481.1161(B)(4) [~~481.1161(B)(3)~~], 481.121(B)(4) [~~481.121(B)(3)~~], OR 481.129(G)(1), HEALTH AND SAFETY CODE, THAT IS PUNISHED UNDER SECTION 12.35(A), PENAL CODE, THE JUDGE SHALL SUSPEND THE IMPOSITION OF THE SENTENCE AND PLACE THE DEFENDANT ON COMMUNITY SUPERVISION, UNLESS THE DEFENDANT HAS PREVIOUSLY BEEN CONVICTED OF A FELONY, OTHER THAN A FELONY PUNISHED UNDER SECTION 12.44(A), PENAL CODE, OR UNLESS THE CONVICTION RESULTED FROM AN ADJUDICATION OF THE GUILT OF A DEFENDANT PREVIOUSLY PLACED ON DEFERRED ADJUDICATION COMMUNITY SUPERVISION FOR THE OFFENSE, IN WHICH EVENT THE JUDGE MAY SUSPEND THE IMPOSITION OF THE SENTENCE AND PLACE THE DEFENDANT ON COMMUNITY SUPERVISION OR MAY ORDER THE SENTENCE TO BE EXECUTED. THE PROVISIONS OF THIS SUBDIVISION REQUIRING THE JUDGE TO SUSPEND THE IMPOSITION OF THE SENTENCE AND PLACE THE DEFENDANT ON COMMUNITY SUPERVISION DO NOT APPLY TO A DEFENDANT WHO:

(A) UNDER SECTION 481.1151(B)(1), HEALTH AND SAFETY CODE, POSSESSED MORE THAN FIVE ABUSE UNITS OF THE CONTROLLED SUBSTANCE;

(B) UNDER SECTION 481.1161(B)(4) [~~481.1161(B)(3)~~], HEALTH AND SAFETY CODE, POSSESSED MORE THAN ONE POUND, BY AGGREGATE WEIGHT, INCLUDING ADULTERANTS OR DILUTANTS, OF THE CONTROLLED SUBSTANCE; OR

(C) UNDER SECTION 481.121(B)(4) [~~481.121(B)(3)~~], HEALTH AND SAFETY CODE, POSSESSED MORE THAN ONE POUND OF MARIHUANA.

SECTION 7. ARTICLE 45.051, CODE OF CRIMINAL PROCEDURE, IS AMENDED BY ADDING SUBSECTION (G) TO READ AS FOLLOWS:

(G) THIS SUBSECTION APPLIES ONLY TO A DEFENDANT CHARGED WITH AN OFFENSE UNDER SECTION 481.1161 OR 481.121, HEALTH AND SAFETY CODE, WHO IS GRANTED A DEFERRAL UNDER SUBSECTION (A). IN ADDITION TO ANY OTHER REQUIREMENT, THE JUDGE SHALL, DURING THE DEFERRAL PERIOD, REQUIRE THAT THE DEFENDANT SUCCESSFULLY COMPLETE A DRUG ABUSE AWARENESS AND EDUCATION PROGRAM APPROVED BY THE DEPARTMENT OF STATE HEALTH SERVICES.

Commentary: A Better Tomorrow Act (“Act”) is solely related to the personal use and possession of marijuana or synthetic marijuana in an effort to financially relieve the Texas Department of Criminal Justice, courts, police enforcement, and taxpayers, and combat substance abuse by implementing substance abuse awareness and support programs. Further this act also seeks to give protection to qualifying patients who have been prescribed medicinal use of marijuana from a qualifying physician.

Essentially, this proposed legislation is de-penalizing possession of marijuana for personal use because the criminal consequences are greatly outweighed by the benefits of such de-penalization. The same goes for patients who have been prescribed use by a qualifying physician.

## 1. Economic benefits of the Act

The economic effect of de-penalization of possession of marijuana for personal use indicates it may be extremely beneficial to the State’s budget and county taxpayers. At the very least, reports have indicated that the Act will have no financial consequences.

First, the amount of arrests made for the offense of possession of marijuana would greatly reduce the amount of police resources spent on its enforcement thus allowing for more money and resources concentrated on the safety and well being of their respective communities. In 2007, there were 68,758 arrests for marijuana possession, which accounted for 97% of all marijuana arrests in Texas.<sup>12</sup> In Harris County, Texas, the top arrestable offense is made for possession of marijuana less than 2 ounces.<sup>13</sup> In 1995, there were a total of 5,422 arrests made in Harris County for possession of marijuana, which is roughly 175% of the population.<sup>14</sup> From the 5,422 total number of people who were arrested for possession of marijuana, 2,116 were African-American and 3,295 were Caucasian. In Montgomery County, Texas, there is an estimated 20 to 30 marijuana arrests made a week.<sup>15</sup>

A defense attorney from Collin County, Texas, published a report on 2011 misdemeanor cases for possession of marijuana.<sup>16</sup> On average most of the defendants end up on probation or deferred adjudication. 1,625 cases were disposed of in 2011. From that number of dispositions, 676 were deferred adjudication; 436 were permanent convictions; 118 cases were dismissed outright; 45 went to trial where 6 jury trial were held—2 resulted in acquittal and 4 resulted in conviction; and 39 judge trial were held—6 resulted in acquittal and 33 resulted in conviction.

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<sup>12</sup> See Jon Gettman’s “Marijuana in Texas. Arrests, Usage and Related Data”

<sup>13</sup> <http://harriscountyarrests.com>

<sup>14</sup> See NORML’s website at [http://norml.org/data/item/texas-marijuana-possession?category\\_id=888](http://norml.org/data/item/texas-marijuana-possession?category_id=888)

<sup>15</sup> See Texas Marijuana Lawyer Blog, by the Gilbert G. Garcia Law Firm at <http://www.texaspossessionofmarijuanalawyer.com/2013/02/shocking-statistics-on-texas-marijuana-arrests-the-high-cost-of-our-current-drug-laws.html>

<sup>16</sup> <http://www.allentexascriminallaw.com/2012/08/collin-county-possession-of-marijuana-statistics.html>

In 2009, Travis County, Texas, began to enforce a “cite and release” policy for individuals caught with small amounts of marijuana. Austin Police Department officials say the policy is successful and helps save police recourses and time.<sup>17</sup>

Evidently, there is a vast amount of time and resources spent by police enforcement on arresting marijuana users. These resources could easily be redirected and coordinated towards violent crimes and major drug sting operations, instead of apprehending marijuana users.

In addition to saving time and money for law enforcement, it would also be saving tax-payer money. The Texas criminal justice system, including local, county and state government, costs totaled \$11.29 billion for 2006. The state spent 4.87 billion on police protection, \$1.99 billion on judicial and legal services, and \$4.43 billion on corrections.<sup>18</sup> A fiscal note for H.B. 184, which has a similar de-penalization provision, indicated that there would be no anticipated fiscal consequences if passed.

The proposed fine for a violation of the Act would be \$500. These fines could contribute to local county funds and existing infrastructure such as municipalities and substance abuse awareness programs. For example, an individual who is cited for possession of marijuana less than one ounce would be able to deal with the citation by paying it and participating in substance abuse awareness program as a requirement of the citation or may receive deferred adjudication. These possible options would be left up to the respective municipalities. The main point is that the Act is very flexible and could be implemented easily because of existing laws and infrastructure.

A study using the methodology of economists such as s Jeffrey Miron, found that the economic benefits of legalizing marijuana in California indicated that the substance’s regulation would result in potentially millions or even billions of dollars in tax revenue for the state.<sup>19</sup> Further, using the same methodology the study showed that the decriminalization of marijuana drug offenses would likely reduce the cost of criminal justice expenditures but would probably be offset by criminal activity such as drugged driving. However, this type of offset would not be a factor in this Act because it only seeks to de-penalize possession of small amounts of marijuana to a citation with no jail time and required substance abuse rehabilitation programs, it does not condone recreational use.

Further, a 2013 poll by the Pew Research Center showed that an overwhelming majority of individuals across the political spectrum and demographic backgrounds said they felt that government enforcement of marijuana laws “cost more than they are worth.”<sup>20</sup> Specifically, when asked whether government efforts to enforce marijuana laws costs more than they are worth 78% of Independents, 71% of Democrats and 67% of Republicans agreed.

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<sup>17</sup> <http://www.keyetv.com/news/features/top-stories/stories/-texas-lawmakers-discuss-reduced-penalties-marijuana-possession-7379.shtml>

<sup>18</sup> Gettman.

<sup>19</sup> Michelle Patton, *The Legalization of Marijuana: A Dead-End or the High Road to Fiscal Solvency?*, 15 Berkeley J. Crim. L. 163 (Spring 2010).

<sup>20</sup> Pew Research Center, See <http://www.people-press.org/2013/04/04/majority-now-supports-legalizing-marijuana/>

The de-penalization of possession of marijuana for one ounce or less would more likely than not be a great revenue generating measure and at the very least cost taxpayers almost nothing.

## 2. Legislative Efforts to De-penalize Marijuana and Public Opinion

Second, there have been efforts made by Federal and State representatives from both political parties to reform the current drug policy. This proposed Act is modeled after House Bill 184, sponsored by State Representative Harold Dutton Jr., District 142 in Houston, Texas. The bill seeks to de-penalize simple possession of marijuana and make it a class C misdemeanor for possession of 1 ounce or less. However, in contrast to the proposed Act, HB 184 calls for a type of 3 strikes penalty. If an individual is convicted of the Class C offense three times in the preceding 24-months from the first conviction, that person will be convicted of a class B and will not qualify for community supervision. This Act does not allow for such a penalty but instead strictly treats the violation akin to that of a traffic ticket. Because of the high arrest rates for possession of marijuana and the psychology of a substance abuser, imposing a three strikes penalty would defeat the purpose of the Act--lowering economic costs and combating substance abuse with social awareness and support programs.

The movement of prior marijuana legislation indicates that the issue is becoming more acceptable by society. On March 12, 2013, Representative Dutton explained the purpose of HB 184 to the Criminal Jurisprudence Committee. There were 17 witnesses testifying for the bill, two witnesses testifying against bill, and two witnesses testifying on the bill. The Fiscal Note for HB 184 indicated there would be no fiscal implication to the State anticipated. On April 23, 2013, HB 184 was reported favorably as substituted. That means a substitute bill has been drafted and will probably be reported to the House.<sup>21</sup> No further action has been taken to date.

Legal officials have spoke about their views on drug abuse. Former Harris County District Attorney Pat Lykos and Texas District Judge Micheal McSpadden, spoke at a conference at the Baker Institute, "The War on Drugs has failed, is Legalization the Answer?"<sup>22</sup> While both were opposed to the legalization of illicit drugs, they admitted that cases where there are residue or traces of illicit drugs on a person or in a pipe less than 1/100 of a gram (aka as "trace cases"), were "clogging up" the court dockets and taking up a vast amount of police time and resources. The policies of the Lykos administration was to stop prosecuting trace cases as state jail felonies and instead defer them to misdemeanor court thus reducing trace cases on the court docket by 60 percent.

During the conference, Judge McSpadden stated that 30 percent of all the state jail felony docket was spent on less than 1 gram cases, or trace cases. He was in favor of the Lycos Policy because courts were able to focus on more heinous crimes such as aggravated robbery and sexual assault. Judge McSpadden further stated that he had written the legislature for three years asking them to

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<sup>21</sup> House Committee Procedures, 83<sup>rd</sup> Legislature. See <http://www.hro.house.state.tx.us/pdf/focus/compro83.pdf>

<sup>22</sup> <https://www.youtube.com/watch?v=FNA-n2GOIUg>

consider lowering anything lower than 1 gram to a misdemeanor offense. As of yet, McSpadden said the legislature has not changed their stance.

While trace cases are usually prosecuted in connection with crack cocaine or powder form of cocaine, the issue illustrates a consensus among law officials to go after sale and distribution offenses, not users. Nonetheless it should be noted that the new Harris County DA Mike Anderson has reversed the policy and trace cases are once again prosecuted as felonies. The passage of the proposed Act would apply a uniform approach by law officials and streamline judicial resources in order to achieve a more affective system.

On the national level, Congressman Ron Paul (R-Tex) along with other congressman sponsored H.R. 2306, which removes Marijuana and tetrahydrocannabinol from the Controlled Substances Act. Congressman Paul said the goal is not to legalize marijuana, but to leave it up to the states to decide how they are going to handle the issue of marijuana possession. It was introduced on June 23, 2011, however it never got past committee.

Despite the unsuccessful attempts of legislators to push forward decriminalization and legalization of marijuana use in Texas and federally, public opinion seems less opposed to this change. Gallup poll has found that there has been a steady rise in support over the past 40 years from Americans for the legalization of marijuana.<sup>23</sup> Gallup's October Crime poll finds 44% of Americans in favor of making marijuana legal and 54% opposed.

In 1970 84% of Americans opposed and 12% supported legalization of marijuana. Fast forward to 2009, Gallup's October Crime poll found that 54 % were opposed to legalization of marijuana and 44% were in favor of legalizing marijuana. Gallup predicted that if public support were to continue to grow at a rate of 1% to 2% per year, "as it has since 2000, the majority of Americans could favor legalization of the drug in as little as four years.

A 2013 poll by the Pew Research Center<sup>24</sup>, showed that a majority of Americans supports the legalization of marijuana. Specifically, the survey showed that 52% of Americans said that use of marijuana should be made legal while 42% said it should not. A majority of individuals were also opposed to the enforcement of marijuana laws against persons who used it for medicinal purposes.

A 2004 Texas poll asked residents whether they would approve of medicinal use of marijuana.<sup>25</sup> It showed 75% would favor such a bill, 6% were neutral and 19% would oppose. The poll surveyed 900 random residents by telephone asking "whether you would favor or oppose a bill in the Texas Legislature that would allow people with cancer and other serious illnesses to use their own marijuana for medical purposes as long as their physician approves?"

Polls indicate that a majority of Texas citizens would support this Act.

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<sup>23</sup> See *U.S. Support for Legalization of Marijuana Reaches a New High* at <http://www.gallup.com/poll/123728/u.s.-support-legalizing-marijuana-reaches-new-high.aspx>

<sup>24</sup> See *Pew Research Center*, at <http://www.people-press.org/2013/04/04/majority-now-supports-legalizing-marijuana/>

<sup>25</sup> <http://medicalmarijuana.procon.org/view.additional-resource.php?resourceID=153>

### 3. The Controlled Substances Act and the Health Effects of Marijuana.

Congress enacted the Controlled Substances Act (“CSA”) in 1970 as part of a comprehensive statutory scheme to regulate the manufacturing, sale and use of all drugs. Texas has adopted the CSA scheme, which can be found in the Texas Health and Safety Code. Under the CSA all controlled substances, legal and illegal, were categorized into five schedules. The factors the U.S. Attorney General considers in determining the control or removal of a substance from the schedules are: (1) Its actual or relative potential for abuse; (2) Scientific evidence of its pharmacological effect, if known; (3) The state of current scientific knowledge regarding the drug or other substance; (4) Its history and current pattern of abuse; (5) The scope, duration, and significance of abuse; (6) What, if any, risk there is to the public health; (7) Its psychic or physiological dependence liability; and (8) Whether the substance is an immediate precursor of a substance already controlled under this subchapter.<sup>26</sup>

Marijuana, synthetic marijuana and Tetrahydrocannabinols (“THC”) are listed as a Schedule 1 drug, the most prohibited substance in the CSA. Marijuana is a schedule 1 drug because: (1) it has “a high potential for abuse”, (2) there is “no accepted medical use in treatment in the United States”; and (3) “there is a lack of accepted safety for use of the drug or other substance under medical supervision.”<sup>27</sup> Other types of drugs listed as a Schedule 1 include methamphetamine, Heroin, and DMT. While schedule II drugs include cocaine, methamphetamine, morphine, and methadone. The Food and Drug Administration (“FDA”) is responsible for the health and safety of the public and enforces the rules in connection with the production and distribution of food and drugs in the states.

The FDA does not approve of marijuana or similar substances for recreational or medicinal use. However, it does approve of Marinol, the pill form of THC, which has been proven to have therapeutic benefits for patients suffering from severe hunger loss due to cancer treatment, HIV or AIDS. The FDA does not approve of the medicinal use of marijuana because, it contends, there is not enough sufficient scientific evidence to support the finding that its use outweighs the health benefits. Specifically, the FDA does not approve of the way it is administered, by inhaling smoke, because of the respiratory problems it causes and, more importantly, because its an addictive substance.<sup>28</sup>

#### a. How addictive is marijuana?

The National Institute on Drug Abuse (“NIDA”) research suggested “about 9 percent of users become addicted to marijuana; this number increases among those who start young (to about 17 percent, or 1 in 6) and among daily users (to 25-50 percent). Thus, many of the nearly 7 percent of high-school seniors who . . . report smoking marijuana daily or almost daily are well on their

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<sup>26</sup> 21 U.S.C.A. § 811 (West)

<sup>27</sup> 21 U.S.C.A. § 812 (West)

<sup>28</sup> See National Institute on Drug Abuse’s Website at <http://www.drugabuse.gov/publications/drugfacts/marijuana>

way to addiction, if not already addicted (besides functioning at a sub-optimal level all of the time).”

However, a public policy congressional research report published in 2010<sup>29</sup> indicated that there was “no evidence for the supposition that state medical marijuana programs lead to increased use of marijuana or other drugs.” In other words, although marijuana can become addictive, the legalization or de-criminalization of it does not necessarily result in an increase in use. The Institute of Medicine, cited by the congressional research report, concluded the following in its findings:

“Finally there is a broad social concern that sanctioning the medical use of marijuana might increase its use among the general population. At this point there are no convincing data to support this concern. The existing data are consistent with the idea that this would not be a problem if the medical use of marijuana were as closely regulated as other medications with abuse potential. . . [T]his question is beyond the issues normally considered for medical uses of drugs and should not be a factor in evaluating the therapeutic potential of marijuana or cannabinoids.”

Marijuana use by teens is low in Texas. Texas ranked 46 in the U.S. in 1999 for percentage of Youth Age 12-17 reporting past-month marijuana use. In 2002-03 it ranked 46 for percentage of Youth Age 12-17 reporting past-month marijuana use. Despite the low percentage of drug use among youth in Texas, the use of marijuana has increased over the years nationally. “In 2011, there were 18.1 million current (past-month) users—about 7.0 percent of people aged 12 or older—up from 14.4 million (5.8 percent) in 2007.”<sup>30</sup>

Trends of drug use in America show that a majority of individuals try illicit drugs in their late teens and early 20s, then discontinue use. The NIDA found “in 2011, 23.8 percent of 18 to 20-year-olds reported using an illicit drug in the past month.”<sup>31</sup>

Therefore while the potential for addictiveness is a risk, it is a relatively small one. The users who are at risk for substance abuse could receive help through the Act which would require persons who received a citation to participate in substance abuse programs instead of being sentenced to jail time and obtaining a life-record that could impede on their economic success and potential opportunity in life.

## b. Is Marijuana Harmful to Your Health?

Aside from the concern of the addictive effects of marijuana, the FDA does not approve of the way the drug is administered – by inhaling smoke.

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<sup>29</sup> Mark Eddy, "Medical Marijuana: Review and Analysis of Federal and State Policies," Congressional Research Service, RL33211 (Washington, DC: Library of Congress, Sept. 20, 2007).

<sup>30</sup> See NIDA, Drugfacts: nationwide trends at <http://www.drugabuse.gov/publications/drugfacts/nationwide-trends>

<sup>31</sup> *Id.*

Marijuana is a “dry, shredded green and brown mix of leaves, flowers stems, and seeds from the hemp plant *Cannabis sativa*” that contains a “psychoactive (mind-altering) chemical” known as “delta-9-tetrahydrocannabinol, or THC.”<sup>32</sup> Marijuana can be cooked and taken orally, but it is usually smoked much like tobacco, in hand rolled cigarettes or pipes.

Opponents of the drug have argued that the “inhaling smoke is an unprecedented drug delivery system” and that “chronic marijuana smoking is harmful to the lungs, the cardiovascular system, and possibly the immune and reproductive systems.”<sup>33</sup>

Nonetheless, the FDA approves of many drugs marked as inhalants. Further, there has never been clinical data that have shown higher rates of lung cancer in people who smoke marijuana.<sup>34</sup> Instead, there has been clinical evidence of the therapeutic value of marijuana.

Specifically, the American Medical Association’s “Council on Scientific Affairs Report 10-Medicinal Marijuana”, adopted by the AMA House of delegates on December 9, 1997 stated:

- “Smoked marijuana was comparable to or more effective than oral THC [Marinol], and considerably more effective than prochlorperazine or other previous antiemetics in reducing nausea and emesis.” (p. 10)
- “Anecdotal, survey, and clinical data support the view that smoked marijuana and oral THC provide symptomatic relief in some patients with spasticity associated with multiple sclerosis (MS) or trauma.” (p. 13)
- “Smoked marijuana may benefit individual patients suffering form intermittent or chronic pain.” (p. 15)<sup>35</sup>

Moreover, medical research and studies have found that Marijuana has not been proven to cause a fatal overdose<sup>36</sup> A FOIA request to the U.S. Food and Drug Administration (FDA) by procon.org, a independent nonpartisan, nonprofit charity, revealed that there was only 1 death where marijuana was the primary suspect compared to 17 FDA-approved drugs which included Compazine, Reglan, Marinol, Zofran, Anzemet, Kytril, Tigan, Baclofen, Zanaflex, Haldol, Lithium, Neurontin, Ritalin, Wellbutrin, Adderall, Viagra, and Vioxx. The results were taken over a period of time starting from January 1, 1997, to June 30, 2005.

Vioxx was the highest reported primary suspect of death totaling 4,540. The FDA discontinued its approval of the drug in 2004 after there were reports of high rates of heart attacks, strokes and death linked to its usage.<sup>37</sup> Second highest was Viagra, used to treat erectile dysfunction, at 2,254 deaths, and third was Wellbutrin, used to treat depression and anxiety, at 1,132 deaths.

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<sup>32</sup> *Id.*

<sup>33</sup> Mark Eddy, "Medical Marijuana: Review and Analysis of Federal and State Policies," Congressional Research Service, RL33211 (Washington, DC: Library of Congress, Sept. 20, 2007)

<sup>34</sup> *Id.* at 29.

<sup>35</sup> *Id.* at 30.

<sup>36</sup> [http://medicalmarijuana.procon.org/view\\_resource.php?resourceID=000145](http://medicalmarijuana.procon.org/view_resource.php?resourceID=000145)

<sup>37</sup> USA Today.

#### 4. Protecting patients

There has been an overwhelming trend to protect medicinal marijuana users. 18 states and the District of Columbia have legalized the medicinal use of marijuana and there are currently 6 states with pending legislation to legalize medicinal use.<sup>38</sup> Additionally, there has been great support from the medical community too. “More than 60 U.S. and international health organizations -- including the American Public Health Association Health Canada, and the Federation of American Scientists -- support granting patients immediate legal access to medicinal marijuana under a physician's supervision.”<sup>39</sup>

Patients who use marijuana for its medicinal effects are usually severely ill with cancer, HIV, AIDS and the like. The criminal prosecution of such individuals only adds insult to injury and their incarceration would only prove to worsen their conditions. Although the debate over the health benefits of marijuana is still ongoing, the multitude of emerging empirical research makes it hard to ignore the substance's health benefits. The National Cancer Institute recognizes and recommends cannabinoids as a treatment for chemotherapy related treatment. Further institutions of higher education, such as the University of California have been given authority from the state to conduct investigations and research into the medicinal benefits of marijuana. According to WebMD there have been at least five published medical peer-reviewed journals that show the use of marijuana for medicinal use has merit.<sup>40</sup> The five journals research is as follows:

- “Smoked cannabis reduced pain in HIV patients. In one study, 50 patients assigned either to cannabis or placebo finished the study. Although 52% of those who smoked marijuana had a 30% or more reduction in pain intensity, just 24% of those in the placebo group did. The study is published in the journal *Neurology*. In another study, 28 HIV patients were assigned to either marijuana or placebo -- and 46% of pot smokers compared to 18% of the placebo group reported 30% or more pain relief. That study is in *Neuropsychopharmacology*.”
- “Marijuana helped reduce pain in people suffering spinal cord injury and other conditions. In this study, 38 patients smoked either high-dose or low-dose marijuana; 32 finished all three sessions. Both doses reduced neuropathic pain from different causes. Results appear in the *Journal of Pain*.”
- “Medium doses of marijuana can reduce pain perception, another study found. Fifteen healthy volunteers smoked a low, medium, or high dose of marijuana to see if it could counteract the pain produced by an injection of capsaicin, the "hot" ingredient in chili peppers. The higher the dose, the greater the pain relief. The study was published in *Anesthesiology*.”
- “Vaporized marijuana can be safe, other research found. In this study, 14 volunteers were assigned to get low, medium, or high doses of pot, either smoked or by vaporization delivery, on six different occasions. The vaporized

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<sup>38</sup> [www.medicalmarijuana.procon.org](http://www.medicalmarijuana.procon.org)

<sup>39</sup> <http://norml.org/marijuana/medical/item/introduction-7#evidence>

<sup>40</sup> See Kathleen Doheny, Medical Marijuana has Merit, Research Shows at <http://www.webmd.com/pain-management/news/20100218/medical-marijuana-has-merit-research-shows>

method was found safe; patients preferred it to smoking. The study is in *Clinical Pharmacology & Therapeutics*.”

Moreover, research has suggested that the medicinal use of marijuana would be minimal compared to recreational use given the small percentage of persons who are severely ill. The RAND Drug Policy Research Center, a global research organization, stated in its newsletter despite the “sharp controversy” of legally permitted marijuana use, if it were to be made available “the quantities prescribed are likely to be miniscule compared to what is sold on the black market. In this sense, the medical use of marijuana poses no threat to drug control.”

The prescribed use of marijuana would not be a great detriment to society given the small percentage of users and doctors prescriptions. While legalizing recreational use of marijuana is still a controversial public debate, polls have shown that the medicinal use of marijuana is not quite as controversial and, in fact, there is great public support for such use for those who really need it. The passage of this Act would give those patients protection from possible criminal liability. Additionally, patients in states that have legalized marijuana would be able to be offered the same protection that they enjoy in their own state.

## MUNICIPAL ORDINANCE

That the Code of Ordinances, Houston, Texas, is hereby amended by adding a section, to be numbered Chapter 48, which said section reads as follows:

- CODE OF ORDINANCES  
Chapter 48 – PROHIBITED POSSESSION OF MARIJUANA

### ARTICLE I. – GENERALLY

#### Sec. 48-1. – Definitions in this chapter<sup>41</sup>

- (a) “Controlled Substance” has the meaning provided by Section 481.002 (*Definitions*) of the Texas Health and Safety Code.
- (b) “Controlled Substance Analogue” has the meaning provided by Section 481.002 (*Definitions*) of the Texas Health and Safety Code.
- (c) “Marijuana” has the meaning provided by Section 481.002 (*Definitions*) of the Texas Health and Safety Code.

#### Sec. 48-2. – Penalty for violating this chapter

It is a criminal offense for any person to violate the provisions of this chapter. Any person in violation of Section 48-4 of this chapter will be fined no less than \$500.

#### Sec. 48-3. - Law enforcement officials

Law enforcement officials of the Houston Police Department or the Metropolitan Transit Authority of Harris County shall enforce the provisions of this chapter by issuance of a citation for possession of marijuana of one ounce or less (hereinafter “PM1”). Law enforcement officials have the discretion to temporarily detain or arrest any person in violation of this provision if it is for the safety of the public.

#### Sec. 48-4. – Prohibited possession of marijuana less than one ounce

It shall be unlawful for any person to be in possession of a controlled substance, specifically marijuana or synthetic marijuana that is one ounce or less by aggregate weight, including adulterants or dilutants.

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<sup>41</sup> Modeled after Chapter 9-5. Restrictions on Drugs, Chemicals, and Controlled Substances, The Code of Austin City, Texas.

**Sec. 48-5. – Remedies; Substance Abuse Awareness Program**

- (a) A person found in violation of the provisions of Article II shall participate in a substance abuse awareness program, community service or any other type of program that is rehabilitative in accordance with 45.051(g), Code of Criminal Procedure.
- (b) A person ordered to participate in such rehabilitative program(s) must complete the program by the specified date pursuant to the order of the presiding judge.
- (c) A person who fails to comply with the order of the court will be charged \$20 for everyday the requirements of the order for rehabilitative programs is not completed.
- (d) All PM1 citation fees shall fund the requisite substance abuse or rehabilitative programs ordered by the presiding judge and in accordance with 45.051, code of criminal procedure, and any other applicable state law.

**ARTICLE II. ADJUDICATION OF PM1 CITATIONS<sup>42</sup>**

**Sec. 48-6. - Jurisdiction.**

The municipal courts department shall have original jurisdiction over cases involving violations of city ordinances enumerated in this article herein and of Section 481.1161(b)(1) of the Texas Health and Safety Code for possession of one ounce or less of marijuana or synthetic marijuana.

**Sec. 48-7. - Procedures.**

The presiding judge shall establish and implement appropriate procedures pursuant to Chapter 16 Article III of this charter and to effect the policy of this article.

**Sec. 48-8. – Possession of Marijuana less than 1 ounce citations.**

- (a) The administrative adjudication process for possession of marijuana less than 1 ounce violation (“PM1”) that is subject to adjudication under this article shall be initiated by the issuance of a PM1 citation. A citation may be issued by a peace officer or other authorized enforcement agent designated by or upon authority of the city, county or state.
- (b) The citation shall provide that the person charged with a PM1 offense shall have the right of an instanter hearing to determine the issue of liability for the charged offense. Such right to a hearing shall be exercised by appearing in person before an adjudication hearing officer within 30 days from the date of issuance of the citation at such convenient and reasonable hours as may be specified by the adjudication hearing officer, which hours shall be printed on the parking citation. In lieu of an instanter hearing the person charged may appear in person or through legal counsel before an adjudication hearing officer within 30 days from the date of issuance of the citation, post a cash bond for fines, costs and fees in an amount to be established by the adjudication hearing officer and shall then be scheduled for a hearing

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<sup>42</sup> Modeled heavily after Article IV of Chapter 16 of the City of Houston Charter.

before the adjudication hearing officer at a date and time certain within 30 days of such appearance.

- (c) The original or any copy of the citation is a record kept in the ordinary course of business in the city and is rebuttable proof of the facts it contains.

**Sec. 48-9. - Deferred adjudication.**

- (a) The municipal court judge may offer deferred adjudication for first-time offenders or individuals who have not received more than one citation for a PM1 violation in the preceding 12 months.
- (b) The grant of such a deferral must be in accordance with this chapters provisions and Article 45.051(g), Code of Criminal Procedure, which requires the defendant successfully complete a drug abuse awareness and education program approved by the Department of the State Health Services.
- (c) An individual must complete the requirements of a drug abuse awareness and education program or community service as imposed by the presiding judge.
- (d) In the event the requirements of the deferred adjudication are not successfully completed within the specified time period, the court shall enter a finding of guilty and the individual shall be required to pay the \$500 fine.

**Sec. 48-10. - Presumption of ownership.**

- (a) It is presumed that the person in possession of the controlled substance is the owner.

**Sec. 48-11. - Hearings.**

- (a) At the hearing before the adjudication hearing officer, the person charged may either admit, admit with explanation, or deny the alleged infraction.
- (b) The issuing peace officer or other PM1 enforcement agent shall not be required to attend the hearing.
- (c) It is not required that the prosecuting attorney attend the hearing. Provided, however, that if the person charged is represented by legal counsel at the hearing, the adjudication hearing officer shall notify the prosecuting attorney who shall have a right to appear on behalf of the city at said hearing.
- (d) No formal or sworn complaint shall be necessary. The adjudication hearing officer shall examine the contents of the citation and the evidence related to ownership of the controlled substance in question, and shall hear and review the testimony and evidence presented by the person charged. If the adjudication hearing officer determines by the preponderance of the evidence that the violation was committed by the person charged, he shall find the person charged liable therefor.
- (e) At the conclusion of the hearing, the adjudication hearing officer shall issue an order stating whether or not the person charged is liable for violation of the ordinance and the amount of

any fine, costs, or fees assessed against him. The order and all other records of the proceeding shall be filed with the clerk of the municipal court. All such orders shall be kept in a separate index or file by the clerk of the municipal court. The filing of the order and other records of the proceeding shall be kept in accordance with Section 682.009 of the Texas Transportation Code.

- (f) Failure of a person charged with the offense to appear before an adjudication hearing officer within 30 days from the issuance of the citation shall be considered an admission of liability for the charged offense and a default notice shall be issued on that basis. In the event that the person charged elects to appear by posting a bond and obtaining a scheduled hearing at a date and time certain, the failure of the person charged to appear in person or through counsel at the hearing as scheduled shall also be considered an admission of liability and an order may be issued on that basis.
- (g) Fines for violations shall be as provided in sections 48-2 and 48-5(c) of this Code. The presiding judge shall establish fines for persons who do not wish to contest their citations and for persons who admit liability under subsection (f), above. The presiding judge shall establish the amount of any added fine that shall be payable if a citation or fine ordered by an adjudication hearing officer is not fully satisfied or a bond is not posted within 30 days from the date of issuance of the citation.
- (h) Court costs shall be payable on all citations in the amounts required by law including, but not limited to, the fees payable under Sections 48-2. and 48-4. of this Code. The court costs shall be disposed as provided by Section 45-5.(d) of this chapter, 45.051, code of criminal procedure, and any other applicable state law. All other fines and fees shall be deposited in the city treasury as general revenues of the city.
- (i) The clerk of the municipal courts shall cause a video or audio tape record to be made of each hearing and shall retain the tape and any documents introduced at the hearing until the time for an appeal to be filed has expired.

#### **Sec. 48-12. - Appeal.**

- (a) A person who is found liable after an administrative adjudication hearing may appeal that finding of liability to the municipal courts by filing a notice of appeal with the clerk of the municipal courts. The notice of appeal must be filed not later than thirty days after the date on which the adjudication hearing officer entered the finding of liability and shall be accompanied by the payment of the appellate filing fee stated for this provision in the city fee schedule for each citation that is appealed. The appellate filing fee shall be refunded if the municipal court overturns the hearing officer's finding of liability. Unless the person, on or before the date of filing of the notice of appeal, posts a bond in the amount of the civil penalty and any late fees, an appeal does not stay the enforcement of the civil penalty. An appeal shall be decided by the municipal court under the substantial evidence rule and on the basis of the evidence adduced at the hearing before the adjudication hearing officer. The clerk's office shall provide or cause to be provided a copy of the record to the municipal court. If the municipal court finds the record to be materially incomplete, the court may upon its own motion or upon the motion of the defendant or the prosecuting attorney refer

the case back to the adjudication hearing officer for further proceedings; however, no evidence may be adduced at the appeal hearing.

- (b) The municipal court shall not reverse the adjudication hearing officer's decision unless it is determined to be:
  - (1) In violation of the law;
  - (2) Not reasonably supported by substantial evidence, based upon a review of the reliable and probative evidence in the record as a whole; or
  - (3) Arbitrary and capricious or characterized by an abuse of discretion.

Commentary: Chapter 48. The following chapter would be an addition to the Houston City Code of Ordinances in relation to the personal use possession of marijuana or synthetic marijuana. This act is solely related to the personal use and possession of marijuana or synthetic marijuana in an effort to financially relieve the criminal judicial system, Texas Department of Criminal Justice, police enforcement, and taxpayers of this city. Most importantly, this chapter seeks to battle substance abuse by requiring PM1 violators to attend substance abuse awareness and rehabilitative programs. The citation fees shall fund the programs.

The City of Houston recognizes that there are a great amount of marijuana users that are convicted who suffer economically and personally as a result of their criminal record. It is the goal of this ordinance to battle marijuana use not with penalization but with a more rehabilitative approach.