



JAMES A. BAKER III INSTITUTE FOR PUBLIC POLICY  
RICE UNIVERSITY

MODEL LEGISLATION:  
RICE UNIVERSITY'S BAKER INSTITUTE AND  
THE SOUTH TEXAS COLLEGE OF LAW  
DRUG POLICY COLLABORATION 2013

EXECUTIVE SUMMARY

BY

NATHAN P. JONES, PH.D.

ALFRED C. GLASSELL III POSTDOCTORAL FELLOW IN DRUG POLICY  
JAMES A. BAKER III INSTITUTE FOR PUBLIC POLICY  
RICE UNIVERSITY

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In 2012, the Drug Policy Program at Rice University's Baker Institute and the South Texas College of Law (STCL) established a unique agreement to work together on marijuana policy model legislation for the state of Texas. The collaboration was initiated by students and supported by the administrations and faculties of both universities. The first fruit of the project—student-written model statutes on marijuana policy for the state—are summarized here. The South Texas College of Law students produced 19 separate statutes for their public law course in the spring 2013 semester. They were asked to write model legislation regarding some aspect of marijuana policy and provide well-reasoned commentary for their statutes.

Speakers from the Baker Institute's Drug Policy Program gave guest lectures on drug policy issues and worked with professor Drury Stevenson of the STCL to provide general direction for the course. No instructions were given to the students in terms of policy direction for their assignments, though there was a general acknowledgement that American society is moving toward loosening marijuana prohibition. Indeed, the students in the course chose a variety of positions for their statutes, including recriminalization following the potential legalization of marijuana. Further, many of the statutes take different, often contradictory, positions on the myriad issues.

The goal of the collaboration between the STCL and the Baker Institute was to create an array of off-the-shelf pieces of legislation that legislators and government officials can consult and learn from as marijuana policy becomes a major issue in Texas over the next decade; this collection presents a menu of options for policymakers. Neither the Baker Institute nor the South Texas College of Law endorse any particular policy.

The contributors took on thorny issues in these statutes, including but not limited to: defining marijuana or cannabis; legalizing industrial hemp; labeling requirements; permitting and licensing of dispensaries; retail and commercial regulations; decriminalization; legalization regulatory frameworks; and employment statutes. The students wrote these in the spring of 2013, prior to the legislative work in Colorado and Washington, and the product should be read with this in mind.

This executive summary of the statutes will proceed according to the following roadmap: (1) a discussion of shifting societal views of marijuana in Texas and the United States in general; (2) a brief analysis of common arguments for and against marijuana policy change; (3) an overview of the organization of the collection and brief descriptions of all 19 statutes; and (4) concluding thoughts on the future of the collaboration.

## Society's Shifting Views of Marijuana

Two Pew and Gallup polls on marijuana policy conducted within the last year show that a majority of Americans now support marijuana legalization.<sup>1</sup> These are further supported by polls showing that 58 percent of Texans support marijuana legalization.<sup>2</sup> Even conservative stalwarts such as Texas Governor Rick Perry support the use of drug courts and diversion programs to unburden the judicial system and reduce the impact on the consumer.<sup>3</sup> President Obama's recent comments on marijuana show that marijuana policy change is now a mainstream issue.<sup>4</sup> Twenty states and the District of Columbia now have medical marijuana laws, and New York will soon join them, as Governor Cuomo institutes a medical system via executive order.<sup>5</sup> Colorado and Washington voters passed initiatives that legalized marijuana for recreational use in 2012. Since then, the respective legislatures have set about the task of establishing the complex regulatory frameworks needed to make the market a reality. Colorado has initiated its system, and the first legal sales of recreational marijuana occurred in January 2014, while Washington will follow later this year. The federal government has stated that it will allow these experiments to occur largely unimpeded, provided the states take affirmative steps to prevent interstate trafficking,

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<sup>1</sup> "Majority Now Supports Legalizing Marijuana," Pew Research Center for the People and the Press, April 4, 2013, <http://www.people-press.org/2013/04/04/majority-now-supports-legalizing-marijuana/>; Art Swift, "For First Time, Americans Favor Legalizing Marijuana," Gallup Politics, October 22, 2013, <http://www.gallup.com/poll/165539/first-time-americans-favor-legalizing-marijuana.aspx>.

<sup>2</sup> Chris Lindsey, "Texans Overwhelmingly Favor Treating Marijuana like Alcohol," Marijuana Policy Project, October 8, 2013, <http://www.mpp.org/states/texas/alerts/texans-overwhelmingly-favor.html>.

<sup>3</sup> Kolten Parker, "Gov. Rick Perry for decriminalization of pot," *San Antonio Express-News*, January 23, 2014, <http://www.mysanantonio.com/news/local/article/Gov-Rick-Perry-for-decriminalization-of-pot-5168667.php>.

<sup>4</sup> Zeke J. Miller, "Obama Says Easing Marijuana Restrictions a Job for Congress," *Time*, January 31, 2014, <http://swampland.time.com/2014/01/31/marijuana-obama-decriminalization/>.

<sup>5</sup> Jesse McKinley, "Even Supporters Question Cuomo's Marijuana Plan," *The New York Times*, January 14, 2014, <http://www.nytimes.com/2014/01/15/nyregion/even-supporters-question-cuomos-marijuana-plan.html>.

prevent minors from obtaining the product, keep it off federal lands, and ensure organized crime does not play a role in the market.<sup>6</sup>

Even major figures in the medical system are signaling an openness to change on marijuana policy. CNN's chief medical correspondent, Dr. Sanjay Gupta, admitted he was wrong to dispute the potential medicinal benefits of marijuana after he studied international research and witnessed seizure patients gain significant relief from marijuana use.<sup>7</sup>

### **Arguments for and against Marijuana Legalization**

The motivations for changing marijuana policy or maintaining the status quo vary widely. Advocates have cited the following reasons for supporting the legalization of marijuana: removing organized crime from the market, reducing drug-related violence in Mexico, delinking marijuana sales from other "harder" drugs, gaining medical access for legitimate patients, reducing the criminal burden on individuals, preserving the rights of the individual, and reducing the cost burden on the criminal justice system. Opponents have largely cited public health concerns about increased marijuana use under conditions of legalization. These include an increase in drugged driving accidents, absenteeism, and the much-disputed notion that marijuana is a gateway drug to other harder drugs.

### **Organization of the Collection and Description of the Statutes**

Professor Drury Stevenson of the public law course at STCL has adeptly edited the volume of statutes by categorizing them into six groups with two additional statutes that cover the issue so expansively they stand on their own. The six groups of statutes are (1) decriminalization statutes, (2) recriminalization statutes, (3) labeling statutes, (4) an employment law statute, (5) permits and licensing statutes, (6) commercial and retail regulation of marijuana establishments, and (7) the two stand-alone statutes.

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<sup>6</sup> Ryan J. Reilly and Ryan Grim, "Eric Holder Says DOJ Will Let Washington, Colorado Marijuana Laws Go Into Effect," *Huffington Post*, August 29, 2013, [http://www.huffingtonpost.com/2013/08/29/eric-holder-marijuana-washington-colorado-doj\\_n\\_3837034.html](http://www.huffingtonpost.com/2013/08/29/eric-holder-marijuana-washington-colorado-doj_n_3837034.html).

<sup>7</sup> Sanjay Gupta, "Why I changed my mind on weed," *CNN*, August 8, 2013, <http://www.cnn.com/2013/08/08/health/gupta-changed-mind-marijuana/index.html>.

*Decriminalization*

The first proposed decriminalization statute effectively legalizes the use of marijuana for persons 21 and older, maintains prohibitions on marijuana for those under the age of 21, specifies the continued illegality of driving under the influence of marijuana, and separates industrial hemp from other marijuana regulations. The regulations are consciously modeled after alcohol regulations and motivated by libertarian sensibilities in line with the political culture in Texas.

The second statute, titled “Section 420—Decriminalization of Personal Quantities of Marijuana,” decriminalizes marijuana use, possession, purchase, or transportation of less than one ounce. It also decriminalizes the cultivation of six plants with no more than three at maturity, provided the cultivation is done by those 21 and older and is not done in public. Allowing personal cultivation solves at least a portion of the supply issue, thus addressing the involvement of organized crime.

In the third statute, legal possession of less than 60 grams of marijuana for those 21 and older is permitted. The author is careful to distinguish between the weight of marijuana and the weight of other substances combined with marijuana in the 60-gram limit. This is particularly thoughtful given the current popularity of marijuana edibles in Colorado. Under this statute, public consumption, public intoxication, and possessing an open container of marijuana result in a fine, but not imprisonment.

The fourth statute, titled an “Act for a Better Tomorrow,” contains both model state and municipal marijuana decriminalization statutes. The statute reduces possession of small amounts of marijuana (less than one ounce) to a Class C misdemeanor. It also categorizes the level of crime for other amounts of marijuana possession, authorizes law enforcement to write tickets for first-time offenders, and makes provisions for medical use under the care of a doctor. The municipal statute provides for the implementation of drug courts and diversion treatment for those in possession of marijuana.

*Recriminalization*

Six of the statutes address issues of recriminalization—the idea that after marijuana is legalized, there will be a need to recriminalize certain behaviors people might display after consuming the

product. This will likely be taken into account in the initial design of any legalization framework; thus, the ideas presented here will inform the architecture of future legislation. The first statute recriminalizes certain acts based on the laws pertaining to alcohol, including open containers, driving while intoxicated, and public intoxication. The second statute addresses voluntary versus involuntary consumption and legal responsibilities for the individual under both conditions. The third statute in this section establishes when a user can safely use a motor vehicle after using marijuana and addresses the annual registration of marijuana retail establishments. The fourth statute establishes that marijuana intoxication cannot be used as a defense in a crime, but involuntary use (such as the unwitting ingestion of marijuana edibles) or not being informed of the potency of marijuana can be used as a defense. The fifth statute establishes age restrictions and an identification requirement. It prohibits employers, universities, and landlords from discriminating (through hiring, firing, evicting, expelling, etc.) against legal marijuana use, and also establishes that both driving under the influence and public intoxication are crimes. The sixth statute provides more specifics on underage use regulation and penalties in addition to discussing the roles of city and state governments in regulating the local industry.

### *Labeling and Advertising*

Two of the student-written statutes pertain to the labeling and advertising of marijuana—a tricky subject in a society that values free speech. The first statute requires that legal sales of marijuana include information about: the percentages of THC and CBD (two of the common psychoactive substances found in marijuana) that the product contains; the type of cannabis; warnings about side effects; the row method; whether or not it is organic; the weight; the state or country of origin; verification of licenses needed to sell; and advertised amounts of use. The packaging of the cannabis must be clear, labeled, and in a tamperproof seal.

The second statute in this section gives regulatory power over marijuana advertising to the Texas Department of Licensing and Regulation Commission. The commission would regulate marijuana advertisements on billboards, television, roads, streets, highways, commercially printed material, Texas-based Internet servers, commercial vehicles, and the Postal Service. They can regulate the size of the advertisements and the rates and prices in retail establishments. The statute also regulates use and sale of marijuana near schools by imposing a “300-foot rule.”

*Employment and Marijuana*

In our contribution focusing on employment regulations, the statute distinguishes between the personal use of marijuana and the use of marijuana during work hours. It directs employers to establish clear policies on the use and possession of marijuana and allows the state and employer to revoke unemployment and disability benefits from anyone fired due to marijuana violations. This is a well-thought-out statute that creates a legal framework for marijuana and employment law, including protections for both the employer and employee.

*Permits and Licensing*

The first statute establishes the regulatory power of the Texas Alcoholic Beverages Commission (TABC) over the marijuana industry. This agency can designate a “separate and distinct” commission for “granting, enforcing, and monitoring the permits created by this code.” This commission is responsible for permitting, the collection of taxes, seizure of property related to violations, and maintaining permittee personnel files, among other things. It will be funded by the TABC budget and its own tax revenue generation, or by a combination of its own budget and legislative appropriation. This model statute also fleshes out the important issues of government jurisdiction over marijuana. Counties and cities have the right to choose whether marijuana sales will be allowed, but cannot reduce regulations below what the state permits. Cities also trump counties in terms of allowing marijuana sales in their locales.

The second statute of this section establishes a permitting framework and eligibility requirements for becoming a marijuana vendor. It also clearly defines the terms used in the statute, including “seller” and “reseller.” One of the more unique aspects of this statute is that it sets the legal age for marijuana consumption at the age of 25. New neurobiological research indicates that this is the age at which the human brain is fully developed; thus, use of marijuana after this age may have a lower impact on brain development.

The third statute establishes retail-licensing requirements for sellers. One of the most interesting aspects of this statute is the requirement that barcode scanners be used to track all licensed marijuana. Transportation of one pound of marijuana from the store to the buyer’s home is lawful within the two days after purchase.

*Regulation of Marijuana Retailers and Commercial Producers*

The first statute establishes thoughtful rules surrounding retail marijuana sales, including: the product cannot be opened or consumed on the premises of the sale; sales and advertising can not occur within 1,000 feet of schools, game arcades, parks, libraries, recreation centers, day cares, or public transit centers; sales can only occur between 11 a.m. and 9 p.m. Monday through Saturday; all sales must be retail grade; stock must be obtained through a licensed distributor; stock must be housed in the store; and special retail permits must be obtained to provide marijuana tastings.

The second statute provides a series of definitions for marijuana. These definitions provide an important starting point that can impact the effect of any marijuana legislation.

In one of our most interesting contributions, the third statute of this section provides detailed legislation on state marijuana stores. A state marijuana commission is given jurisdiction over the regulation of the marijuana industry. The state treasurer maintains an account for all of the money from state stores. This maneuver avoids problems with federal restrictions regarding the banking of marijuana proceeds. Constituents are given the ability to vote on permitting marijuana sales in their counties on a regular basis. The state stores must be 10 miles apart from each other, and the state commission must approve of the location of each state store. The statute also establishes regulations for private marijuana establishments and regulations for counties to accept or reject commercial sales.

*Stand-alone Statutes*

Two of the student statutes were considered so comprehensive that they are treated as stand-alone pieces of legislation. The first stand-alone statute is titled “The Federal Marijuana Act of 2013” and establishes a Marijuana Regulatory Agency (MRA) in addition to the general contours of a new marijuana market. It includes familiar regulations such as establishing a minimum age of 21 for marijuana use and enabling the regulatory agency to ensure safe consumption, regulation of sales, registration of producers, and sanctions for vendors that do not comply with the MRA regulations.

The second stand-alone statute, titled “Commercial Cannabis Control Act” (CCCA), puts the regulation of marijuana in the hands of Texas’ alcohol regulatory agency and argues all states should do the same to increase the uniformity of regulation. The statute has seven sections, including general provisions, administrative provisions, activities subject to regulations, growing licenses, quality and product labeling, taxation, and local option election.

### **Conclusions and the Next Stage of the South Texas College of Law/Baker Institute Collaboration**

There were important common themes in the statutes. First, many heavily emphasized preventing minors from accessing marijuana in a legal market. Nearly every statute established a minimum age of 21 years for consumption. Second, nearly all of the statutes reduced the penalties on the possession of small amounts of marijuana (usually an ounce or less), paying homage to the general societal criticism that the United States has punished nonviolent drug offenses too harshly. Third, many of the statutes created regulatory agencies or gave regulatory power to an existing agency to manage the market. The students perspicaciously understood that regulation would be ongoing and have to adapt to market conditions. An agency to manage those shifts would be needed.

Some of the statutes possessed unique ideas, such as a 25-years-or-older marijuana use rule, and the use of radio frequency identification or scanner tracking of marijuana products to enforce limits on transportation. Few of the statutes touched on the issue of medical marijuana, which has played an important role in the marijuana legalization movement and has been mentioned by Texas gubernatorial candidate Wendy Davis.<sup>8</sup>

The South Texas College of Law students did excellent work drafting and commenting on model marijuana legislation. They produced far more legislation than was initially anticipated and the quantity was in many ways overwhelming. As a result, future iterations of the course will divide the students into groups to work on a smaller number of high-quality statutes focusing on

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<sup>8</sup> Dana Davidsen, “Wendy Davis supports medical marijuana,” *CNN*, February 11, 2014, <http://politicalticker.blogs.cnn.com/2014/02/11/wendy-davis-supports-medical-marijuana/>.

different aspects of the large policy options, such as decriminalization, medical marijuana legislation, legalization through a state monopoly, and regulated legalization led by the private sector. We look forward to receiving feedback on the ideas behind the statute and future iterations of the collaboration as we move toward the creation of “uniform” statutes for new marijuana policy in the state of Texas.

To view each of the model statutes, visit [bakerinstitute.org/model-legislation-2013](http://bakerinstitute.org/model-legislation-2013).

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