

ISSUE BRIEF **02.04.15**

Marijuana Reform: Fears and Facts

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In 1972, a National Commission on Marijuana and Drug Abuse, comprising establishment figures chosen mostly by President Richard Nixon himself, issued a report that declared that “neither the marijuana user nor the drug itself can be said to constitute a danger to public safety” and recommended that Congress and state legislatures decriminalize the use and casual distribution of marijuana and seek means other than prohibition to discourage use.¹

President Nixon, intent on pursuing his newly announced War on Drugs, ignored the report and Congress declined to consider its recommendations, but during the 40-plus years since its publication, at least 37 states have acted to refashion a crazy-quilt collection of prohibitions, nearly always in the direction favored by the commission. The specifics vary by state, but most reform legislation has followed one of three formulas: decriminalization of marijuana possession, legalization of marijuana for medical use, or legalization of marijuana for adult recreational use. During its 2015 session, the Texas legislature will consider bills involving each of these options.

MARIJUANA DECRIMINALIZATION

Marijuana decriminalization generally involves lowering the status of an offense or reducing or removing penalties for possession of small amounts of the substance. Since 1989, possession of less than 2 ounces has been a Class B misdemeanor in Texas, with

possible penalties of 180 days in state jail, a \$2,000 fine, and, most damaging of all, a criminal record. At least 18 states have gone further, reclassifying low-level marijuana offenses as fine-only misdemeanors with no prospect of jail time or as civil violations punishable with a modest fine but no criminal charge or record. The amounts of the drug subject to decriminalization vary, ranging from as low as half an ounce (Connecticut and Maryland) to just under 4 ounces (Ohio). Incongruities exist. In Montana, possessing less than 60 grams (a little over 2 ounces) is a misdemeanor with a possible penalty of six months in jail and a \$500 fine, but selling or giving away any amount is a felony that can incur a \$50,000 fine and one year to life in prison.² In Mississippi, possessing up to 30 grams is a civil violation with a maximum penalty of \$250, but possession of paraphernalia to use it —e.g., a pipe, a vaporizer, or a bong—is a misdemeanor with a possible \$500 fine and six months in a county jail.³

A novel form of decriminalization that does not challenge the validity of legal prohibitions instructs police to regard marijuana offenses as their “lowest law enforcement priority” (LLEP) and to direct their attention instead to preventing and solving serious crimes such as burglary, robbery, rape, and murder. Since Seattle pioneered the LLEP approach in 2003 and found after four years that it had not led to an increase in marijuana use or crime or had any adverse impact on public health, a growing number of sizable cities, including



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— 1972 National Commission on Marijuana and Drug Abuse

San Francisco, Fayetteville, Arkansas, and the six largest cities in Michigan have passed similar measures.

The 2015 Texas legislature will consider a bill to replace jail time with a maximum fine of \$100 for individuals possessing up to 1 ounce of marijuana. Offenders would not have a criminal record and would thus be saved from the quite real threat of compromised educational and housing opportunities and lasting difficulties in finding employment. Other decriminalization measures are expected to arise during the session. While decriminalization is a welcome move away from prohibition, it falls short of effective marijuana policy. Under many decriminalization schemes, people can still be arrested, and inability to pay the fines associated with civil penalties will result in incarceration for some people, most likely minorities and the poor. Decriminalization also fails to address the needs of individuals who can benefit from the plant’s medicinal properties. Its greatest flaw, however, is that as long as growing and selling marijuana remain illegal, criminals decide what and to whom to sell, and they get to keep the money, tax-free.

MEDICAL MARIJUANA

Twenty-three states have laws allowing for the use of marijuana—properly called cannabis—for specified medical purposes. States differ in what they consider legitimate medical use of the drug and in how they control access. While the majority of states authorize licensed dispensaries, some do not. States that do not have dispensaries—as well as many that do—allow patients to grow their own marijuana plants.⁴ A recent trend has been the proliferation of laws that allow for access to strains of marijuana that are quite low in THC (the cannabinoid compound in the plant that produces the “high”) and high in cannabidiol (or CBD, the compound most well-known for its medical properties). These laws have attracted support, particularly in southern states, because they are seen as a way to provide patients with the medicinal qualities of the marijuana plant without allowing individuals to “get high.” A key

drawback of CBD-only laws is that they place strict limits on the number and types of qualifying medical conditions. Further, numerous ailments known to benefit from marijuana require the use not just of CBD, but of THC and other of the estimated 100-plus cannabinoids found in the whole cannabis plant. Dr. Raphael Mechoulam, the Israeli professor of medicinal chemistry who first isolated THC as the primary psychoactive agent in cannabis and who pioneered the study of CBD and other cannabinoids and their effect on the brain, speaks of an “entourage effect”—the many components of this complex plant work better together than in isolation. While CBD-only marijuana might protect people from experiencing any pleasure, it would also produce little or no relief for most conditions.

MARIJUANA LEGALIZATION

Four states—Colorado, Washington, Oregon, and Alaska—have legalized adult recreational use of marijuana. (The District of Columbia voted to legalize by a two-to-one margin, but Congress has blocked implementation at least temporarily.) Several other states will consider legalization of adult use during their 2015 and 2016 legislative sessions and in the 2016 election. States are experimenting with legalization in different ways. For example, Colorado restricted recreational-use licenses to dispensaries already part of its experienced medical marijuana system during 2014, with new licenses to be available to others beginning in 2015. Washington has kept the two systems separate, with stricter regulations for the recreational market. Thus far, Colorado has experienced a smoother launch of its system. The Alaska and Oregon systems are expected to resemble those in Colorado and Washington. If or when the DC system becomes operative, it will allow individuals to grow up to six plants for personal use and small gifts, but they will not be allowed to sell it and there is no provision for a legal market for marijuana.

Full legalization is the most controversial of the marijuana reforms, but it is also the only action that ensures that people will no longer face criminal sanctions for marijuana use.

WHAT WILL HAPPEN IF TEXAS CHANGES ITS MARIJUANA LAWS?

Opponents of marijuana reform argue that relaxation of prohibition will result in a number of negative consequences, including increased drug use among teens, increased crime, and increased traffic fatalities. Such fears are understandable, but overblown.

Teen Drug Use Has Increased in Some, but Not All, Places

Fear of increased teen use stems from the expectation that the main reform options—decriminalization, medical marijuana, or legal recreational use—will increase access to marijuana or lead teens to think that using it is acceptable social practice. Several studies in the United States and abroad have found that decriminalization does not lead to increased use.⁵ A recent California study, however, did find that after the state decriminalized marijuana in 2010, 12th graders in 2012 and 2013 were roughly 20 percent less likely than their peers in other states to view marijuana use as a health risk and 25 percent more likely to report having used it in the past 30 days.⁶ But increased use is only one measure. Another recent study found that between 2010 and 2012 there was a 20 percent drop in overdose deaths among 15- to 19-year-olds in California, compared to a 4 percent increase in the rest of the United States; a 3 percent decrease in marijuana DUIs compared to a 9 percent increase nationally; and a 22 percent decrease in the school dropout rate.⁷ This suggests that even if more teens have used marijuana since decriminalization, other negative consequences have not materialized.

Legal medical marijuana also does not appear to drive up illegal use. A study using 2002–2009 data from the National Survey on Drug Use and Health found medical marijuana laws have no discernible effect on marijuana use or the perceived riskiness of use among adolescents or adults.⁸ Data comparing teen use of marijuana before and after the passage of medical marijuana bills suggest that the overall impact of legalizing marijuana on teen use is negligible or negative. For example, in Arizona, where medical marijuana became

legal in 2010, current marijuana use among teens (defined as having smoked marijuana in the past 30 days) has remained stable: current use was 23.7 percent in 2009 and 23.5 percent in 2013.⁹ In Nevada, which legalized medical marijuana in 2000, current marijuana use among high school students increased slightly from 25.9 percent in 1999 to 26.6 percent in 2001, then decreased significantly to 18.7 percent in 2013.¹⁰ But Connecticut, which legalized medical marijuana in 2009, experienced an increase in teen use from 23.2 percent in 2007 to 26 percent in 2013.¹¹ This modest rise may or may not be related to legal medical marijuana. If it is, the experience of other states suggests that while increased availability may initially spur some teens to experiment, it is likely that usage rates will eventually return to original levels.

Fewer data exist on the effects of full legalization, but in Colorado, where marijuana has been legal for adults since January 2013, teen use has decreased. In 2011, 22.7 percent of high school teens reported using marijuana in the previous 30 days.¹² In 2013, a year after adult use was legalized, this percentage decreased to 19.7 percent.¹³ These usage rates are lower than the national average, which was 23.1 percent in 2011 and 23.4 percent in 2013.¹⁴ It is also worth noting that for almost 40 years, between 81 and 90 percent of U.S. 12th graders “have said they could get marijuana fairly easily or very easily if they wanted some.”¹⁵ Availability has never been a major deterrent to teen use. Further, with sharply reduced involvement of criminals in the distribution of marijuana, fewer teens would sell it and fewer dealers would encourage the use of more dangerous drugs, including forms of fake pot sold under such names as Kush, Spice, and K2.

Crime Rates Have Not Increased

Another common fear is that marijuana reform will cause crime rates to increase. Again, the evidence indicates that this has not been the case. A recent study of the association between state medical marijuana laws and FBI “index crimes” (murder, rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson)

[If existing laws were fully enforced,] “nearly one-tenth of the total population of the state of Texas would be put behind bars and supported at public expense by the remainder of the citizenry ...The ranks of teachers, doctors, housewives, labor union members, lawyers, and even public officials would be visibly reduced. When the disparity between felonious conduct and actual social practice becomes as wide as this, it is necessary to remind ourselves that ‘the law is made for the people—not the other way around.’”

— Marijuana in Texas, Report to the Senate Interim Drug Study Committee, March 1972

between 1991 and 2006 found that medical marijuana laws did not lead to an increase in any of these crimes. Medical marijuana laws were, however, associated with decreases in homicide and assault rates.¹⁶ In Denver, a comparison of crime rates between January 1 and October 31, 2013, when marijuana first became fully legal, and the corresponding period in 2014 revealed a 7.7 percent decrease in all crimes identified by the FBI's Uniform Crime Report, a 1.1 percent decline in violent crimes, and an 8.8 percent decline in property crimes.¹⁷

Traffic Accidents and Fatalities Have Not Increased

Reform has also not translated into large increases in marijuana-induced traffic accidents and fatalities. In Colorado, traffic fatalities in 2013 and 2014 were below the average rate of traffic fatalities in the state since 2002.¹⁸ A study published in 2014 reported that 10 percent of fatal crashes in Colorado in 2011 involved drivers who tested positive for marijuana, up from 4.5 percent in 1994. The authors acknowledge, however, that "THC metabolites are detectable in an individual's blood or urine for several days and sometimes weeks" after the effects of the drug wear off and may have played no causal role in the fatal crashes.¹⁹

This is not to contend that driving while intoxicated on marijuana is safe. It is not, and DUI laws should apply to marijuana users as stringently as to users of alcohol, but there is no question that alcohol poses the greater threat. A review of numerous studies of the impact of marijuana or alcohol on motor vehicle crashes found that driving while using marijuana raises the chances of accident by 1.3 to 3 times, compared to 6 to 15 times for alcohol.²⁰ Other such analyses have found similar differences.²¹ Alcohol-impaired drivers have been involved in about 30 percent of Colorado traffic fatalities for the last several years. Legislators seriously interested in reducing traffic accidents should consider lowering the permissible level of blood alcohol concentration (BAC). They might also crack down further on the use of cell phones while driving, which quadruples the risk of an accident. Texting while driving is estimated to

be 23 times more likely to cause an accident than marijuana or alcohol.²²

MARIJUANA REFORM CAN BRING SIGNIFICANT BENEFITS TO SOCIETY

In addition to evidence that should allay the fears of marijuana skeptics, there is also ample reason to view marijuana reform as a net positive for society. Significant benefits include cost savings, increased tax revenue, relief for medical patients, and reduction in marijuana arrests and the consequences that come with a criminal record.

Cost Savings from Marijuana Reform

Removing marijuana use from criminal status means federal, state, and local governments no longer need to spend money to arrest, process, and jail defendants; to provide taxpayer-funded legal counsel to indigent defendants; to incarcerate convicted offenders; or to monitor these offenders through probation and parole after they are released. According to the Texas Criminal Justice Coalition, incarceration for drug possession costs Texas taxpayers nearly \$725,000 per day.²³ Jeffrey Miron and Katherine Waldock of the Cato Institute estimate that Texas spends \$330 million (2008 dollars) per year just on marijuana prohibition.²⁴ That considerable sum could be used to greater benefit if directed to such needs as education, transportation, public health, and human trafficking.

Tax Revenue from Medical Marijuana and Marijuana Legalization

States that legalize some form of marijuana not only see substantial savings; they also enjoy increased tax revenue. As of 2014, yearly estimates of tax revenue in medical marijuana states ranged from a low of \$428,659 in Rhode Island to \$109 million in California.²⁵ Income to Colorado from taxes, licenses, and fees from the marijuana industry through the first 11 months of 2014 amounted to \$44 million and were expected to top \$50 million by year's end.²⁶ If the entire United States were to legalize recreational marijuana use, it would stand

“The severity of the marijuana penalty seems to bear only a minor relationship, if any, to the actual incidence of marijuana usage. States which have lowered their penalties have not experienced a sudden or disproportionate rise in usage.”

— 1972 National Commission on Marijuana and Drug Abuse

to make \$3 billion in tax revenue from sales. Texas could bring in approximately \$166.3 million in taxes.²⁷ In addition, the legal marijuana industry creates jobs for people who pay additional taxes. According to the Colorado Department of Labor and Employment, that state's marijuana industry employed 3,523 residents from January to March of 2014, up 14.2 percent from year-end 2013.²⁸ The average weekly wage of a marijuana worker in Colorado is \$555, significantly above the minimum wage.²⁹

Relief for Medical Patients

The strongest and most important reason to legalize medical marijuana is that it will bring relief to many patients. Despite frustrating barriers federal agencies have erected to thwart research into potential therapeutic benefits of marijuana, a growing body of scientific research performed in other countries and in the United States with private and other non-federal funds has found marijuana to be useful in treating nausea caused by chemotherapy, neuropathic pain, glaucoma, multiple sclerosis, epilepsy, autism, anxiety, and PTSD, and has at least some potential to slow the growth of cancerous tumors. Marijuana also has the potential to replace more addictive painkillers, a valuable resource at a time when addiction to powerful prescription drugs is increasing. One recent study found that while there were increases in overdose deaths from prescription painkillers nationwide between 1999 and 2010, such deaths were 25 percent fewer in states with legal medical marijuana.³⁰

Reduction in Marijuana Arrests

States that have decriminalized marijuana have seen significant drops in low-level marijuana arrests: 90 percent in Massachusetts, 86 percent in California, and 67 percent in Connecticut. High-level marijuana arrests also decreased: Massachusetts saw a 23 percent drop, California saw declines of 20 percent, and Connecticut saw a 43 percent decrease.³¹ Full legalization of marijuana would result in even greater decreases. The impact on minorities would be substantial. As of

2010, African Americans were 3.73 times more likely nationwide to be arrested for marijuana possession than whites and 10 times more likely to be incarcerated, despite similar usage patterns.³² In Texas, blacks were 2.33 times more likely to be arrested for marijuana possession than whites, but rates vary widely by county. In 2010, Van Zandt County had the largest racial disparity in marijuana possession arrests in the nation, with blacks 34.1 times more likely to be arrested than whites. Cooke County ranked fourth, with blacks 24.7 times more likely to be arrested.³³ Marijuana reform is by no means a panacea, but it would help reduce glaring racial disparities in the criminal justice system in Texas and elsewhere in the United States.

Fewer marijuana arrests would lessen the burden of the collateral consequences associated with arrest and conviction. Individuals with a criminal conviction may have greater difficulty finding employment and housing, reduced earning power, and higher levels of distrust toward police.³⁴ Arrests and convictions also have consequences for the families of offenders. According to a 2010 Pew Charitable Trusts study, "one in every 28 children in the United States ... has a parent in jail or prison." For black children, the rate is one in nine, four times higher than 25 years earlier. Having an incarcerated parent can negatively impact a child's development and economic well-being and have future adverse consequences that affect society as a whole in the form of lower productivity, greater dependency on social welfare services, and greater potential to commit crimes.³⁵

“[T]he severity of the marijuana penalty seems to have no effect on the development of a ‘hard drug’ problem ... Recent medical studies consistently confirm the proposition that usage of marijuana does not lead to involvement with narcotic drugs in any causal sense, and the experience of states which have had moderate marijuana penalties for several years points in the same direction.”

— Marijuana in Texas, Report to the Senate Interim Drug Study Committee, March 1972

CONCLUSION

The arguments for marijuana reform do not rest on the assumption that all resulting consequences will be positive. Particularly in the case of widespread legalization, complete with a fully commercialized for-profit market—not, it should be noted, the only viable alternative to prohibition—it is possible, even likely, that marijuana use will increase. But the proportion of people who develop a problem with any drug, including

“In view of the present state of knowledge about marijuana’s medical and social effects, should a person go to jail merely for using it? The consensus of medical and legal authority in the English-speaking world answers this question overwhelmingly in the negative.”

— Marijuana in Texas, Report to the Senate Interim Drug Study Committee, March 1972

alcohol, tends to remain stable over time, albeit with some periodic spikes in the use of individual drugs. Between 2002 and 2013, the number of people who had used marijuana in the past month increased from 14.6 million to 19.8 million, but the number of problem users remained constant at just over 4 million.³⁶ Most marijuana use is experimental or occasional and does not develop into monthly use, much less problematic use, suggesting that legalization would not result in a drastic rise of “potheads.” But even if the number of marijuana users, including problem users, were to increase, the social costs of this increase would be far less than the price society now pays for arresting and incarcerating them. The public recognizes this. A 2014 national Gallup poll found 51 percent of the public supports marijuana legalization.³⁷ A University of Texas/Texas Tribune poll found similar results (49 percent) for Texas residents, with an overwhelming 77 percent supporting legalizing medical marijuana.³⁸ (A September 2013 Public Policy Polling survey recorded a higher figure, 58 percent, for supporters of full legalization.)³⁹

Eventually, marijuana will be legal across the United States. Texas can choose to lag along, then fall into line somewhere down the road, losing millions in revenue and injuring the lives of countless citizens in the process. Or, it can maintain its reputation as a leader in policy innovation, take its place near the head of the line, and guide the rest of the nation toward responsible, practical, and effective marijuana policy.

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— Marijuana in Texas, Report to the Senate Interim Drug Study Committee, March 1972

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ACKNOWLEDGEMENTS

The authors would like to thank Drug Policy Program members Jerry Epstein and Buford Terrell, who made valuable contributions to the research for this publication.

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Cite as:

Neill, Katharine A., and William Martin. 2014. *Marijuana Reform: Fears and Facts*. Issue Brief no. 02.04.15. Rice University's Baker Institute for Public Policy, Houston, Texas.

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