

Background Paper 79-8

MARIJUANA PENALTIES

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I

Penalties for the use and sale of marijuana have been subject to review and revision throughout the United States in recent years. Derived from the Indian hemp plant, i.e., *cannabis sativa*, marijuana has been used worldwide for medicinal and recreational purposes for thousands of years. Until 1914, there were no laws against marijuana in the United States. By 1937, every state, either by adoption of the Uniform Narcotic Act of 1932 or by separate legislation, had prohibited marijuana use. The first federal law for marijuana control was the Marijuana Tax Act of 1932, which placed a special tax on all marijuana transactions.

Recent surveys (1976) by the National Institute on Drug Abuse indicate that 36 million Americans, or about 21 percent of the adult population, have used marijuana at least once and that 15 million are regular users. According to a 1975 study by the institute, "present evidence indicates that marijuana use has significantly increased among Americans during the last 2 years." Use is most common among young people. National survey data indicated that over half of those in the 18 to 25 age group have tried the drug and that current use, defined as "use within the past month preceding the survey," has increased among those under 18.

The National Commission on Marijuana and Drug Abuse was directed by Congress, in PL 91-513 of 1971, to evaluate existing federal and state laws relating to marijuana. In its 1972 report, the commission found that the vast majority of marijuana related arrests occur at the state level (at least 200,000) as opposed to the federal level (approximately 4,000). Only a small proportion of marijuana users are arrested. Most marijuana arrests are for possession. In a sample study of enforcement, the commission found (1) 93 percent of the arrests were for possession as opposed to sale or distribution, (2) arrests were concentrated among the young--88 percent were 25 or under.

Information collected by the Uniform Crime Reporting Program in 1975 for Nevada shows that 74 percent of total drug arrests were marijuana related. Because Clark and Washoe counties no longer provide breakdowns for types of drug arrests, the percentage of marijuana arrests for 1976 and 1977 can only be estimated. The Commission on Crime and Delinquency reports, however, that the 74 percent figure for marijuana arrests in 1975 is holding fairly constant for both 1976 and 1977.

Research concerning potential medicinal benefits of marijuana began in the United States in the mid-19th century. As recreational use among Americans increased in the 1920's and 1930's, studies of the potential health hazards of the drug began and such research is still being conducted. Findings on both the medical benefits and the potential hazards of long-term use of marijuana are considered inconclusive. However, as Section IV of this paper points out, some states have made marijuana available for certain medicinal purposes. The primary psychoactive ingredient in marijuana, tetrahydrocannabinols (THC), only recently has been identified. Marijuana has not been demonstrated to cause physical tolerance, nor has it been found to be physically addictive, although long-term use may result in what researchers refer to as "psychological addiction." Regarding marijuana as a forerunner to use of other drugs, the National Commission on Marijuana and Drug Abuse Report states:

The overwhelming majority of marijuana users do not progress to other drugs, although statistically marijuana users are more likely to experiment with other drugs than are nonusers.

II.

Every state and the federal government distinguish between possession of marijuana and sale of it by imposing harsher penalties for its sale. Most states, not including Nevada, distinguish between "sale" and "possession with intent to sell." Most states also, and here Nevada is included, provide harsher penalties if the sale has been to a minor. Cultivation of marijuana plants is a further distinction found in state legislation. In 30 states the penalty for cultivation of one or more plants is the same as the penalty for sale of any amount. Certain other states treat cultivation as either simple possession or possession with intent to distribute.

The trend, both federally and among the states, has been towards reducing the penalties for marijuana possession. The current federal law on marijuana, the Controlled Substances Act of 1970, makes the penalty for marijuana possession a misdemeanor, with a maximum jail sentence of one year. The act brings about a reduction from an earlier federal law, under which possession was a felony.

Most states have followed the federal lead. Today, possession of small amounts of marijuana is a misdemeanor in all states but two (Arizona and Nevada). In Arizona, possession of any amount of marijuana can be prosecuted as either a felony or a misdemeanor. Marijuana possession is a felony in Nevada but conditional discharge is authorized for first offenders. This allows the court, without entering a judgment of guilt and with the consent of the accused, to defer further proceedings and place the offender on

probation. Besides Nevada, 28 other states provide for conditional discharge for first offense possession.

Nevada is unique because its law distinguishes between those over and under 21 concerning marijuana possession. The Nevada penalty for the first offense for possession of any amount of marijuana is 1 to 6 years in prison and/or a \$2,000 fine for offenders 21 years or older. Any person under 21 convicted of possessing less than 1 ounce of marijuana may be punished, however, by not more than 1 year in the county jail and/or a \$1,000 fine. In addition, a person convicted of possessing marijuana may be placed on probation rather than receiving a jail sentence (subsection 6 of NRS 453.336). In fiscal year 1977-78 there were 204 marijuana possession convictions in Nevada. Of these, 179, or 80 percent, received probation. When people are sentenced for possession of marijuana in Nevada it is usually because of their previous arrest records or other individual circumstances. The average sentence length in 1977-78 was 3.2 years (this excludes one extreme case).

Many state laws provide harsher penalties for possession of large quantities of marijuana. For example, in Georgia, the penalty for a first offense for possession of up to 1 ounce of marijuana is a maximum 1 year prison sentence and/or a \$1,000 fine. The penalty for possession of more than 1 ounce of marijuana in Georgia, however, is 1 to 10 years.

Penalties for first offense possession of marijuana vary among the states. A penalty provided in almost half of the states is a minimum 1 year prison sentence and/or a \$1,000 fine. This applies to possession of any amount in states such as Alabama, Maryland, North Dakota, Tennessee and Virginia. In other states, including Connecticut, Florida, Idaho, and Montana, this particular penalty applies to possession of small quantities of marijuana. Several other states have a less harsh penalty for possession of small amounts. In New Mexico, for example, possession of up to 1 ounce may result in a penalty of up to 15 days jail sentence and/or a \$50 to \$100 fine. For possession of 1 to 8 ounces, the penalty is up to 1 year and/or a \$100 to \$1,000 fine.

Many states, including Nevada, Colorado, Indiana and Missouri, provide for harsher penalties for second offense possession, especially if large amounts of marijuana are involved.

As of December 1978, 11 states (Oregon, Alaska, California, Colorado, Maine, Mississippi, New York, North Carolina, Nebraska, Ohio, and Minnesota) decriminalized possession of a small quantity of marijuana. In 1973, Oregon became the first state to enact such a law, providing for a \$100 fine for possession of up to 1 ounce. Alaska, California, Colorado, Maine and Ohio passed similar legislation in 1975; Minnesota and South Dakota followed in 1976; Mississippi, North Carolina, and New York in 1977; and

Nebraska in 1978.* While the provisions of each of the eight states differ in some respects, their laws contain three common elements: (1) The possession of a small amount of marijuana is punished by a fine without imposition of a jail sentence, (2) a traffic-like citation is authorized in lieu of an arrest, and (3) no permanent criminal record is maintained for an arrest.

Six states (Oregon, Alaska, California, Colorado, Ohio and Minnesota) provide for a maximum \$100 fine for possession of small amounts of marijuana. Maine's law specifies that possession of any amount for personal use is subject to a maximum \$200 fine. Minnesota's law provides an increased penalty for the second offense of up to 90 days in jail and/or a \$300 fine.

In six states (Oregon, Alaska, Maine, Mississippi, Nebraska and Minnesota), the possession of small amounts of marijuana is considered a civil violation. In California and Ohio, it is a misdemeanor with no permanent criminal record. In Colorado, it is classified as a "Class 2 Petty Offense" with no criminal record, and in New York, it is a violation with no criminal record.

In 1975, Alaska passed a law which provided for a \$100 fine for possession of any amount of marijuana in private, or up to one ounce in public, for personal use. Subsequently, however, the supreme court of Alaska held that the constitutional right of privacy protection extends to adults who possess marijuana in their home for personal use. This decision invalidated the \$100 fine for simple possession of marijuana in the home. Now, Alaska is the only state in which possession of marijuana in private is no longer a violation of the law.

Recent attempts in Nevada to decriminalize the possession of marijuana include A.B. 285 (1975) which called for a \$100 fine for a person under 21 possessing one ounce or less. Two bills were introduced in 1977. A.B. 253 sought a \$100 fine for any person convicted of possessing an ounce or less and A.B. 280 would have legalized both the possession and the sale of marijuana. All three of these bills died in committee.

All states, including Alaska, have criminal penalties for the sale and distribution of marijuana.

*South Dakota's decriminalization law, however, never did become effective. During a revision of the criminal code by an interim committee in 1976, the penalty for possession of one ounce or less of marijuana was changed to a \$20 fine. When the legislature met in 1977 the revised code passed the house and a senate committee but failed to be enacted.

III.

Because it was the first state to decriminalize possession of marijuana, Oregon has been the subject of interest and study. Several studies have been done to determine the effects of Oregon's law. Oregon's Legislative Research Bureau conducted a survey of criminal justice and related agencies concerning their observations on the effect of the new law after a year's experience with it. The report, Effects of the Oregon Laws Decriminalizing Possession and Use of Small Quantities of Marijuana, concludes that the law has not caused major problems for the state and that it has, for the most part, been accepted or approved by law enforcement officials.

The Drug Abuse Council also conducted a survey in Oregon in 1974 which sought to assess what changes had occurred in marijuana usage during the first year following passage of the new law and to find out what impressions Oregonians had of the law. The survey showed that 58 percent of those asked favored the elimination of criminal penalties for possession of small amounts of marijuana. The survey also found that the number of individuals using marijuana after the law was passed was somewhat higher than before.

According to the above referenced report by Oregon's Legislative Research Bureau, two of the reasons for the passage of the new marijuana law appear to be:

- (1) To remove the possibility that persons arrested for possession of a small amount of marijuana would receive a criminal record and its liabilities, and (2) to enable criminal justice agencies to concentrate on more serious criminal offenses than the possession or use of less than 1 ounce of marijuana.

Those who favor maintaining harsher penalties than a civil fine for marijuana law violations have been critical of the Oregon statute. Concerning the Oregon law, Senator James O. Eastland, as chairman of the U.S. Senate Subcommittee on Internal Security said:

This approach, I submit, is altogether too permissive and just doesn't take into account the serious social damage done by marijuana or by the compelling need to protect society against the spread of the habit. It doesn't take into consideration the basic fact that all drug addiction--including marijuana addiction--is like a contagious disease.

Included among the reasons given for retaining harsh marijuana use penalties is the argument that such penalties act as a deterrent to use. Also, it is felt that marijuana has not been proven to be medically harmless and, until it is, its use should remain prohibited.

The congressional mandated National Commission on Marijuana and Drug Abuse, chaired by former governor of Pennsylvania, Raymond P. Shafer, made its recommendations to Congress in 1972. The commission emphasized that society should not approve or encourage the recreational use of any drug. It concluded that elimination of marijuana and its use is unachievable and that the drug's relative potential for harm to individuals and society does not justify a social policy designed to seek out and firmly punish those who use it.

The commission chose to recommend to the public and its policy-makers a social control policy seeking to discourage marijuana use, while concentrating primarily on the prevention of heavy and very heavy use. The commission concluded that legalization was inadvisable for a drug which it found "alters short-term perception, which has uncertain long-term effects, and which may be of transient social interest." Instead, the commission recommended a partial prohibition scheme which symbolizes a continuing societal disapproval of use, removes the criminal stigma and threat of incarceration for users and maximizes the flexibility of future public responses as new information comes to light.

The major recommendations in the commission's 1972 report are:

1. Production and distribution of marijuana should remain criminal activities.
2. Marijuana should be contraband subject to confiscation in public places.
3. Criminal sanctions should be withdrawn from private use, but, at the state level, fines should be imposed for use in public.
4. Possession of more than 1 ounce in public should be prohibited.
5. Not-for-profit transfer of small amounts should be prohibited in public.

IV.

Recently marijuana has been used for medicinal purposes, especially in treating glaucoma and the side effects of cancer chemotherapy.

In February 1978 New Mexico became the first state to make marijuana available for these medicinal purposes. Florida, Louisiana and Illinois have passed similar legislation,* Hawaii, Maryland and New York have considered making marijuana available for medicinal purposes and California and Washington are expected to introduce legislation to this effect in 1979.

*New Mexico - H.B. 329, Law 78, Chapter 22 (Controlled Substance Therapeutic Research Act); Florida - H.B. 1237, Chapter 78-413; Louisiana - S.B. 745, Act 725; Illinois - H.B. 2625, Public Act 80-1426 (Cannabis Control Act).

SUGGESTED READINGS

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