



Decriminalization of Marijuana

Study Highlights

January 2018

Two bills, SB 908 (Senator Lucas) and SB 1269 (Senator Ebbin), and a letter request from Senator Norment were sent to the Crime Commission during the 2017 Session of the General Assembly requesting a review of the decriminalization of possession of marijuana.

Decriminalization refers to the removal of criminal penalties for possessing small amounts of marijuana for personal use. Such possession would be punished as a civil offense. Marijuana would remain a prohibited substance under the law.

The Crime Commission received over 5,500 written comments and heard extensive testimony from the public.

Why was decriminalization of marijuana studied?

Decriminalization of marijuana has been proposed as a potential solution to the collateral consequences individuals incur as a result of being convicted for possession of marijuana. Such consequences may include significant financial costs to an offender and could have a negative impact to their driver's license, employment, higher education financial aid, housing, immigration status, ability to purchase and possess firearms, eligibility to obtain a concealed handgun permit. Another concern raised by proponents of decriminalization has been the racial disparity amongst persons arrested and prosecuted for possession of marijuana.

What were the findings of this study?

Ultimately decriminalization of marijuana is a policy decision. Virginia's current criminal penalty structure for possession of marijuana, Va. Code § 18.2-250.1, was enacted in 1979. Twelve states have decriminalized possession of marijuana in some manner using varying penalty structures, punishments, and quantity limits. Some of these states impose the same civil penalty regardless of the number of prior offenses, other states mandate an increasing civil penalty for subsequent offenses, and certain states treat initial violations as civil and subsequent offenses as criminal. The laws of these states could serve as models for amending the Code of Virginia to decriminalize possession of marijuana in some manner.

Any legislation that amends the current penalty structure and decriminalizes marijuana will impact numerous other areas of Virginia law, including the punishment, enforcement, trial procedures, and administrative processes relating to possession of marijuana. Such legislation may require consideration of other policies matters, including, but not limited to: (i) the creation of a central repository to store the records of civil violations, (ii) quantity limits for personal use and punishments for possession over those limits, (iii) development of weight measurement standards, (iv) which forms of marijuana to decriminalize, (v) whether possession in vehicles, other areas, or public use should remain criminal, (vi) trial matters, such as the burden of proof and how to count prior marijuana convictions, (vii) whether to suspend a person's driver's license as a result of a civil conviction, (viii) any amendments to Virginia's first time drug offender statute, (ix) any modifications to Virginia's firearm and concealed handgun permit statutes, (x) any amendments to Virginia's DUI statutes, (xi) providing training to law enforcement to recognize signs of drug-impaired driving, and (xii) a delayed or emergency enactment clause.

Crime Commission members were presented with three policy options in regard to decriminalization of marijuana. No motions were made on any of the following three options:

Policy Option 1: Maintain the status quo.

Policy Option 2: Remove the jail sentence as punishment for possession of marijuana.

Policy Option 3: Decriminalize possession of small amounts of personal use marijuana.

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What does the data show?

Data demonstrated that males, young adults, and Blacks/African Americans are overrepresented in the total number of arrests for possession as compared to their overall general population. Arrest data provided by the Virginia State Police for possession of marijuana in Virginia from CY07-CY16 showed the following:

- The U.S. Census Bureau estimated that as of 2016, Virginia's total population by sex was comprised of 51% females and 49% males:
 - 81% of first offense arrests were of males.
 - 91% of second or subsequent offense arrests were of males.
- When examining the age of the person arrested:
 - 54% of first offense arrests were of persons aged 18 to 24.
 - 37% of second or subsequent offense arrests were of persons aged 18 to 24.
- The U.S. Census Bureau estimates that as of 2016, approximately 70% of Virginia's population was White and 19.8% was Black/African American:
 - 45.5% of first offense arrests were of Blacks/African Americans.
 - 52.7% of second or subsequent offense arrests were of Blacks/African Americans.

Data revealed that the majority of possession of marijuana charges are filed and concluded in the general district courts. The vast majority of these charges are for first offense possession of marijuana. There appeared to be a large attrition rate between the total first offense charges filed and total convictions obtained. Of these first offense charges filed in the general district courts, approximately:

- 55% resulted in a conviction for possession of marijuana or some other related offense; and,
- 45% resulted in dismissal, *nolle prosequi*, or a finding of not guilty.

It could not be ascertained how many of these first offense charges represented defendants who had previously had a possession of marijuana charge dismissed pursuant to the first offender statute.

Data further showed that an extremely low number of offenders serve jail time solely for possession of marijuana offenses.

- Jail time is frequently waived for first time offenders.
- For defendants convicted of second or subsequent offense possession of marijuana, approximately:
 - One-third receive a fine only;
 - One-third receive a fine and a suspended jail sentence; and,
 - One-third receive an active jail sentence.
- The median effective jail sentence for defendants convicted of second or subsequent possession of marijuana during FY16 was 15 days.

Will Virginia's DUI laws be impacted?

Virginia's existing statutes are sufficient to prosecute individuals for driving under the influence of marijuana. Current research does not support a reliable correlation between THC blood levels and impairment while operating a motor vehicle. Law enforcement may need additional training to recognize signs of drug-impaired driving. Approximately one year ago, DMV began offering Drug Recognition Expert (DRE) training to law enforcement to assist in identifying

 drug-impaired drivers.