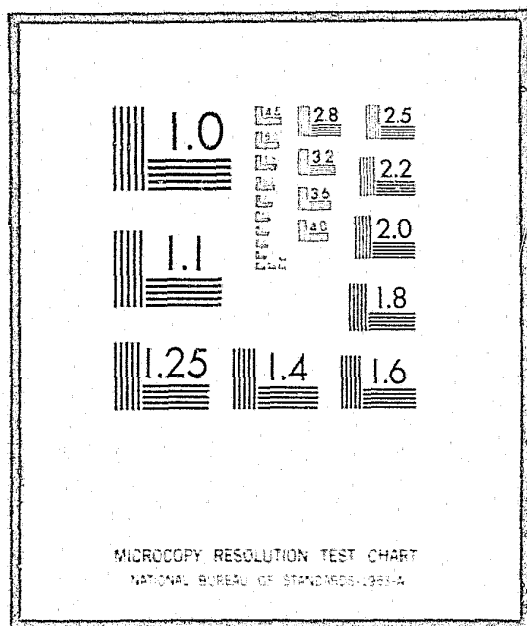


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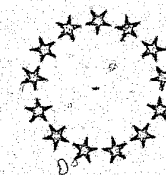
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A Study of State Policies and Penalties

Volume 1
Executive Summary

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MARIJUANA:

A STUDY OF STATE POLICIES AND PENALTIES

VOLUME 1 - EXECUTIVE SUMMARY

Prepared by

NCJRS

Peat, Marwick, Mitchell & Co.

APR 5 1977

ACQUISITIONS

For the

NATIONAL GOVERNORS' CONFERENCE

Center for Policy Research and Analysis

March 1977

Hall of the States • 444 North Capitol Street • Washington, D.C. 20001

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FOREWORD

Marijuana: A Study of State Policies and Penalties is a three-volume analysis of issues concerning marijuana that are of importance to state policymakers. The study reviews the medical, legal, and historical dimensions of marijuana use and examines the range of policy approaches toward marijuana possession and use which state officials have considered. Attention is directed to the experience of eight states that have eliminated incarceration as a penalty for private possession of small amounts of marijuana as well as to the experience of states that have not passed such decriminalization laws.

Governor Brendan T. Byrne of New Jersey proposed in 1975 that this study be initiated to provide state policymakers with better information on issues concerning marijuana. The Executive Committee of the National Governors' Conference authorized the NGC Center for Policy Research and Analysis to undertake the study. The Center obtained financial support from the National Institute of Law Enforcement and Criminal Justice of the Law Enforcement Assistance Administration and selected the firm of Peat, Marwick, Mitchell & Co. to conduct the study. An expert Interdisciplinary Review and Assessment Panel provided guidance and quality control throughout the research process.

Two aspects of the study should be emphasized at the outset. First, the study provides a comprehensive, independent, and objective analysis of the issues under examination. It does not, however, make policy recommendations, but instead leaves the evaluation of data and the development of specific policy options to state officials. Second, the assessment of the experience with decriminalization laws, which have been passed only recently, is based on the best data now available rather than on trend data or longitudinal analysis. Further assessments, based on more substantial and longer-term data, will determine whether or not the impact of the new laws over time on the criminal justice and health care systems and on usage is consistent with the patterns observed to date.

The efforts of many persons have made this study possible, including the PMM&Co. study team and the Interdisciplinary Review and Assessment Panel. John Lagomarcino of the NGC staff has made major contributions. The counsel of Dr. Helen Erskine of the National Institute of Law Enforcement and Criminal Justice has also been of great benefit.

Stephen B. Farber, Director
National Governors' Conference

PREFACE

There has been no Governor of any state in the nation over the past decade who has not felt some pressures--and often very strong pressures--to enact some change or other in the law affecting the use and possession of marijuana.

It is to help present and future Governors deal with these pressures knowledgeably and reasonably that I proposed this study and the National Governors' Conference Executive Committee agreed to undertake it. The study was underwritten by the Law Enforcement Assistance Administration.

There is an abundance of literature on what marijuana is and isn't and on the medical and sociological results of its use. We have not attempted any exhaustive evaluation of these questions, other than to summarize that body of literature.

We have instead focused attention on the experience of several states that have taken or attempted action of one kind or another to deal with the problem. In eight states the legislature has changed the law to decriminalize the use or possession of small quantities of marijuana; in one of those states the court also mandated a change in approach.

Even Governors who have no intention of initiating action with their legislatures in this area may have to anticipate a court-mandated re-evaluation of the situation.

This report is an attempt to evaluate how and where the legal approach to marijuana use and possession has changed; what the measurable effects of those changes have been on law enforcement and other government functions in the state making the change; and what sort of response by the executive branch appears to be necessary or advisable in order to cope with those changes successfully.

I hope that this study will prove to be a useful tool in the hands of Governors who will be coming to grips with changes in this area in the years ahead.

Brendan T. Byrne
Governor of New Jersey

ACKNOWLEDGMENTS

Peat, Marwick, Mitchell & Co. conducted this study for the National Governors' Conference under funding provided by the Law Enforcement Assistance Administration of the Department of Justice. The written contributions of Professor Richard J. Bonnie of the University of Virginia School of Law, and Dr. Peter G. Bourne, appointed since the study as a Special Assistant to President Carter, are acknowledged in the reports. In addition, we would especially like to express our appreciation and give appropriate recognition to two members of the PMM&Co. study team: Morten Engstrom, who as lead consultant on the study labored long and hard in the research, field interviews, and compilation of drafts; and Judith A. Cass, the PMM&Co. technical editor, who perspicaciously refined the drafts into final form.

Raymond T. Olsen, Project Director

Lawrence S. Herman, Project Manager

EXECUTIVE SUMMARY

INTRODUCTION

In his campaign statements, President Carter endorsed recent efforts to reconsider the existing and generally harsh penalty structure for private possession and use of marijuana and in fact advocated the decriminalization of small amounts (1 ounce or less). His statements reflect the growing national concern that criminal fines and incarceration for private possession and use of small amounts of the drug may be inappropriate. As an example of this concern, the November 1976 Federal Strategy for Drug Abuse Prevention stated:

society pays a relatively high price for this form of deterrence: high in terms of stigmatizing casual users with criminal records; high in terms of diverting limited criminal justice resources from other, more serious matters; and high in terms of contributing to an atmosphere which nurtures disrespect for the law.

Strongly held opposing views, of course, have also been expressed. Faced with these divergent views, many Governors and state legislatures have considered the possibility of change in existing state statutes. Since 1973, when Oregon passed the first decriminalization law, eight states have eliminated incarceration as a penalty for private possession of small amounts of marijuana. (Decriminalization of marijuana should not, however, be construed as legalization, which few, if any, policymakers have advocated.)

Although the legal consequences and potential penalties differ substantially in the remaining 42 states, private use, regardless of the amount involved, is uniformly classified as a criminal offense involving potential incarceration, permanent criminal records, and substantial fines.

Many of these 42 states have seriously considered the marijuana decriminalization issue, either in policy level reviews within the executive departments or in legislative debate. Undoubtedly, the issue will be seriously debated in the coming years. The new administration's position may add to the momentum created by recent revisions in the laws of the eight states.

State-level consideration of the issue, however, has been complicated by the absence of a systematic compilation of the relevant data

by independent sources. In response to this gap, the National Governors' Conference (NGC) initiated a study of the recent revisions and attempted revisions of the penalties for possession, use, and sale of marijuana and alternative state-level policy approaches. The NGC Executive Committee approved the project and authorized its Center for Policy Research and Analysis to initiate the study. Funding was obtained from the Law Enforcement Assistance Administration, and the firm of Peat, Marwick, Mitchell & Co. (PMM&Co.) was selected to conduct the study.

Throughout the study, an advisory panel guided the research approach and reviewed the preliminary findings and reports. The panel consisted of Professor Richard Bonnie of the University of Virginia School of Law, author of The Marijuana Conviction and previously Associate Director of the National Commission on Marijuana and Drug Abuse; Dr. Peter Bourne, currently Special Assistant to President Carter for Mental Health and Drug Abuse and previously Associate Director of the White House Special Action Office for Drug Abuse; Samuel Dash, Director, Institute of Criminal Law and Procedure, Georgetown University Law Center; John Petersen, former Director, National Governors' Conference Center for Policy Research and Analysis; and John Lagomarcino, Staff Director, National Governors' Conference Committee on Crime Reduction and Public Safety. Professor Bonnie was responsible for preparation of most of the legal aspects of the study; Dr. Bourne prepared the medical/scientific information.

A three-part research program was used in the study. First, a literature and legal search was performed, which included existing studies on the impact of changes in law. Second, site visits were undertaken in nine states to investigate the political process of marijuana law revision and the impact of decriminalization (in those states which had passed such legislation). The states were chosen to represent a range of political, geographical, and marijuana policy diversity. The nine states are presented in Exhibit 1. Third, the data collected in the literature search and case histories were assembled and thoroughly analyzed to provide an information base for decision-making by Governors and their staffs, and to provide an analysis of the impact of recent legislative change.

Because marijuana law revision is currently being considered in a number of states, this study is intended to provide timely, functional information on state experience with the marijuana issue rather than a comprehensive longitudinal analysis. The study was highly dependent on previously collected data. Statewide data were used when available; when such data did not exist, local data and the subjective estimates

EXHIBIT 1
SITE VISIT STATES

California	(1/1/76)*	}	Decriminalized states
Ohio	(11/22/75)		
Maine	(5/1/76)		
Minnesota	(4/10/76)		
Colorado	(7/1/75)		
Texas	(8/27/73)	}	Substantial penalty reduction but no decriminalization
Iowa		}	States in which decriminalization legislation was introduced but was not passed
Louisiana			
New Jersey			
Decriminalized states not visited in the study:**			
Alaska	(3/1/76)		
Oregon	(10/5/73)		
South Dakota	(4/1/77)		

*Date in parentheses indicates effective date of penalty reduction law.

**Time constraints and the need to visit states with disparate policy approaches precluded visits to all eight decriminalized states: Alaska was excluded because the important role of the judiciary made its experience less extensible than that of other states; Oregon was excluded because substantial research has already been performed there and is available in the literature; and South Dakota was excluded because its law has not yet become effective.

of knowledgeable political, criminal justice, and other officials were used. Care was taken to interview individuals with differing views on the issue.

Even where statewide data were available, such data must be considered indicative rather than definitive. Trend data in particular should be analyzed over a sufficient number of years. For example, differences in data from only two years may reflect a long-term trend rather than a change resulting from the law, even if such data represent periods before and after legislative change. Unfortunately, long-term data are relatively unavailable, in part because of the short time period decriminalization laws have been in effect, and special care must therefore be taken to ensure that relationships, particularly causal relationships, are not misassigned.

GENERAL BACKGROUND

Marijuana usage is not a recent phenomenon, but rather is embedded in our social and cultural history. The marijuana plant has been grown in this country since the 17th century when colonists derived fiber (hemp) from it for use in rope and cloth. This use continued through the 19th century, although hemp was slowly replaced by cotton and wool as a fiber source. Marijuana was also used in the 18th and 19th centuries as a medicinal herb.

While it is not clear when marijuana use as an intoxicant began in the United States, it was only in the 20th century that it became a widely discussed public issue. Initially, marijuana was associated with criminal activity and the harder drugs such as heroin. States began passing marijuana prohibition statutes in 1914 and the Federal Government passed its first marijuana prohibition legislation in 1937. In the decades that followed, both state and federal law underwent several increases in the severity of the penalty structure. It is only recently that a combination of medical/scientific information and increased usage has fostered movements to reconsider the existing generally severe penalty structure.

This movement appears to have as its roots the relatively recent (mid-1960s) spread of use to larger segments of the middle class, the schools and universities, and the work force. Government enforcement and medical efforts were no longer affecting only small segments of the population generally not part of the economic and political mainstream, but began to include substantial elements of the general population.

In large measure the two reports of the National Commission on Marihuana and Drug Abuse (created in 1970; reports were issued in March 1972 and March 1973) represent a reference point for subsequent and future consideration of the issue. The Commission was a Presidential-level organization which marshalled national resources to assess the nature and extent of the marijuana problem. The Commission's recommendation that private possession of less than 1 ounce for personal use be decriminalized stimulated the recent marijuana law revisions and focused public attention on the issue.

ISSUE ANALYSIS

Consideration of alternative marijuana penalty policies and approaches by state-level policymakers (the Governors, the legislators, and their staffs) requires a philosophical and conceptual background against which the issues can be considered. The conceptual approach begins with the assumption that marijuana needs to be considered separately from other illicit and abused drugs, because of:

- its widespread use;
- its historical and traditional use in parts of our society;
- its derivation, pharmacology, and addictive differences from other drugs; and
- the extensive medical/scientific research findings on the subject.

Our conceptual approach is hierarchical in nature. The most general policy option is whether, and to what degree, the penalty approach should reflect discouragement or neutrality. Neutrality characterizes a social policy in which government makes no official effort to dissuade individuals from using the drug for recreational purposes. Instead, government activities are limited to providing information to facilitate informed personal choices and to deterring excessive or otherwise irresponsible consumption patterns, such as driving under the influence of the drug. Neutrality roughly approximates this nation's current approach to the use of alcohol by adults. On the other hand, discouragement characterizes a social policy in which the government officially aims to dissuade its citizens from using the substance at all (except for medical uses). Discouragement is the current national policy toward marijuana and increasingly toward tobacco.

Within a discouragement framework, the principal conceptual choice involves the nature and extent of discouragement. From the statutory point of view, discouragement can itself take two basic forms--prohibition or regulation. As current tobacco policy indicates, regulation can be approached in many ways: through educational requirements, restrictions on advertising, licensing, pricing policy, and so forth. However, a regulatory approach, though potentially consistent with discouragement, is not a viable state-level option at the present time because it conflicts with federal and international law and because it is inconsistent with public opinion, as discussed in Volumes 2 and 3.

The current issue faced by policymakers is therefore to determine the type of prohibition that will provide the most desirable marijuana policy. Prohibition can be applied to trafficking (sale) of marijuana only, or to both sale and possession (use). If a prohibition policy is applied to use, it can cover a spectrum from minor fines without incarceration as in the currently decriminalized states, to severe felony sentences for simple possession. This range represents the principal policy options currently available to policymakers. In choosing a marijuana policy, state policymakers wish to know the following:

- the impact on usage patterns of following a decriminalized approach;
- the impact on criminal justice system costs of various options;
- the impact on health care system costs of various options; and
- state experience with the process of marijuana law revision and the political costs, if any, of espousing various positions on the issue.

These issues form the basis for the analysis in this report and are summarized with our findings in the following pages. Although states with a variety of penalty approaches were investigated, the discussion focuses on the distinction between decriminalized and "criminalized" policy.

The Usage Dimension

The usage data of the National Institute of Drug Abuse (NIDA) and numerous other studies indicate that more than one in every five

individuals older than 12 has used marijuana at least once (i.e., over 37 million people). Currently, regular users are fewer but the numbers are still substantial: 8 percent of adults and 12 percent of the nation's youth. In total, marijuana is the third most frequent nonmedically used drug (after cigarettes and alcohol), and the overall trend toward increased use in the last decade is clearly evident, although recent data indicate that the pattern of use may be leveling off (tables summarizing usage data are included in Volume 3).

Penalty reduction policies have a potential impact on usage patterns in terms of use incidence, intensity, and nature (e.g., public versus private use). Opponents of decriminalization contend that the withdrawal of criminal sanctions will increase consumption; on the other hand, some proponents contend that existing sanctions are being widely ignored, and usage patterns would not change.

Of the states included in our survey, only California has recently conducted a survey of usage patterns both prior to and subsequent to the effective date of the law. Consequently, the consumption impact assessment for this study primarily used the subjective judgment of key knowledgeable public officials. Although most interviewees suggested that there was considerable concern that usage would increase dramatically, and that those first states to implement decriminalization approaches would encounter an influx of users from nondecriminalized states, neither of these patterns has occurred or is occurring, according to those public officials interviewed except for those interviewed in Los Angeles, California. Data from Oregon since its decriminalization showed no increase in use during the first two years. However, a third-year study does show an increase in use, although not to a level of use above the average level in other west coast states. This raises the possibility that, although changes in the law may not have an immediate effect, such changes may result in, as well as symbolize, a gradual long-term change in public perceptions regarding the moral, social, and medical propriety of marijuana use. These perceptual changes may in turn affect usage patterns. However, speculation on public motivation is difficult, and in any case, state decriminalization laws have not been in effect long enough to determine whether a long-term increase in use can generally be expected to occur.

There is also a concern that increased public display and use may occur as a result of decriminalization. Our interviews have indicated that this has not occurred to any substantial extent. Nevertheless the potential for increased driving while under the influence of marijuana remains a concern.

The Criminal Justice Dimension

Until 1975, marijuana-related arrests increased significantly faster than use (perhaps reflecting either intensified law enforcement activity or greater display and use of the drug in public). In 1975, marijuana use arrests exceeded 400,000, which represents almost 70 percent of all drug-related offenses. The related enforcement costs for this level of activity are clearly substantial, both in total dollar cost and as a percentage of various drug enforcement budgets. At issue is the potential cost impact of reduced marijuana penalties on the criminal justice system. The available evidence, although incomplete, strongly suggests that savings of personnel resources and public costs are substantial with respect to law enforcement and the courts.

The data from decriminalized states indicate a decrease in arrests subsequent to the implementation of their laws, thereby decreasing the associated costs. In addition, the magnitude of savings depends upon a number of factors that relate to the nature and specifications of the law. For example, those states with a mandatory citation procedure are likely to save more than those states in which complete arrest and booking procedures are used. It is important to note that these savings accrue from the procedural specification of the law rather than from decriminalization per se.

Savings that will accrue at other points in the criminal justice system include:

- evidentiary hearings and trial costs;
- incarceration costs; and
- probation and parole costs.

Although these savings and/or costs have not been quantified generally, preliminary California studies as well as local data and subjective estimates from other states suggest that substantial dollar savings can be obtained.

The Medical/Health Dimension

The medical/health analytical summary was prepared by Dr. Peter Bourne. Analysis of literature in the medical/health field indicates that the preponderance of evidence shows that marijuana is not physically addictive, and in infrequent or moderate use probably does not pose an immediate substantial health hazard to the individual. Many

researchers suggest that the adverse consequences of such use appear to be no worse than those for tobacco and alcohol, although disagreement still exists. The effects of long-term heavy use by youthful individuals are unknown and are the subject of ongoing research. Similarly, research is being undertaken because of uncertainties about long-term genetic effects, the effects of marijuana use on pregnant women, the effect on individual sexual hormones, and the effect of long-term marijuana smoking on the smoker's lungs. Information regarding secondary effects, such as dangerous driving, is not well-documented and also requires further research. Nevertheless, dangerous driving (i.e., driving under the influence of marijuana) represents an area where potential and actual personal damage and societal costs may reasonably be expected to occur. Any direct causal relationship between marijuana use and the use of harder drugs has been largely discounted by experts. Although the user populations do overlap, this may reflect sociocultural patterns and psychological predisposition.

Also of concern is whether health care system costs will increase or decrease as a result of decriminalization. Some opponents of decriminalization argue that health care costs will increase because of increased use and consequent increases in adverse effects. Supporters argue that health care costs will decrease because (1) adverse psychological reactions are a result of the prohibitive environment, and (2) the bulk of such costs result from diversion of arrested individuals from the courts to the health care system. Because nationally only about 5 percent of those in federal drug treatment programs identify marijuana as their primary drug problem, the potential impact of new enforcement patterns may not be substantial on an overall basis. However, states that have used extensive diversion programs to remove individuals arrested for the possession of marijuana from the criminal justice system can realize substantial savings. Preliminary California diversion program statistics, for example, show a sharp decrease in referral of marijuana cases since its decriminalization law took effect. No evidence was encountered during the study which indicated that any significant increase in the use of treatment facilities occurred as a result of decriminalization laws.

Process of Change

A number of common factors were associated with the various state deliberation processes, all of which are described in more detail in the case study reports:

- The active involvement and public position of legislative leaders were crucial to the final outcome.
- Decriminalization attempts did not succeed unless at least one law enforcement group supported the attempt, or unless such groups remained publicly neutral.
- The Governor tended not to be an active public participant in the decriminalization debate.
- The perceived and publicized success of the Oregon decriminalization law was often used as a major exhibit of proponents.
- Both proponents and opponents generally felt the media were objective in their presentation of the debate.
- Neither support for nor opposition to decriminalization was perceived by legislators and other elected officials as resulting in adverse political consequences.

REPORT FORMATS

This report contains three volumes. Volume 1, the Executive Summary, is intended to provide a summary of the contents of Volumes 2 and 3. As such, it provides highlights but does not provide a thorough analysis or commentary in any single area. It is intended to provide Governors, their assistants, legislators, and their staffs with an overview of the study, including the purpose, contents, potential use in decisionmaking, and limitations.

Volume 2, Findings and Analysis, contains an analysis of various policy approaches and alternatives that the policymaker must consider during the process of deliberation on the marijuana issue. It suggests an analytical framework to permit rational consideration of the issue. Volume 2 presents our findings from the case studies and background research. It also contains, for those policymakers who wish to consider introduction of decriminalization legislation, a detailed guide to

the substantive and structural alternatives associated with such legislation. The guide was prepared by Professor Richard J. Bonnie.

Volume 3, the Research and Case Studies, provides the detailed results of our research, including the historical, usage, enforcement, and medical dimensions of the issue, in addition to the detailed documentation of our site visit findings. Volume 3 is an informational resource for the more generalized information in Volume 2.

END