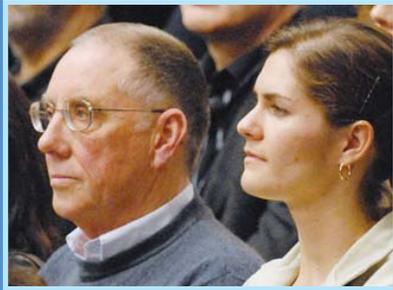


MARIJUANA

*It's Time for a
Conversation*



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A Guide to Understanding Our Marijuana Laws and Their Impacts

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Table of Contents

I.	It's Time for a Conversation	1
II.	Washington State Laws	2
	A. Direct consequences.....	2
	B. Additional consequences	3
III.	The History of Marijuana Prohibition	4
	A. The Marihuana Tax Act of 1937.....	4
	B. The LaGuardia Report	6
	C. The Shafer Commission	6
	D. State laws	8
IV.	Marijuana as Medicine	9
	A. How many states have medical marijuana laws?	9
	B. Washington's medical marijuana law	9
	C. Medical marijuana and federal law	14
V.	Use of Public Safety Resources	17
VI.	Consequences for Communities and Personal Freedom	19
	A. Consequences of the "War on Drugs"	19
	B. Home searches	22
	C. Loss of property	23
	D. Drug testing.....	23
VII.	Frequently Asked Questions	25

This guide is a companion to the half-hour television program *Marijuana: It's Time for a Conversation*. It provides additional information about state and federal marijuana laws in the United States, their origins, and the multi-billion dollar impact they are having today on hundreds of thousands of Americans. We encourage you to discuss the information in this booklet with others and to consider whether these laws are working for society's benefit.

This guide is not meant to provide legal advice – individuals seeking legal advice on how marijuana laws apply or do not apply to them personally should speak with their own attorneys.

I. It's Time for a Conversation

In 2008, state and local law enforcement made 847,863 marijuana-related arrests nationwide. This number represented fully half of all drug arrests combined, and 89% were for simply possessing marijuana, not for growing or selling it.¹ Such arrests cost Americans billions of tax dollars every year, stress our courts and jails, and divert public safety resources away from violent crime and property crime.

The majority of Americans believe the “War on Drugs” has been a failure,² yet we continue to wage the war at a cost of several billion dollars each year.

It's time for Americans to have an open and informed conversation. We need to rethink whether our marijuana laws are working for us or creating a new set of problems. If we conclude the current laws are misdirected, then we can begin to talk about creating more effective and just policies. We hope the information in this booklet will provide a starting point for that discussion.

II. Washington State Laws

A. Direct consequences

In Washington state, possessing any amount of marijuana is a crime. The possession of 40 grams (roughly equivalent to two packs of cigarettes) or less is a misdemeanor crime and carries a mandatory minimum sentence of a day in jail plus a \$250 fine for the first offense.³ Sentences can go up to 90 days in jail plus a \$1,000 fine.⁴

Possession of more than 40 grams of marijuana is a felony.⁵ If convicted, a person faces up to 5 years in prison and a fine as large as \$10,000.⁶

Growing any amount of marijuana, even a single plant, is a felony that carries the same penalties.⁷ This is also true for the “delivery” of marijuana, a term that includes sharing any amount of the plant, with or without the exchange of money.⁸

These sentences can be doubled for second offenses, or any subsequent offenses following a conviction.⁹

The use or delivery of marijuana paraphernalia (pipes, rolling papers, etc.) is a separate misdemeanor that carries a mandatory sentence of a day in jail and a \$250 fine, and can go up to 90 days in jail with a \$1,000 fine.¹⁰

In addition to jail time and fines, marijuana convictions frequently result in probation, additional court costs, and a mandatory substance abuse evaluation at the individual's personal expense. These evaluations often lead to additional expenses for classes and/or drug treatment, plus random drug testing.¹¹

B. Additional consequences

Marijuana convictions result in criminal records. Criminal records are public information made available to anyone who seeks it,¹² including employers, landlords, loan officers and law enforcement. In addition to the embarrassing stigma and possible discrimination, the following can result from a single marijuana conviction or even the suspicion of marijuana use:

- ✓ Loss of employment¹³
- ✓ Loss of housing¹⁴
- ✓ Loss of voting rights¹⁵
- ✓ Loss of federal financial aid for college¹⁶
- ✓ Seizure and forfeiture of property¹⁷
- ✓ Termination of child visitation rights¹⁸
- ✓ Deportation, even of legal permanent residents¹⁹

III. The History of Marijuana Prohibition

In colonial times, marijuana was cultivated for rope, canvas, paper, soap, oil, and other goods. Until the early 20th century, marijuana was known in the United States either as “hemp,” the English term describing this fibrous plant,²⁰ or “cannabis,” its botanical name. It was included in the U.S. pharmacopoeia in 1870, prescribed by American doctors, and dispensed by American pharmacies.²¹ “Mariguana” or “marihuana” was the Mexican slang name for the plant, one that American journalists and politicians began using in the early 1900s when they wanted to denigrate the use of the plant by Mexican immigrants.²²

A. The Marihuana Tax Act of 1937

The first anti-marijuana laws passed in the United States were enacted between 1915 and 1933 in the western states, where prejudice against Mexican newcomers was common. As authors Richard Bonnie and Charles Whitebread noted,

Whether motivated by outright ethnic prejudice or by simple discriminatory lack of interest, the proceedings before each legislature resembled those in Texas and New Mexico in 1923. There was little if any public attention and no debate. Pointed references were made to the drug's Mexican origins, and sometimes to the criminal conduct which inevitably followed when Mexicans used the “killer weed.”²³

During these years, newspapers throughout the country began printing inflammatory and often racist accounts of marijuana's effect on its users. For example, the *Rocky Mountain News* in Denver reported that marijuana was “used almost exclusively . . . by the Mexican population employed in the beet fields,”²⁴ and several Hearst newspapers published an editorial claiming

that “the insidious and insanity producing marihuana has become among the worst of the narcotic banes, invading even the school houses of the country . . .”²⁵

Against this backdrop of growing hysteria, Harry J. Anslinger, a federal alcohol prohibition official, was appointed commissioner of the new Federal Bureau of Narcotics (FBN) created in 1930.²⁶ Anslinger lobbied state legislatures to adopt both the Uniform Narcotic Drug Act and an optional provision making marijuana illegal. He initially had little success with local lawmakers, who did not want to assume the expense of enforcing a new state criminal law.²⁷ So, in late 1934, Anslinger and the FBN jumped on the “marijuana menace” bandwagon,²⁸ harnessing and contributing to the media's anti-marijuana propaganda and tales of “reefer madness.” By 1937 the FBN had succeeded in convincing half the states to adopt the version of the act that included marijuana prohibition.²⁹

Ironically, Anslinger's anti-marijuana campaign may have worked *too* well for his comfort. He was hesitant about introducing *federal* legislation that would ban marijuana outright due to concerns about its constitutionality.³⁰ But his campaign against marijuana had taken on a life of its own. In 1935, members of Congress introduced a pair of bills proposing a federal prohibition on the shipment and transportation of cannabis in interstate or foreign commerce and requested the Treasury Department's position.³¹ Responding to the pressure for federal action, the Treasury announced no objection to such legislation.³² The bills did not pass in that session, but the stage was set for a national law.

In 1937, the Treasury Department itself proposed H.R. 6385 – the Marihuana Tax Act. Rather than directly prohibit marijuana as a criminal matter, the Act created a “prohibitive tax”: all manufacturers, importers, dealers and practitioners were required to register and pay a special occupational tax that, theoretically, would allow them to distribute marijuana to users. However, these transfers were subject to

a massive \$100 per ounce tax, making any legal exchange financially impossible.³³

At the hearings on H.R. 6385, the lone dissenting voice was the American Medical Association. The AMA opposed the bill on the grounds that there was no scientific basis for a federal ban, and the ultimate effect would be to inhibit any research into the medical uses of marijuana.³⁴ The association's position was ignored. In June 1937 – without evidence-based reason – Congress passed the Marihuana Tax Act, establishing the nationwide prohibition of marijuana that still exists today.

B. The LaGuardia Report

The following year, concerned by the widespread propaganda about the dangers of marijuana, New York City Mayor Fiorello LaGuardia requested the advice of the New York Academy of Medicine.³⁵ At the academy's recommendation, Mayor LaGuardia appointed a committee of 31 scientists to conduct a thorough study of the effects of marijuana use.³⁶

Six years later, the results were released in the LaGuardia Report. The committee had found that marijuana was “not the determining factor in the commission of major crimes” and that “juvenile delinquency [was] not associated with the practice of smoking marijuana.”³⁷

Anslinger was furious and used his media connections and political ties to discredit the report and its authors.³⁸ Marijuana prohibition continued.

C. The Shafer Commission

Another challenge to the laws arose after Anslinger's retirement. In 1970, Congress passed the Controlled Substances Act, which reduced simple

possession of all drugs to a misdemeanor under federal law and created the National Commission on Marihuana and Drug Abuse. One of the commission's assignments was to conduct a yearlong, authoritative study of marijuana.³⁹

The commission was commonly referred to as the Shafer Commission in honor of its chair, former Pennsylvania Governor Raymond P. Shafer. It was a bipartisan body with 13 members, nine appointed by President Nixon and four by Congress. Advocates for marijuana law reform sharply criticized Nixon's appointees for being “out of touch,” politically predisposed to the status quo, and unlikely to have an open mind on the issue.⁴⁰

Moreover, President Nixon had no qualms about attempting to influence the commission's deliberations. At a press conference six weeks after it began its work, he made the following statement to a reporter:

As you know, there is a Commission that is supposed to make recommendations to me about this subject, and in this instance, however, I have such strong views that I will express them. I am against legalizing marihuana. Even if the Commission does recommend that it be legalized, I will not follow that recommendation.⁴¹

Despite Nixon's apparent stacking of the deck, when the commission issued its report, *Marihuana: A Signal of Misunderstanding*, in March 1972, it made some unexpected findings. The commission recommended that marijuana be decriminalized at both the state and federal level:

- ✓ **Possession of marihuana in private for personal use would no longer be an offense; and**
- ✓ **Distribution of small amounts of marihuana for no remuneration, or insignificant remuneration not involving profit would no longer be an offense.**⁴²

President Nixon was not pleased. Just as Harry J. Anslinger had buried the LaGuardia Report, Nixon consigned the Shafer Commission's report to the library bookshelves. Neither he nor Congress took any action to implement its recommendations.

D. State laws

Although the Nixon Administration ignored the Shafer Commission recommendations, 12 states decriminalized marijuana possession in the 1970s:

- ✓ Alaska (1975)
- ✓ California (1975)
- ✓ Colorado (1975)
- ✓ Maine (1975)
- ✓ Minnesota (1976)
- ✓ Mississippi (1977)
- ✓ Nebraska (1978)
- ✓ New York (1977)
- ✓ North Carolina (1977)
- ✓ Ohio (1976)
- ✓ Oregon (1973)
- ✓ South Dakota* (1977)

* *South Dakota subsequently re-criminalized the possession of marijuana.*

Nevada decriminalized marijuana possession in 2001, and Massachusetts decriminalized in 2008. According to the most recent population estimates from the U.S. Census Bureau,⁴³ states where marijuana is decriminalized represent 35% of our nation's population. These states have substantially reduced the social costs associated with the enforcement of marijuana prohibition, while experiencing little or no impact on rates of use by their residents, according to research by Eric Single of the University of Toronto's Department of Public Health Sciences.⁴⁴ In other words, decriminalization has benefited the individuals and communities in those states, without any accompanying negative impacts.

In 2006, 74% of registered Washington voters supported either making marijuana possession legal for adults or making marijuana possession a non-criminal offense that carries a fine.⁴⁵ In 2010, 54% thought it "would be a good idea" to "allow state-run liquor stores to sell and tax marijuana."⁴⁶

IV. Marijuana as Medicine

Marijuana has been found effective in treating pain, nausea and vomiting, and wasting syndrome.⁴⁷ Nearly three-fourths of Americans aged 45 and older support legalizing marijuana for medical use.⁴⁸ In Washington, 82% of registered voters polled support the medical use of marijuana when recommended by a doctor.⁴⁹

A. How many states have medical marijuana laws?

Fourteen states and the District of Columbia, representing 27% of our national population, have passed laws that provide some level of protection from arrest and prosecution to patients whose doctors recommend the medical use of marijuana:

- ✓ California (1996)
- ✓ Alaska (1998)
- ✓ Oregon (1998)
- ✓ Washington (1998)
- ✓ Maine (1999)
- ✓ Colorado (2000)
- ✓ Nevada (2000)
- ✓ Hawaii (2000)
- ✓ Montana (2004)
- ✓ Vermont (2004)
- ✓ Rhode Island (2006)
- ✓ New Mexico (2007)
- ✓ Michigan (2008)
- ✓ New Jersey (2010)
- ✓ District of Columbia (2010)

B. Washington's medical marijuana law

Washington state voters passed the Medical Use of Marijuana Act⁵⁰ in 1998 as a ballot initiative (I-692), and the Washington state legislature amended the act in 2007 and 2010.

■ *What does the Medical Use of Marijuana Act do?*

Washington state's medical marijuana law gives qualifying patients and their designated providers the legal right to grow and possess a "sixty-day supply" of marijuana for medicinal purposes. The law also says that doctors may discuss medical marijuana as a treatment option with their patients and authorize its use without penalty.

The Medical Use of Marijuana Act applies only to the medical conditions listed in the statute (see below) and others that may be approved by the Washington State Medical Quality Assurance Commission and Board of Osteopathic Medicine and Surgery. All other uses of marijuana remain illegal.

■ *How much is a "sixty-day supply" of medical marijuana?*

On October 2, 2008, the Washington Department of Health clarified the law by adopting a rule defining a "sixty-day supply" of medical marijuana.⁵¹ It specifies that a qualifying patient or designated provider "may possess a total of no more than twenty-four ounces of useable marijuana, and no more than fifteen plants."⁵²

Useable marijuana is defined as "the dried leaves and flowers of the *Cannabis* plant family Moraceae" and does not include "stems, stalks, seeds and roots."⁵³ A plant is defined as "any marijuana plant in any stage of growth."⁵⁴

Qualifying patients who need a larger supply of medical marijuana than the limits set in this rule may present evidence in court to justify their need.⁵⁶ The rule does not say what kind of evidence may be used to establish a qualifying patient's need. Patients who require more than twenty-four ounces of useable marijuana or fifteen plants should consult with an attorney.

More information about the Department of Health's rulemaking process may be found at the following Web site:

<http://www.doh.wa.gov/hsqa/medical-marijuana/>

■ *Who is a protected "qualifying patient"?*

Washington's law protects patients suffering from specified terminal or debilitating medical conditions. The patient must be diagnosed and given written authorization by a licensed Washington state physician, osteopathic physician, physician's assistant, osteopathic physician's assistant, naturopath, or advanced registered nurse practitioner. He or she must be a Washington state resident at the time of diagnosis, and the practitioner must advise her or him (1) about the "risks and benefits" of medical marijuana and (2) that he or she "may benefit from the medical use of marijuana." The authorization must be printed on tamper-resistant paper. A standard form is available at the following Web page:

<http://www.aclu-wa.org/news/guide-washingtons-medical-marijuana-law>

Currently, the Medical Use of Marijuana Act covers these conditions:

- (1) Cancer, human immunodeficiency virus (HIV), multiple sclerosis, epilepsy or other seizure disorder, or spasticity disorders;
- (2) Intractable pain, that is, pain unrelieved by standard medical treatments and medications;
- (3) Glaucoma;
- (4) Crohn's disease;
- (5) Hepatitis C; and
- (6) Diseases, including anorexia, which result in nausea, vomiting, wasting, appetite loss, cramping, seizures, muscle spasms, or spasticity.

Anyone may petition the Medical Quality Assurance Commission and the Board of Osteopathic Medicine and Surgery to add other terminal or debilitating conditions to the list.

Qualifying patients must carry “valid documentation” whenever they possess or use medical marijuana. Valid documentation consists of two items: (1) their practitioner’s authorization, and (2) proof of their identity, such as a Washington state driver’s license or identicard. A qualifying patient must present both of these items to any law enforcement officer who questions the patient regarding his or her medical use of marijuana.

■ *Who is a protected “designated provider”?*

Some qualifying patients need help growing, obtaining and/or using medical marijuana. For this reason, the law allows them to appoint a “designated provider” who is also protected under the Medical Use of Marijuana Act. The patient must designate the provider in writing before the provider assumes any responsibility for the patient’s medical marijuana.

■ *How does the medical marijuana law protect practitioners?*

Washington law states that licensed practitioners “shall not be penalized in any manner, or denied any right or privilege” for:

- (1) Advising patients about the risks and benefits of medical marijuana; or
- (2) Providing a qualifying patient with valid documentation that the medical use of marijuana may benefit that patient.

Practitioners and their licenses to prescribe controlled drugs are also protected under federal law. In 2002, the Ninth Circuit Court of Appeals ruled that the federal government may not revoke a physician’s Drug Enforcement Administration (DEA) registration or initiate an investigation based solely on the recommendation of medical marijuana to a patient.⁵⁶ The court found this a violation of the First Amendment right of doctors to give advice to patients. Practitioners still cannot provide marijuana to their patients – only patients and their designated providers may possess marijuana for the patient’s medical use.

■ *What else should I know about Washington’s medical marijuana law?*

- ✓ Someone who is not a patient or designated provider cannot be punished merely for being in the presence of medical marijuana or its use.
- ✓ No health insurer can be required to pay for the medical use of marijuana.
- ✓ Practitioners are not required to authorize the medical use of marijuana for a patient.
- ✓ Places of employment, school buses, school grounds, youth centers and correctional facilities are not required to accommodate the on-site use of medical marijuana.
- ✓ Patients are not allowed to smoke medical marijuana in any public place in which smoking of any kind is prohibited under the Washington Clean Indoor Air Act.

C. Medical marijuana and federal law

1. The federal government provides medical marijuana to some patients.

In 1978, Robert Randall successfully sued the federal government over access to medical marijuana for treatment of his glaucoma.⁵⁷ The result was a federal program, commonly referred to as the “compassionate use program,”⁵⁸ in which the government began providing certain patients, including Randall, a monthly supply of medical marijuana.⁵⁹

The program continued for nearly 15 years. But in 1991, Assistant Secretary for Health James O. Mason announced that the federal government would, for “humanitarian reasons,” continue supplying medical marijuana to those patients already admitted to the program but would not provide it to any new applicants.⁶⁰ Today, the federal government continues to supply medical marijuana to four surviving patients.⁶¹ However, federal law still does not recognize the medical use of marijuana, and until recently, even those who were protected by laws passed in their own states were threatened.⁶²

2. The DEA ignores rulings by its own administrative law judges.

In 1972, the National Organization for the Reform of Marijuana Laws (NORML) and two other organizations petitioned the Bureau of Narcotics and Dangerous Drugs (predecessor to the DEA⁶³) to remove marijuana from Schedule I of the federal Controlled Substances Act, which had been in effect for just over a year.⁶⁴ Marijuana’s placement on Schedule I meant that, as a matter of law, marijuana had no legitimate medical use.⁶⁵ DEA Administrative Law Judge Francis L. Young received testimony over 15 days of hearings held in three cities⁶⁶ as to whether marijuana should be moved from Schedule I to Schedule II, so that physicians could prescribe it for medical purposes.⁶⁷

In September 1988, Judge Young recommended that the DEA transfer marijuana from Schedule I to Schedule II,⁶⁸ noting,

Based upon the facts established in this record and set out above one must reasonably conclude that there is accepted safety for use of marijuana under medical supervision. To conclude otherwise, on this record, would be unreasonable, arbitrary and capricious.⁶⁹

However, the DEA rejected this recommendation and ordered that marijuana remain a Schedule I substance.⁷⁰ This is where marijuana remains today, which is why practitioners may *authorize* or *recommend* the medical use of marijuana but not *prescribe* it.

In 2001, Lyle Craker, Professor of Plant and Soil Sciences at the University of Massachusetts-Amherst, applied to the DEA for a permit that would allow him to grow marijuana for medical research approved by the Food and Drug Administration.⁷¹ Administrative Law Judge Mary Ellen Bittner received witness testimony and documentary evidence over 9 days of hearings.⁷² In February 2007, Judge Bittner issued her ruling, in which she stated:

. . . [T]here is currently an inadequate supply of marijuana available for research purposes, . . . competition in the provision of marijuana for such purposes is inadequate, and . . . Respondent has complied with applicable laws . . . I therefore find that Respondent’s registration to cultivate marijuana would be in the public interest.⁷³

The judge went on to recommend that Professor Craker’s application be granted.⁷⁴ Two years later, DEA Deputy Administrator Michele M. Leonhart denied the application.⁷⁵ A motion for reconsideration is pending.

3. Medical marijuana is gaining acceptance within the federal government.

In October 2009, the U.S. Department of Justice advised its U.S. Attorneys serving in states with medical marijuana laws not to expend federal resources on the investigation or prosecution of “individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana.”⁷⁶ And in July 2010, the U.S. Department of Veterans Affairs advised its patient care service providers that “VHA policy does not prohibit veterans who use medical marijuana from participating in VHA substance abuse programs, pain control programs, or other clinical programs,” and that “patients participating in state medical marijuana programs must not be denied VHA services.”⁷⁷

Although these directives are only policy declarations and do not change federal law, they represent significant departures from previous administrations’ “zero tolerance” approaches to marijuana law enforcement. They also evidence a recognition of the important role states play as laboratories for reexamining and reshaping drug policy.

V. Use of Public Safety Resources

American taxpayers spend at least \$7.5 billion each year enforcing marijuana prohibition through criminal punishment.⁷⁸ Washington state spends at least \$23 million annually.⁷⁹

One out of eight drug offenders in our states’ prisons have been locked up for a marijuana offense.⁸⁰ Current forecasts indicate that Washington state will need two new prisons by 2020, costing taxpayers \$250 million to construct and \$45 million per year to operate.⁸¹

What kind of return are we getting on our investment?

The use of our public safety resources to enforce marijuana prohibition has diminished neither the supply of, nor the demand for, marijuana in the United States.⁸² Rising marijuana arrest rates have not led to falling marijuana use rates:

- ✓ From 1991 to 2008, marijuana arrests nationwide have tripled from 287,900 to 847,860.⁸³
- ✓ Yet between 1991 and 1996, annual marijuana use tripled among 8th graders and rose significantly among 10th and 12th graders beginning in 1992.⁸⁴
- ✓ Both first-time marijuana use and current (past-month) marijuana use by Americans 18 and older – those subject to criminal conviction – have remained steady since 2002 despite skyrocketing arrest rates.⁸⁵

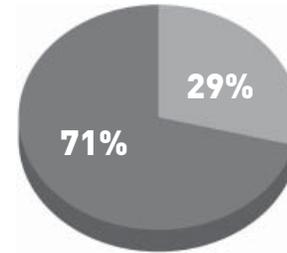
Marijuana is more available than ever on the black market, making millionaires out of the criminals who control it. Today, the domestic market alone generates \$35.8 billion per year, **making marijuana our country's #1 cash crop – unregulated and untaxed.**⁸⁶

More than half of the violent crimes committed each year go unsolved⁸⁷ while we spend billions of tax dollars enforcing marijuana laws that have no effect on usage. Could our precious public safety resources be put to better use?

VI. Consequences for Communities and Personal Freedom

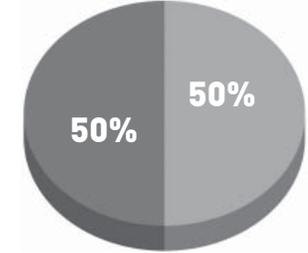
More arrests are made for marijuana than for any other drug. In 2008, 1,702,537 drug-related arrests were made nationwide. Of those, 847,863 – a record 50% – were made for marijuana-related offenses. And of those marijuana arrests, 89% were made for possession alone.⁸⁸ The shifting focus of the “War on Drugs” to a “War on Marijuana” has been occurring since the 1990s:

Drug Arrests 1991



■ Total Marijuana Arrests
■ All Other Drug Arrests Combined

Drug Arrests 2008



■ Total Marijuana Arrests
■ All Other Drug Arrests Combined

Source: F.B.I., Crime in the United States, annually

A. Consequences of the “War on Drugs”

In the “War on Drugs,” marijuana use is combated through criminal punishment. Much less effort has gone into providing factually accurate and effective public education, or making treatment available for those who need and want it. This approach has had tremendous consequences, both for the individuals who are arrested and for civil liberties and racial equality in our communities. As early as 1968, Stanford University

law professor Herbert L. Packer offered observations that still ring true today:

For over 50 years the United States has been committed to a policy of suppressing the “abuse” of narcotic and other “dangerous” drugs. The primary instrument in carrying out this policy has been the criminal sanction. The results of this reliance on the criminal sanction have included the following:

- (1) Several hundred thousand people, the overwhelming majority of whom have been primarily users rather than traffickers, have been subjected to severe criminal punishment.
- (2) An immensely profitable illegal traffic in narcotic and other forbidden drugs has developed.
- (3) This illegal traffic has contributed significantly to the growth and prosperity of organized criminal groups.
- (4) A substantial number of all acquisitive crimes – burglary, robbery, auto theft, other forms of larceny – have been committed by drug users in order to get the wherewithal to pay the artificially high prices charged for drugs on the illegal market.
- (5) Billions of dollars and a significant proportion of total law enforcement resources have been expended in all stages of the criminal process.
- (6) A disturbingly large number of undesirable police practices – unconstitutional searches and seizures, entrapment, electronic surveillance – have become habitual because of the great difficulty that attends the detection of narcotics offenses.
- (7) The burden of enforcement has fallen primarily on the urban poor, especially Negroes and Mexican-Americans.

- (8) Research on the causes, effects, and cures of drug use has been stultified.
- (9) The medical profession has been intimidated into neglecting its accustomed role of relieving this form of human misery.
- (10) A large and well-entrenched enforcement bureaucracy has developed a vested interest in the status quo, and has effectively thwarted all but the most marginal reforms.
- (11) Legislative invocations of the criminal sanction have automatically and unthinkingly been extended from narcotics to marijuana to the flood of new mind-altering drugs that have appeared in recent years, thereby compounding the preexisting problem.

A clearer case of misapplication of the criminal sanction would be difficult to imagine.⁸⁹

Marijuana prohibition affects us all. Our public safety resources have been taken away from violent crimes and property crimes. An increasing number of otherwise law-abiding citizens have been turned into “criminals,” resulting in a multitude of lost rights and opportunities, not only for them but for their families. The damage is multiplied in communities of color, where marijuana laws are enforced disproportionately on groups that have historically had to fight for equal treatment.⁹⁰

Further, our policies have resulted in a lack of scientific knowledge about the marijuana plant and erected obstacles to candid discussions between patients and their health care providers. As the American Medical Association predicted in 1937, the laws have thwarted research that could benefit the seriously ill and dying. And the stigma of criminality discourages patients from disclosing and discussing their non-medical use of marijuana honestly with their health care providers.

Finally, marijuana prohibition has created an enormously profitable black market that enriches criminal enterprises and deprives us of billions in potential tax revenues from the nation's leading cash crop. And for the millions of people who use the plant every year, there is no regulation to ensure it is free of contaminants.

B. Home searches

Our legal system traditionally has revered the right of individuals to be left alone in the privacy of their own homes, so long as they are not harming others. As a federal court ruling put it in 1951,

A man can still control a small part of his environment, his house; he can retreat thence from outsiders, secure in the knowledge that they cannot get at him without disobeying the Constitution. That is still a sizable hunk of liberty – worth protecting from encroachment. A sane, decent, civilized society must provide some such oasis, some shelter from public scrutiny, some insulated enclosure, some enclave, some inviolate place which is a man's castle.⁹¹

Two-thirds of Washington voters agree with the statement, “Adults ought to have the right to decide for themselves whether they want to use marijuana in the privacy of their own home.”⁹² But both the federal Ninth Circuit Court of Appeals and the Washington State Supreme Court have held that a police officer may obtain a warrant to enter a private home based on the simple claim that he or she smelled marijuana.⁹³

The invasion of privacy is not limited to the search of one's home. Because the exchange of marijuana takes place between consenting individuals, the offense is rarely reported. This has resulted in law enforcement officials resorting to wiretapping private telephones, using paid informants, and other invasive investigation procedures.

C. Loss of property

Homes, vehicles, and personal property can be seized from individuals suspected of marijuana-related offenses and forfeited to the government – even without a criminal conviction, and even if no criminal charges are ever filed.⁹⁴ While federal law provides for the appointment of counsel to individuals trying to recover their property in federal forfeiture proceedings,⁹⁵ Washington state law does not. A property owner trying to defend against a state forfeiture action must either hire a lawyer at his or her own expense or represent himself or herself. Forfeiture proceedings are complex and subject to strict time deadlines. Failure to comply with the deadlines can result in the property being forfeited without the owner ever getting to have a hearing.⁹⁶

D. Drug testing

To many people, being required to provide one's urine to an employer is embarrassing and invasive. Urine samples can reveal much more about your private life than drug use, including whether you are being treated for a heart condition, depression, epilepsy or diabetes. Urine tests can also reveal pregnancy.

Surveys conducted in 2002-2004 revealed that almost half of full-time workers aged 18 to 64 reported their employer tested them for drug use, either during the hiring process, on a random basis, or both.⁹⁷ According to a federal agency, “[w]orkplace drug testing was implemented as an effort to deter substance abuse and its effects on productivity, health, and safety in the Nation's workforce,” but “there is limited evidence about the effectiveness of this deterrent effect. . . . Thus, it is not possible to draw conclusions about the causal direction of the relationship between testing and substance use.”⁹⁸

Marijuana urinalysis does not indicate whether or not someone is intoxicated, and it doesn't measure job performance or an employee's ability to function safely in the workplace. Marijuana urinalysis simply detects the presence of metabolites – chemicals that have been broken down by the body. What this means is that a positive test only indicates that a person may have ingested marijuana sometime in the past. With marijuana, those metabolites can be present in an employee's urine for days after its use.⁹⁹ Occasional weekend use can show up in a drug test administered on a Wednesday, long after the individual was affected. On the other hand, an employee impaired by sleep deprivation might pass a drug test only to injure herself or someone else on the job.

Random testing of employees who are not even suspected of using drugs is degrading and violates a fundamental right of privacy. Employers with public safety concerns, like those in the transportation and construction industries, have effective means to detect actual impairment available to them, such as computer-aided performance testing.¹⁰⁰ These methods not only respect the privacy of their employees but also detect other safety concerns such as lack of adequate rest or unreported injuries.

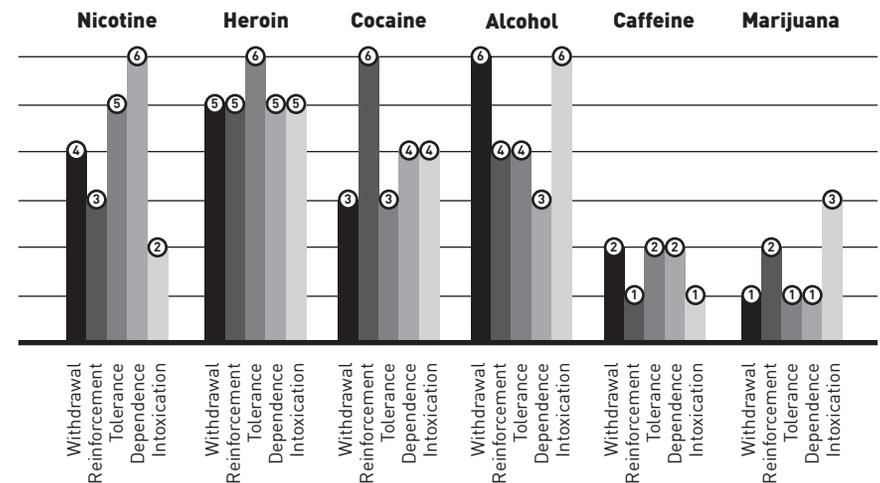
VII. Frequently Asked Questions

“Is marijuana addictive?”

Marijuana is less addictive than the legal drugs nicotine, alcohol and even caffeine, but some individuals do develop a dependence that can cause mild, short-lived symptoms upon cessation of use. This chart ranks various legal and illegal drugs on a range of characteristics associated with addictiveness:

Ranking of Addiction Criteria for Popular Drugs

1= Least Serious 6= Most Serious



Withdrawal: Presence and severity of characteristic withdrawal symptoms.

Reinforcement: A measure of the substance's ability to get users to take it again and again, and in preference to other substances.

Tolerance: How much of the substance is needed to satisfy increasing cravings for it, and the level of stable need that is eventually reached.

Dependence: How difficult it is for the user to quit, the relapse rate, the percentage of people who eventually become dependent, the rating users give their own need for the substance and the degree to which the substance will be used in the face of evidence that it causes harm.

Intoxication: Though not usually counted as a measure of addiction in itself, the level of intoxication is associated with addiction and increases the personal and social damage a substance may do.¹⁰¹

This comparison of addictiveness factors is consistent with information showing the percentage of people who have ever tried a particular drug and the percentage who have become dependent on that drug:

Prevalence of Drug Use and Dependence in the General Population¹⁰²

Drug Category	Proportion That Have Ever Used (%)	Proportion of Users That Ever Become Dependent (%)
Tobacco	76	32
Alcohol	92	15
Marijuana (including hashish)	46	9
Anxiolytics (including sedatives and hypnotic drugs)	13	9
Cocaine	16	17
Heroin	2	23

In summary, although few marijuana users develop dependence, some do. But they appear to be less likely to do so than users of other drugs (including alcohol and nicotine), and marijuana dependence appears to be less severe than dependence on other drugs.¹⁰³

“Does using marijuana lead one to use harder, more dangerous drugs? Is there a biological or social cause-and-effect relationship?”

No. There is no reliable evidence that marijuana use causes a biological, chemical or physical reaction that makes the user want to use other illicit substances.¹⁰⁴ These scientific findings are consistent with the observation that while 100 million Americans report having used marijuana at some point in their lifetimes, only 36 million have tried cocaine, 13 million have tried methamphetamine, and 4 million have ever tried heroin.¹⁰⁵

Logically, people who are willing to try cocaine, methamphetamine or heroin probably also tried marijuana at some point. While that might say something about these individuals as risk-takers, it says nothing about whether or not marijuana itself physiologically influences other drug use.

However, the status of marijuana as a prohibited substance does force its users into the illegal drug market, where they may be exposed to other illicit substances or pressured to experiment. As stated in a report commissioned by the Office of National Drug Control Policy:

Whereas the stepping stone hypothesis presumes a predominantly physiological component of drug progression, the gateway theory is a social theory. The latter does not suggest that the pharmacological qualities of marijuana make it a risk factor for progression to other drug use. Instead, *the legal status of marijuana makes it a gateway drug.*¹⁰⁶

In other words, if marijuana is a potential gateway drug, that is because of its status as an illegal drug. Ending the criminal prohibition on marijuana, taking it out of the hands of criminal profiteers, and placing it in a regulated market would reduce that risk.

“If we remove criminal penalties for adults who use marijuana, aren't we sending the message to our kids that it's okay for them to use marijuana, too?”

No. If we provide honest, evidence-based education and regulate marijuana as we do other substances like alcohol and tobacco, we can send a much clearer message to our children. There are innumerable activities that adults are permitted to do that minors are not. We have no problem justifying age restrictions on driver's licenses, tobacco and alcohol consumption, and the voting booth. We could just as easily explain why marijuana is not okay for children. In fact, by continuing to treat adult marijuana use as a crime and refusing to acknowledge that 40% of Americans have committed this “offense,” we might be undermining our credibility and making it more difficult to distinguish adult and juvenile use.

The experience of the 11 states that decriminalized the possession of marijuana in the '70s is encouraging. The fact that usage rates have not increased in these states suggests that marijuana laws can be reformed without endangering children.¹⁰⁷

There are more effective and cost-efficient ways to deter our youth from using marijuana. For example, the “truth” antismoking campaign initiated in 2000 costs a fraction of the marijuana prohibition budget, and it has already been associated with substantial declines in youth smoking.¹⁰⁸ It wasn't necessary to criminalize the adult use of tobacco to accomplish this.

“What are the health risks associated with marijuana use?”

This question has been subject to intense debate and disagreement for more than 70 years now. We do know that smoking *anything* is not a healthy activity,¹⁰⁹ heavy use of *any* intoxicant is risky, and children are at a higher risk of compromising their physical and emotional development through the use of intoxicants than adults are.

But we must ask another question: what impact does the *criminalization* of marijuana have on our ability to address this public health issue effectively? Encouraging the reconsideration of our policies does not mean advocating the use of marijuana. The question is simply whether the serious problems that result from prohibition call for us to look at alternative approaches.

“Why bother changing state marijuana laws if marijuana will still be prohibited by federal law?”

While marijuana is prohibited under both state and federal law, most enforcement is done by state and local authorities. Of the 872,720 marijuana arrests made in 2007, federal authorities made only 5,700, or less than 1% – the other 99+% were made by state and local law enforcement officers.¹¹⁰ As with alcohol Prohibition, reform of our marijuana laws may need to begin at the state level. As United States Supreme Court Justice Louis B. Brandeis noted, “It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”¹¹¹

Are current marijuana laws working?

We know they are extremely costly in terms of tax dollars, they divert public safety resources from other priorities, and they have very real consequences to individuals, their families, and their communities.

Talk to your friends, family and policymakers about this issue. Is there a better way for us to handle the use of marijuana? Let the conversations begin.

Endnotes

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- 17** R.C.W. 69.50.505; 21 U.S.C. §881.
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- 21** *Id.* at 4, 48-49.
- 22** *Id.* at 32-40.
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- 24** *Id.* at 39.
- 25** *Id.* at 100-01.
- 26** *Id.* at 65-66.
- 27** *Id.* at 79-97.
- 28** *Id.* at 97-117.
- 29** *Id.* at 115.
- 30** *Id.* at 120-21.
- 31** *Id.* at 119.
- 32** *Id.* at 119-20.
- 33** *Id.* at 124-26.
- 34** *Id.* at 164-73.
- 35** *Id.* at 200.
- 36** *Id.*
- 37** *Id.* at 201.
- 38** *Id.* at 201-02.

- 39** *Id.* at 244.
- 40** *Id.* at 255-56.
- 41** *Id.* at 256.
- 42** NATIONAL COMMISSION ON MARIHUANA AND DRUG ABUSE, MARIHUANA: A SIGNAL OF MISUNDERSTANDING 152, 154 (1972).
- 43** As of July 1, 2009. Available at <http://www.census.gov/popest/states/NST-ann-est.html>.
- 44** Eric W. Single, *The Impact of Marijuana Decriminalization: An Update*, 10 J. PUB. HEALTH POL'Y 456, 457-58 (1989) (describing reductions in “the financial costs of law enforcement, encroachment on individual rights and freedoms in order to facilitate drug enforcement, the adverse effects of a criminal record for the large numbers of convicted offenders, and the impacts of the penalties (fines and imprisonment) on the users”).
- 45** Public opinion research conducted by Belden Russonello & Stewart on behalf of the American Civil Liberties Union in January 2006. Respondents were asked to choose one of three options (the third being “continue to send adults to jail for marijuana possession,” which 22% selected), so there is no duplication among the polled voters who stated they would make possession legal and those who would make it a finable non-criminal offense.
- 46** SurveyUSA News Poll #16194, sponsored by KING-TV Seattle, conducted Jan. 13, 2010.
- 47** *See, e.g.*, INSTITUTE OF MEDICINE,

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- 49** Public opinion research conducted by Belden Russonello & Stewart on behalf of the American Civil Liberties Union in January 2006.
- 50** R.C.W. 69.51A.
- 51** W.A.C. 246-75-010.
- 52** W.A.C. 246-75-010 3(a).
- 53** W.A.C. 246-75-010 2(d).
- 54** W.A.C. 246-75-010 2(b).
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- 56** *Conant v. Walters*, 309 F.3d 629 (9th Cir. 2002), *cert. denied*, 540 U.S. 946 (2003).
- 57** *See Kuromiya v. United States*, 78 F. Supp. 2d 367, 368 (E.D. Pa. 1999) (*Kuromiya II*); *Kuromiya v. United States*, 37 F. Supp. 2d 717, 720 (E.D. Pa. 1999) (*Kuromiya I*).
- 58** *Kuromiya I*, 37 F. Supp. at 720 n.2.
- 59** *Kuromiya II*, 78 F. Supp. at 368.
- 60** Def. Mem. of Points and

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- 61** *See, e.g.*, <http://www.medicalcannabis.com/patients-caregivers/federal-ind-patients>, accessed Sept. 4, 2010.
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- 63** DEA became the successor agency in a reorganization carried out pursuant to Reorganization Plan No. 2 of 1973, eff. July 1, 1973. 38 Fed. Reg. 15932 (1973).
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- 65** 21 U.S.C. §812(b)(1).
- 66** Opinion and Recommended Ruling, *supra* note 64, at 6.
- 67** *Id.* at 2-6.
- 68** *Id.* at 67-68.

- 69** *Id.* at 66.
- 70** Marijuana Scheduling Petition, Denial of Petition, 54 Fed. Reg. 53767-02 (DEA 1989).
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