

420 In The 757: Marijuana And Hampton Roads



420 IN THE 757: MARIJUANA AND HAMPTON ROADS

It is time for us to recognize this growing national consensus that criminalizing marijuana is unnecessary, discriminatory and gratuitously punitive. It is also time for us to cease saddling our fellow Virginians with criminal records for marijuana possession that is legal in ever-larger swaths of the country.

– Gregory Underwood, Commonwealth’s Attorney, City of Norfolk



In June 26, 2019, Gov. J.B. Pritzker of Illinois signed legislation making the state the 11th to legalize possession of 30 grams or less (1.05 ounces) of marijuana for personal use. In the same month, Virginia Attorney General Mark Herring argued in an opinion piece published throughout the Commonwealth that legislators should remove criminal penalties for marijuana possession as a first step on the path toward legalization for personal use. While not in complete agreement, Senate Majority Leader Tommy Norment of James City County echoed the sentiment. Given the conversations taking place in Hampton Roads and throughout Virginia about marijuana, it is time to consider what a change in its legal status might look like, whom it might affect and how it might impact the cities and counties of our region.

Even though a majority of adult Americans have used marijuana in their lifetime and over a third of young adults in Virginia used it in the previous year, marijuana possession is almost always unlawful in the Commonwealth of Virginia.¹ The Code of Virginia Section 18.2-250.1 states: “It is unlawful for any person knowingly or intentionally to possess marijuana unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the Drug Control Act.” A conviction of the violation of this section for the first offense can result in confinement of no more than 30 days, a fine of up to \$500, or both. A second or subsequent conviction results in a Class 1 misdemeanor, which may result in maximum confinement of 12 months, a maximum fine of \$2,500, or both.

Madison Davis is a young resident of Hampton and has undergone 10 brain surgeries for cancer. Her family obtained a Virginia prescription for medical cannabis oil and must carry the prescription and state registration with them

in the event they are stopped by law enforcement; otherwise, they could be arrested for marijuana possession. One of the priorities of Madison’s mother, Melanie, is the legalization of medical marijuana. “If we are willing to give her radiation, if we are willing to give her chemo that we know is going to make her lose her hair, we know it’s going to make her vomit, then why would we not try something you can grow in your backyard that people have been using since 8,000 BC?”²

Virginia has a limited qualification for the possession and personal use of marijuana. As a result of HB 1251 (2018) and SB 1B 1557 (2019), doctors, physician’s assistants and licensed nurse practitioners can issue a written certification for oils that contain tetrahydrocannabinol (THC) or cannabidiol. Each dispensed dose cannot exceed 10 milligrams of THC. Virginia’s law also only provides for an “affirmative defense.” The certification may not prevent an arrest for marijuana possession and can only be raised during a criminal prosecution.³

¹ National Survey of Drug Use and Health, 2017 Estimates and 2014-2016 Sub-State Estimates. Substance Abuse and Mental Health Data Archive. Responses are for Virginia - Region 5, which includes the Eastern Shore and excludes counties in North Carolina.

² <https://www.wavy.com/news/pitch-for-pot-mother-of-child-with-cancer-local-delegate-want-marijuana-reform-in-va/>.

³ <https://www.mpp.org/states/virginia/>.

A number of Hampton Roads residents use marijuana and, if marijuana sales were legal here, it would be a popular business. In the 2014-2016 National Survey of Drug Use and Health, 7.6% of residents 18 and older in Hampton Roads reported using marijuana in the past month, a higher percentage than for Virginia (6.7%) but lower than for the United States (8.7%). Hampton Roads adults were more likely to have used marijuana in the past year (14.1%) than residents of the Commonwealth (11.5%) and the United States (13.7%). Not surprisingly, marijuana use was the highest among adults ages 18 to 25. Over 20% of adults ages 18 to 25 in Hampton Roads used marijuana in the past month and over a third in the past year. Hampton Roads young adults can lay claim to the dubious distinction of having the highest (no pun intended) marijuana use among young adults in the Commonwealth.

While more than 50% of Virginians in recent surveys supported legalization of the personal use of small amounts of marijuana, the Code of Virginia is quite clear: possession of marijuana is illegal in almost every circumstance. A first offense for marijuana possession can result in an arrest that is resolved by either a court summons or transport to confinement. From 2010 to 2018, there were nearly 200,000 marijuana possession arrests in Virginia, of which almost 39,000 were in Hampton Roads. Over 80% of marijuana possession arrests in Virginia were for a single offense; that is, no other offense was charged at the time of arrest. In the Virginia portion of Hampton Roads in 2018, there were 114.3 marijuana possession arrests per 100,000 white residents and 621.0 arrests per 100,000 black or African American residents in 2018.⁴

While some argue that decriminalization could reduce these inequities, evidence from decriminalized states suggests that these disparities may persist. Legalization, on the other hand, has dramatically reduced the number of possession arrests in several states but also has resulted in increases in the number

⁴ We utilize the Virginia State Police's publicly available Crime in Virginia dataset on individual arrests in Virginia to obtain these findings. We follow the U.S. Census Bureau's conventions with regard to race. Individuals choose to self-identify race and may self-identify more than one race. For more information, see: <https://www.census.gov/topics/population/race/about.html>.

of traffic accidents and emergency department visits. Of particular concern for Hampton Roads is how decriminalization or legalization would affect the large number of military service members and federal employees who, in many cases, are regularly tested for drug use.

In this chapter, we will look at how perceptions about marijuana have changed over time and who uses it. We'll consider who is arrested for possession, discuss the differences between decriminalization and legalization, and provide an estimate of the financial impact of marijuana legalization. It's not just smoke; there are real issues to examine.

Marijuana And Hemp: A Primer

There are two plants, hemp and marijuana (cannabis), that look alike to the untrained eye.⁵ Hemp has many uses, including for clothing, rope and livestock feed. Marijuana, on the other hand, is primarily a recreational substance. Both marijuana and hemp contain tetrahydrocannabinol (THC). THC is the main psychoactive agent in marijuana; when consumed, it stimulates the parts of the brain that respond to pleasure, leading to the release of dopamine.⁶ Hemp, however, must legally have a THC content of less than 0.3%, well below the 18.7% average THC level in marijuana sold for recreational purposes in Colorado.⁷

Hemp, unlike marijuana, can be produced legally, processed, distributed and sold throughout the United States as of Jan. 1, 2019.⁸ The change in hemp's legal status has allowed hemp growers access to banking, water rights and crop insurance, among other institutional rights and protections.⁹ Farmers can now grow hemp and sell to processors, potentially good news for a sector that has struggled recently in Virginia with the decline in the demand for tobacco

⁵ For the purposes of the chapter, we refer to cannabis as marijuana.

⁶ <https://www.webmd.com/mental-health/marijuana-use-and-its-effects#1>.

⁷ <https://www.nbcnews.com/storyline/legal-pot/legal-weed-surprisingly-strong-dirty-tests-find-n327811>.

⁸ <https://www.agriculture.senate.gov/2018-farm-bill>.

⁹ <https://www.vox.com/policy-and-politics/2018/12/12/18136408/hemp-marijuana-legalization-trump-congress-farm-bill>.

products. Everything Diesel, a Colorado-based company, has applied for a hemp-processing license to open a facility in Chesapeake. If the license and use permits are approved, the company will extract oil from the plants for manufacturing purposes.

Sam Grant, managing partner of the Virginia Hemp Company, recently made an appeal to farmers in Mount Jackson, Virginia, to consider growing hemp. “We need to buy 11,000 tons of hemp straw as it comes out of the field, which is about 2,500 acres at 4.5 tons to the acre. We found a building that is of suitable size here and with a commitment, we can build an environmentally responsible way to make cottonized hemp.”¹⁰

While hemp is legal, marijuana remains a subject of tension between the federal government and many state and local governments. **As of July 2019, 34 states (plus the District of Columbia, Guam, Puerto Rico and the U.S. Virgin Islands) have legalized medical marijuana, 15 states have decriminalized marijuana possession for personal use and 11 states (plus the District of Columbia) have legalized marijuana for recreational purposes. There is not a common legal framework among the states.** In some states, such as Colorado and California, where recreational marijuana possession is legal for adults, the production and sale are taxed and regulated, and there are medical marijuana laws. In other states, such as New Mexico and North Dakota, possession does not result in confinement and medical marijuana is allowed under the law. In some states, including North Carolina, possessing small amounts of marijuana may result in an arrest or fine. Virginia allows the prescription of cannabis oil products but not medical marijuana. Lastly, in some states, such as Alabama, possession of marijuana in any form for almost any reason is illegal under state law. This, of course, can create

¹⁰ https://www.lancasterfarming.com/farming/field_crops/virginia-hemp-company-seeks-growers/article_39ebb86c-4e44-523c-844b-805181c053bd.html.

confusion as individuals may purchase marijuana legally in one state and travel to another state only to find they are now in violation of state law as well as federal law.¹¹

With all this in mind, we must remember that the federal government considers marijuana an illegal substance. The Drug Enforcement Agency (DEA) classifies marijuana as a Schedule I drug, with no currently accepted medical use and a high potential for abuse.¹² Marijuana is grouped together with heroin, lysergic acid diethylamide (LSD), 3,4-methylenedioxymethamphetamine (ecstasy), methaqualone (Quaaludes) and peyote. Marijuana’s classification as a Schedule I drug also effectively outlaws most medical research on products with THC. Marijuana producers and dispensaries are also largely shut off from financial networks and, in many cases, must conduct business in cash.

We find marijuana’s classification curious, since the Centers for Disease Control and Prevention (CDC) notes that a fatal overdose is “unlikely” but that an overdose can lead to adverse reactions, including confusion, anxiety and paranoia.¹³ To place this into context, the CDC reported that there were 63,632 fatal overdoses in 2016 in the United States.¹⁴ Fentanyl, which is a Schedule 2 drug, accounted for 28.8% of the overdose deaths. Heroin (Schedule 1), cocaine (Schedule 2) and methamphetamine (Schedule 2) accounted for 25.1%, 17.8% and 10.6% of deaths, respectively. There were no reported deaths from marijuana overdose in 2016.

We must be careful to note that these observations focus on overdose fatalities. Marijuana use can cause impaired driving and there is no field test for marijuana intoxication. Prolonged substance abuse is also possible with marijuana. Withdrawal symptoms may be exacerbated in individuals with a mental illness;¹⁵ however, there continues to be fierce debate as to the impact of marijuana use on anxiety and depression. Many claims and counterclaims remain untested due to the classification of marijuana as a Schedule 1 substance.

¹¹ For more information, see the National Conference of State Legislatures and the Marijuana Policy Project.
¹² U.S. Drug Enforcement Agency. For more information, see <https://www.dea.gov/drug-scheduling>.
¹³ For more information, see <https://www.cdc.gov/marijuana/faqs/overdose-bad-reaction.html>.
¹⁴ Centers for Disease Control and Prevention (2018), “Drugs Most Frequently Involved in Drug Overdose Deaths: United States, 2011-2016.”
¹⁵ Randi Melissa Schuster, Madeleine Fontaine, Emily Nip, Haiyue Zhang, Ailish Hanlya and A. Eden Evins, “Prolonged cannabis withdrawal in young adults with lifetime psychiatric illness,” *Preventive Medicine* 104 (2017).

Cannabidiol (CBD)

Hemp and marijuana contain another active component that, unlike THC, has gained acceptance in recent years. Cannabidiol, or CBD, does not result in a “high” after ingesting or applying to the body. Claims that CBD can reduce anxiety and seizures, and provide pain relief, have sparked interest in and usage of CBD products.¹⁶ CBD often comes in the form of an oil but can also be found in creams, or even gummies. With the 2018 Farm Bill’s passage, if CBD products are derived from hemp under the THC guidelines contained in the law, these products can be consumed and are transportable nationwide. Any products derived from hemp or marijuana with THC levels greater than allowable limits remain illegal at the federal level.

In 2018 and prior to the passage of the 2018 Farm Bill, Virginia legalized the production and use of CBD oils and set explicit guidelines for the cultivation and production of CBD-related products. The Commonwealth also created a framework for legal prescriptions, although CBD products (absent of THC) were already widely available without prescription.¹⁷ Virginia has since passed a law conforming state regulation of hemp to federal guidelines regarding oversight and the THC content of hemp. The absence of previous legal oversight of hemp led to large variation in quality and active ingredients for products that may perhaps share the same names or labels.¹⁸

Even though CBD is legal in Virginia, the production and distribution of CBD products is still in its infancy. The Virginia Board of Pharmacy selected five CBD distributors (one for each health service area) for the entire state. Columbia Care, a firm that already operates dispensaries in multiple states, produces products and services patients who are part of the medical marijuana program, was selected for Hampton Roads.^{19,20} At the time of this writing, the expectation was that Columbia Care would open its facility in Portsmouth in late 2019.

¹⁶ <https://www.health.harvard.edu/blog/cannabidiol-cbd-what-we-know-and-what-we-dont-2018082414476>.

¹⁷ Virginia CBD law passed: <https://law.lis.virginia.gov/vacode/54.1-3408.3/>. Story regarding availability of CBD products: <https://www.virginiamercury.com/2018/09/27/virginia-is-creating-strict-new-cbd-oil-regulations-why-are-health-food-stores-and-gas-stations-already-selling-it/>.

¹⁸ <https://www.consumerreports.org/cbd/how-to-shop-for-cbd/>.

¹⁹ https://pilotonline.com/business/consumer/article_25145784-f8cb-11e8-9a54-2f04dc11ffda.html.

²⁰ <https://www.dailypress.com/news/southside/vp-bz-medical-marijuana-dispensaries-0111-20190112-story.html>.

John Kelly is the chief executive officer at Everything Diesel, a company that extracts distillate and isolate from CBD and produces CBD-infused products. Everything Diesel is looking to expand its operations to a 30,000-square-foot facility in Chesapeake. The facility, which aims to extract CBD from Virginia-farmed hemp to produce products ranging from CBD oils and creams to CBD-infused pet food, would be ideally placed to take advantage of the temperate growing climate and access to the Port of Virginia. When we interviewed Kelly, he noted that Virginia used to be a leading tobacco producer and hemp represents an opportunity to reinvigorate this sector. “Virginia has an agricultural story. We have an ability to bring it back and make a high-quality product at the same time. We can work with small farmers to help them bring in additional revenue, add quality jobs and bring in tax revenue.”

From Hippie Culture To Culturally Acceptable

I didn't inhale it, and never tried it again. – Bill Clinton

When I was a kid, I inhaled frequently. That was the point. – Barack Obama

Graph 1 illustrates how swiftly perceptions about marijuana have changed in the United States. In 1969, only 12% of those surveyed thought marijuana should be legalized. Even at the turn of the current century, only 31% of respondents were in favor of legalization. By 2013, a majority of respondents were in favor. In 2018, almost two-thirds of Americans reported they thought marijuana should be legalized. The most recent survey found broad support for legalization among millennials (74%), Gen Xers (63%) and baby boomers (54%).

Recent surveys of Virginians reflect the national data. Polls by Quinnipiac University in 2015 and 2017 found that a majority of Virginians supported adults being able to legally possess small amounts of marijuana. The 2017 Quinnipiac poll also found an overwhelming 92% of Virginians supported marijuana use for medical purposes with a doctor's prescription.²¹ A March 2018 Christopher Newport University poll found that 76% of Virginians favored decriminalizing possession of small amounts of marijuana.²²

Public perceptions of marijuana are changing because more Americans have used marijuana. The National Survey of Drug Use and Health (NSDUH) collects data at the national, state and substate level on drug use, abuse and mental health. The latest survey illustrates the rise in marijuana's popularity relative to other drugs. The percentage of respondents who reported using marijuana in their lifetimes increased from 42.7% in 2002 to 48.2% in 2017 (Graph 2). Across the same time period, reported use of crack cocaine and LSD declined while cocaine usage increased slightly.

It appears that marijuana has reached a tipping point, where a majority of the population has tried it, supports its legalization for personal use and overwhelmingly supports the use of marijuana for medical purposes.

As marijuana use by adults has increased over time and the drug is now legalized or decriminalized in a number of states, we compare marijuana use in the previous month with two of the most popular legal substances: alcohol and cigarettes (Graph 3). Since 2002, while alcohol usage in the past month by Americans 18 and older has increased only at an average rate of 0.1% a year, cigarette use has declined at an annual rate of 2.3% a year.²³ Reported marijuana use grew at a 3.4% annual rate over the period. The increasing acceptance of marijuana coincides with the decline in the use of cigarettes and tobacco.



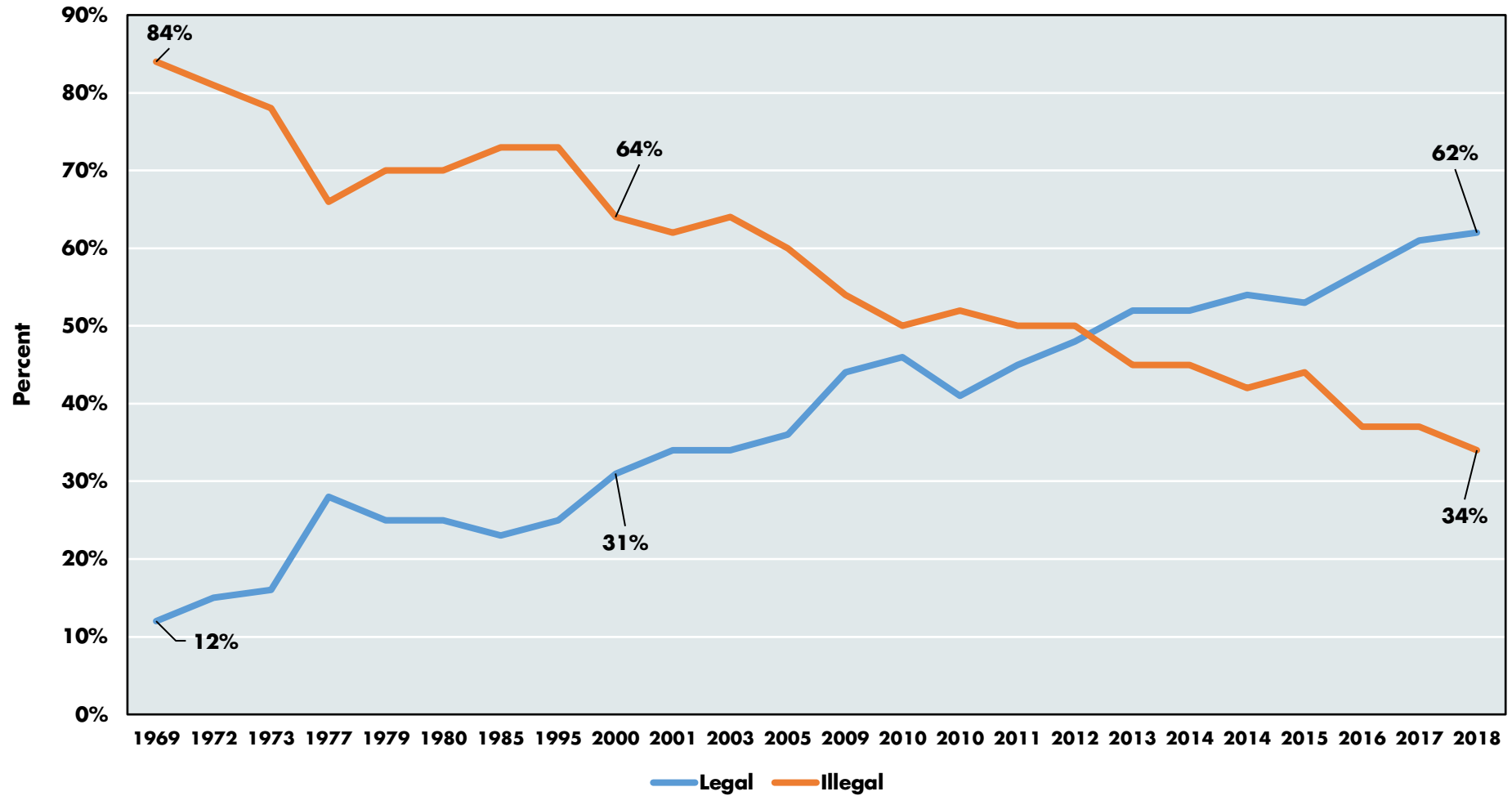
21 <https://poll.qu.edu/virginia/release-detail?ReleaseID=2451> (2017 VA poll).

22 <https://bloximages.newyork1.vip.townnews.com/pilotonline.com/content/tncms/assets/v3/editorial/c/77/c77f8ee9-f7c3-5208-810e-5a45e762a3ee/5a7b20dfb8755.pdf.pdf>.

23 We estimate the compound annual growth rate (CAGR) to determine the average annual growth or decline in each substance over the period in question. CAGR is equal to $(\text{End Value}/\text{Start Value})^{1/\text{Number of Periods}} - 1$.

GRAPH 1

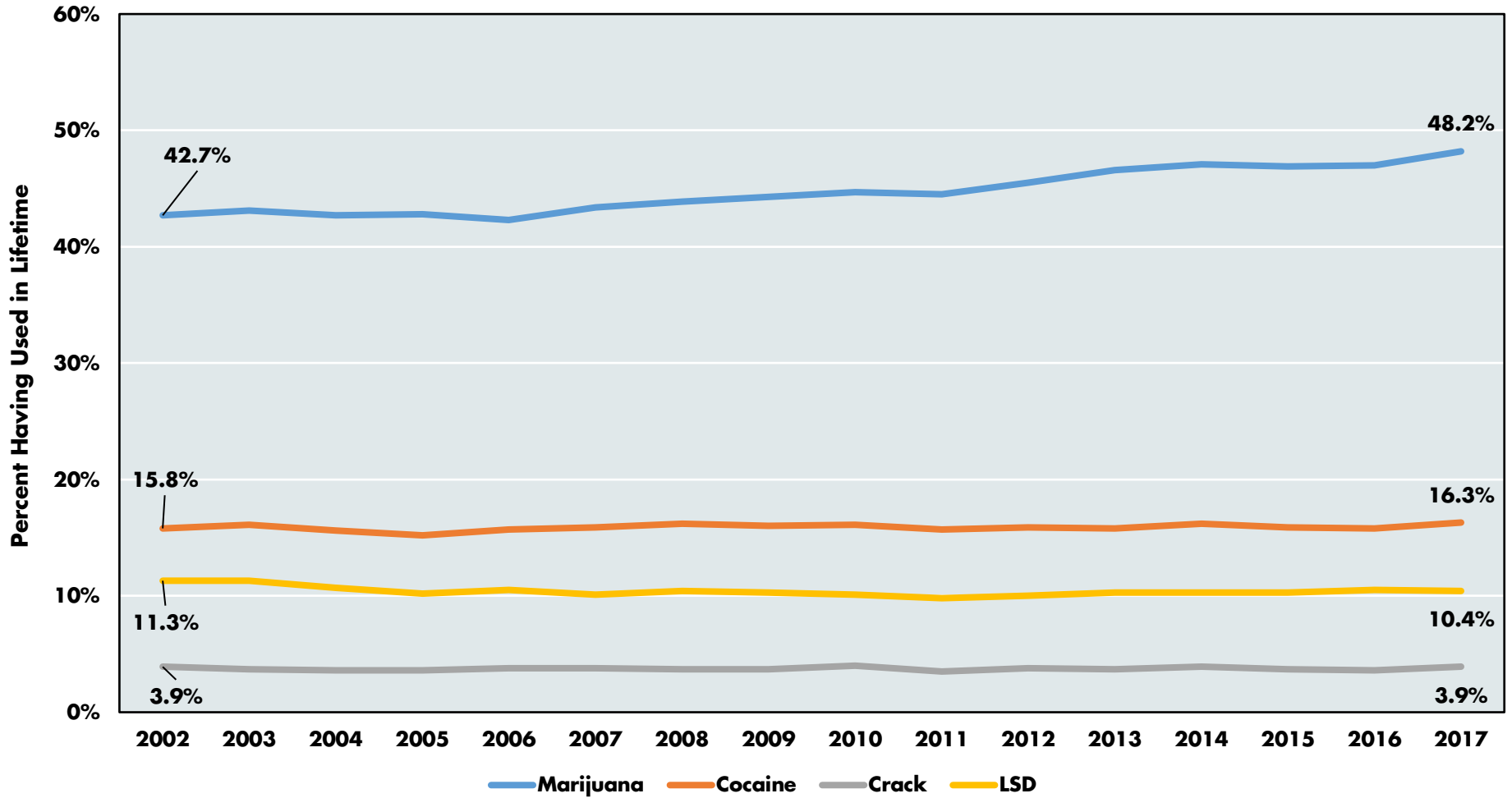
PEW RESEARCH POLL ON LEGALIZING MARIJUANA: UNITED STATES, 1969-2018



Source: Pew Research Center (2018). The Pew Research Center conducted surveys at various intervals over time, including multiple surveys in some years. Individual survey results are displayed in the graph instead of annual averages for those years with multiple surveys.

GRAPH 2

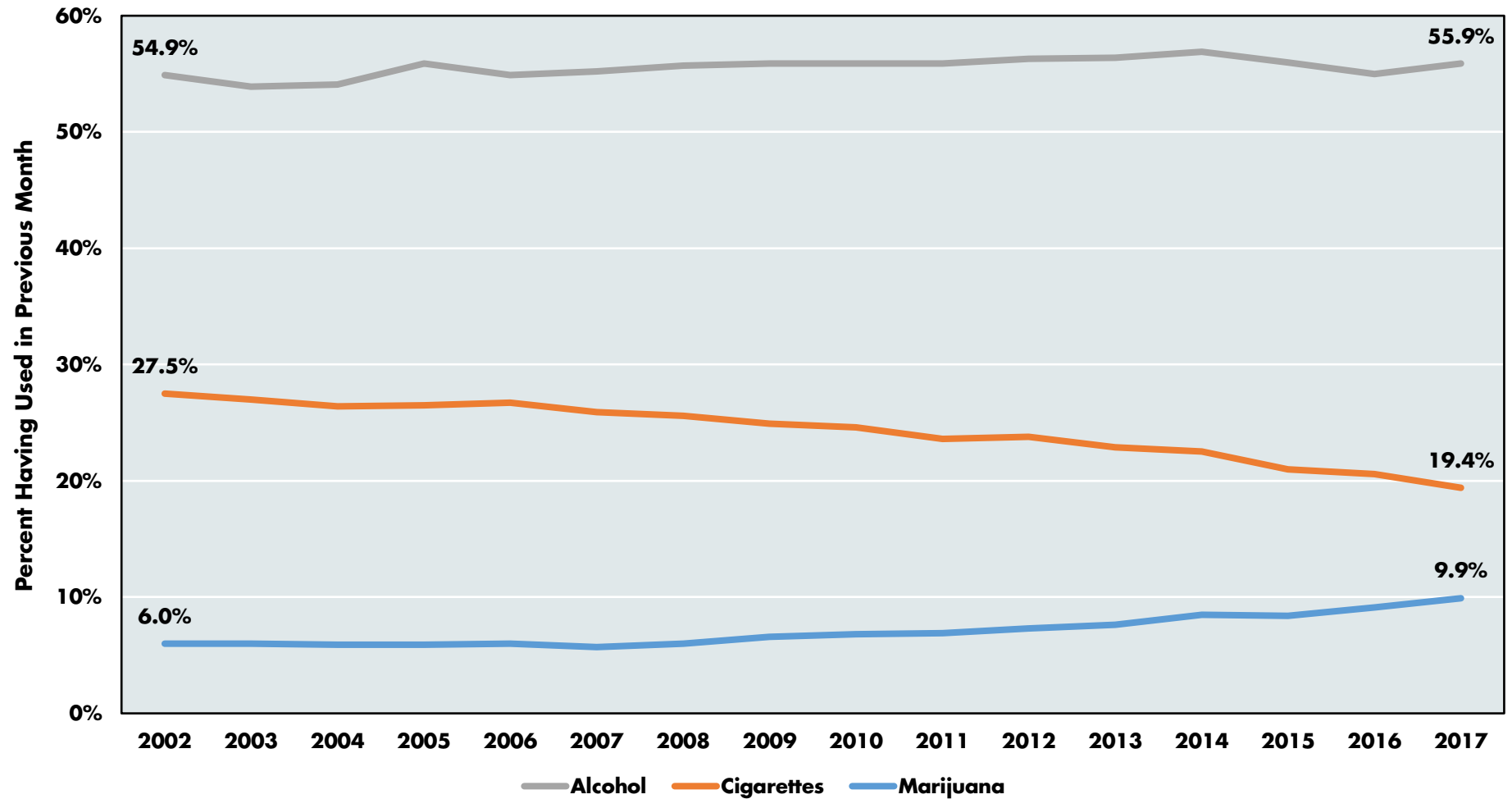
SELECTED TYPES OF ILLICIT DRUG USE IN LIFETIME AMONG PERSONS AGES 18 OR OLDER: UNITED STATES, 2002-2017



Source: Substance Abuse and Mental Health Services Administration, 2017 National Survey of Drug Use and Health, Table 7.7B

GRAPH 3

USE OF ALCOHOL, CIGARETTES AND MARIJUANA IN THE PREVIOUS MONTH: UNITED STATES, 2002-2017



Source: Substance Abuse and Mental Health Services Administration, 2017 National Survey of Drug Use and Health, Table 7.9B and 7.18B

Diving into the national data, over 53% of males and almost 44% of females reported having used marijuana at least once, with 18% of males and 12% of females reporting having used it in the past year. Examining respondents by race yields an interesting observation: Whites are more likely than African Americans or Hispanics to have used marijuana in their lifetimes. On the other hand, African Americans used marijuana in a slightly greater proportion in the past year and month than whites or Hispanics (Table 1).

TABLE 1 MARIJUANA USE BY RACE, AGES 18 AND OLDER: UNITED STATES, 2017			
	Lifetime	Past Year	Past Month
White	53.8%	15.8%	10.1%
Black or African American	45.5%	17.9%	12.2%
American Indian	63.8%	24.2%	15.6%
Native Hawaiian	45.9%	11.7%	9.7%
Asian	20.6%	7.2%	3.8%
Two or More Races	59.9%	24.1%	16.7%
Hispanic or Latino	36.0%	13.1%	8.5%

Source: Substance Abuse and Mental Health Services Administration, 2017 National Survey of Drug Use and Health, Tables 1.32B, 1.33B, 1.34B

Marijuana use increases with education and falls with employment (Table 2). While some may believe marijuana is used predominantly by “slackers,” the survey evidence suggests that usage is highest among those who have attended some college. College graduates and those who did not graduate from high school report the same usage over the previous year, although college graduates have the lowest usage rates in the previous month. On the other hand, marijuana usage rates are the highest among the unemployed. **It may be that continued marijuana use lowers employability, which, in turn, leads to increased use. However, 1 out of 10 full-time employed respondents reported using marijuana in the past month.**

TABLE 2 MARIJUANA USE BY EDUCATION AND EMPLOYMENT, AGES 18 AND OLDER: UNITED STATES, 2017			
	Lifetime	Past Year	Past Month
Less than high school	35.2%	13.3%	9.3%
High school graduate	45.2%	15.2%	10.7%
Some college/ associate degree	54.6%	18.3%	11.9%
College graduate	49.3%	13.3%	7.5%
Full-time employment	54.6%	16.6%	10.4%
Part-time employment	51.1%	19.7%	13.0%
Unemployed	53.3%	27.4%	17.6%
Other	36.7%	10.1%	6.8%

Source: Substance Abuse and Mental Health Services Administration, 2017 National Survey of Drug Use and Health, Tables 1.32B, 1.33B, 1.34B

Is Marijuana A Gateway Drug?

As an increasing number of Americans use marijuana on a more frequent basis, the debate whether marijuana is a gateway drug continues to boil. A 2015 study examined the responses of 6,624 survey participants who used marijuana prior to any other drug.²⁴ Almost 45% of individuals with lifetime marijuana use progressed to other illegal substances at some time during their lives. Other potential indicators of substance abuse include being male, urban residence, never being married, being separated or divorced, having a psychiatric disorder or a family history of substance abuse, and the early use of marijuana.

These findings echoed previous studies that suggested that a significant (but not all) proportion of marijuana users used other illegal drugs at some point in their lives.²⁵ There are several arguments why this progression from marijuana to other drugs may occur. First, marijuana users (in states where it is illegal) are exposed to other illegal drugs because the supply channels overlap. Second, marijuana provides a pleasurable experience that may encourage experimentation with other illegal substances. Marijuana use may also “condition” the brain to be more sensitive to the pleasurable effects of other drugs. Finally, if one is under the influence of marijuana, there is a potential loss of self-control and increased likelihood of experimentation with other drugs.²⁶

However, the National Institute on Drug Abuse also recently noted that the majority of people who use marijuana do not go on to use other substances.²⁷ While there is strong evidence that marijuana may act as a gateway drug for some users, the same may be also be said about two legal substances, alcohol

and tobacco. Cigarette use, for example, may increase the risk of cocaine addiction.²⁸ A 2012 study of high school students found that alcohol, not marijuana, was the gateway drug. Alcohol use led to tobacco, marijuana and other substance use.²⁹

An alternative to the gateway hypothesis is that individuals who are more likely to use drugs start with readily available substances (alcohol, marijuana, tobacco). A portion of these individuals then, whether through social interaction or “priming the brain,” then transition to other substances. If marijuana was not available, individuals would start elsewhere, and some would eventually transition to “harder” drugs. From this perspective, marijuana, by itself, is not a gateway drug. Individual characteristics and social conditions determine whether there is a transition path to other substances, not the use of marijuana.

Regardless of whether one accepts or rejects the argument that marijuana is a gateway drug, there is a degree of commonality among these arguments. At some point, some individuals will use marijuana along the path toward using other drugs. Whether the starting point is alcohol, tobacco or marijuana, we need to recognize that awareness, intervention and treatment may be more effective earlier rather than later. For the majority of marijuana users, however, the evidence suggests that marijuana (for now) is not a door to harder drugs.

24 R. Secades-Villa, O. Garcia-Rodríguez, C.J. Jin, S. Wang and C. Blanco (2015), “Probability and predictors of the cannabis gateway effect: a national study,” *The International Journal on Drug Policy*, 26(2), 135–142.

25 A. Agrawal, M.C. Neale, C.A. Prescott and K.S. Kendler, “A twin study of early cannabis use and subsequent use and abuse/dependence of other illicit drugs,” *Psychological Medicine*, 2004;34(7):1227–1237, and K. Van Gundy and C.J. Rebellon, “A Life-course Perspective on the ‘Gateway Hypothesis,’” *Journal of Health and Social Behavior*, 2010;51(3):244–259.

26 T.J. Dishion and L.D. Owen, “A longitudinal analysis of friendships and substance use: bidirectional influence from adolescence to adulthood,” *Developmental Psychology*, 2002;38(4):480–491, and M. Ellgren, S.M. Spano and Y.L. Hurd, “Adolescent cannabis exposure alters opiate intake and opioid limbic neuronal populations in adult rats,” *Neuropsychopharmacology*, 2007 Mar; 32(3):607–15.

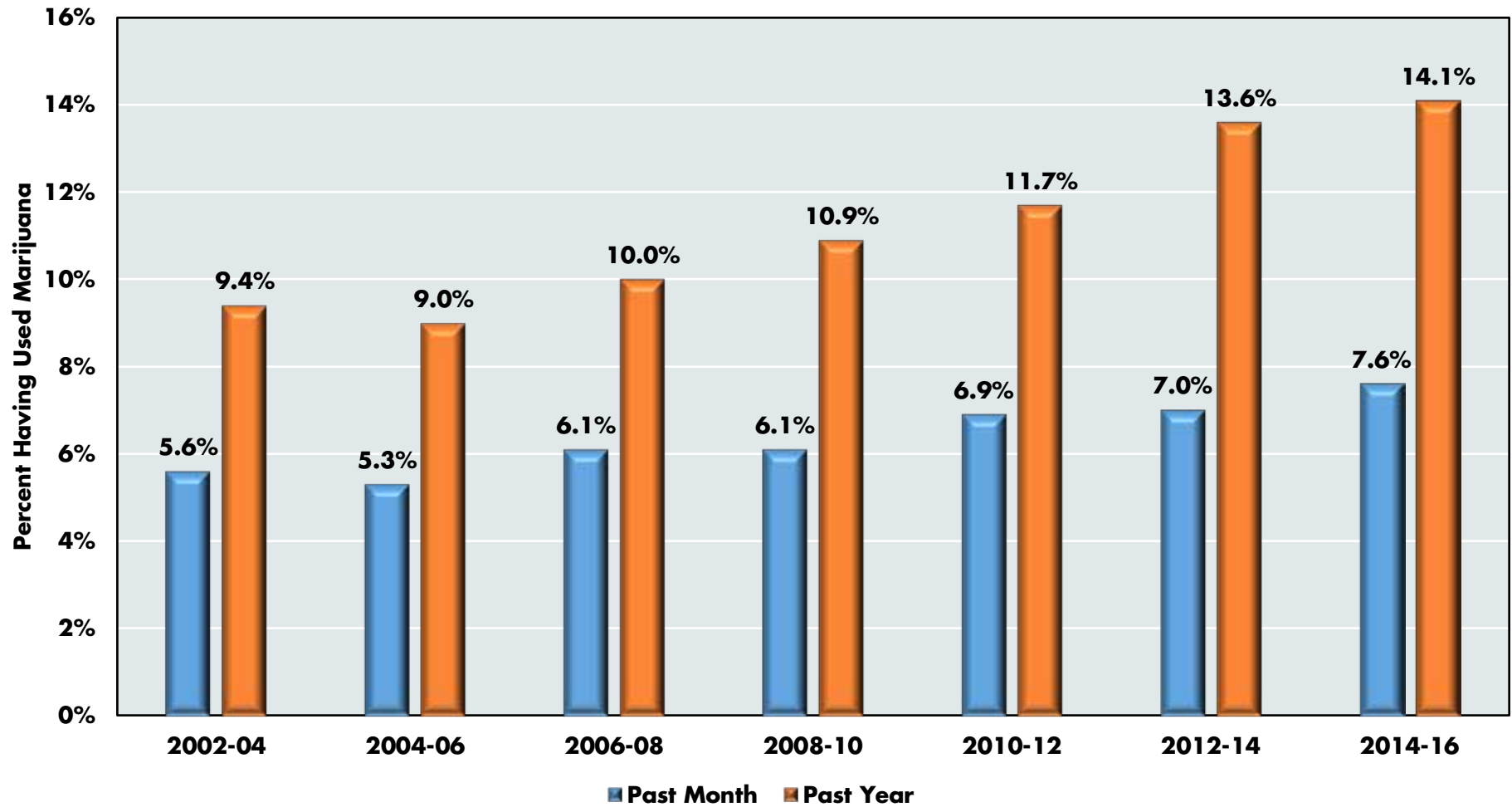
27 <https://www.drugabuse.gov/publications/research-reports/marijuana/marijuana-gateway-drug>.

28 A. Levine, Y. Huang, B. Drisaldi, et al., “Molecular mechanism for a gateway drug: epigenetic changes initiated by nicotine prime gene expression by cocaine,” *Science Translational Medicine*, 2011;3(107):107ra109. doi:10.1126/scitranslmed.3003062.

29 T. Kirby and A.E. Barry, (2012), “Alcohol as a Gateway Drug: A Study of US 12th Graders,” *Journal of School Health*, 82: 371–379. doi:10.1111/j.1746-1561.2012.00712.

GRAPH 4

USAGE OF MARIJUANA IN PREVIOUS YEAR AND PREVIOUS MONTH, AGES 18 OR OLDER: HAMPTON ROADS, 2002-2016



Source: National Survey of Drug Use and Health, Substate Surveys, various years. Hampton Roads is Virginia Region 5. Available at <https://pdas.samhsa.gov/saes/substate>.

We compare marijuana use in Hampton Roads with the other Virginia Health Service Areas and Virginia as a whole in Table 3. **Hampton Roads (Region 5) had the highest proportion of adults 18 and older who have used marijuana in the past year and was only slightly behind Region 4 (South Central Virginia) in terms of usage in the previous month.** Northern Virginia (Region 2) had the lowest reported usage of marijuana in the Commonwealth.

TABLE 3

**MARIJUANA USE BY VIRGINIA HEALTH SERVICES REGIONS:
2017, 18 YEARS AND OLDER**

	Past Year	Past Month
Virginia	11.5%	6.7%
Region 1	11.1%	6.8%
Region 2	8.9%	5.2%
Region 3	10.9%	7.0%
Region 4	13.3%	7.7%
Region 5	14.1%	7.6%

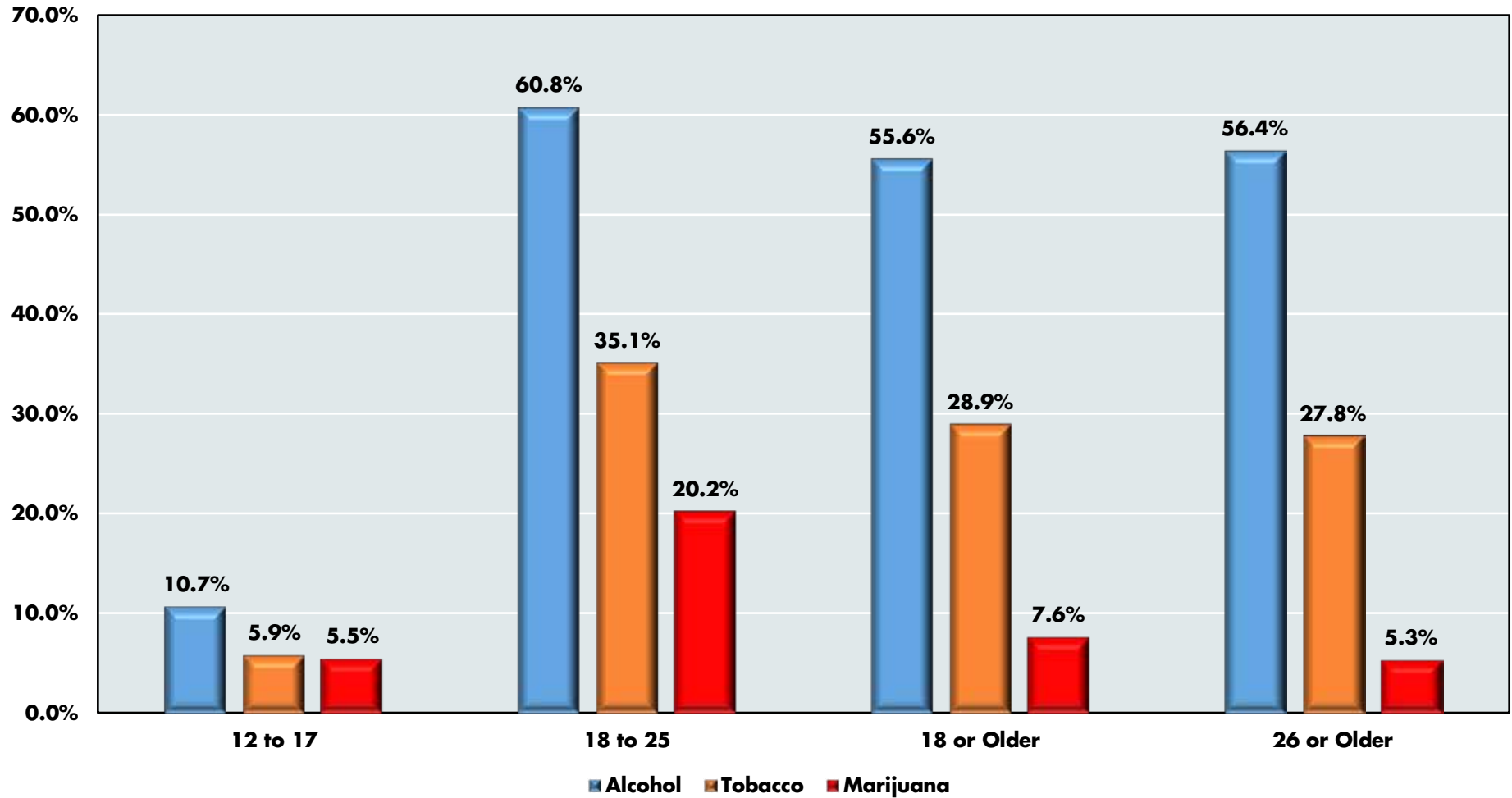
Source: National Survey of Drug Use and Health, 2014-2016 Substate Survey. Available at <https://pdas.samhsa.gov/saes/substate>.

Lastly, we examine usage of alcohol, marijuana and tobacco for Hampton Roads in Graph 5. Alcohol is clearly the substance of choice, with over 55% of adults replying that they had used alcohol in the previous month. Almost 29% of adults 18 and older replied that they had used some form of tobacco in the previous month, a higher response rate than that of the nation and Virginia as a whole. With respect to marijuana usage in Hampton Roads, one in five individuals ages 18 to 25 replied that they had used marijuana in the previous month. Only 5.5% of teenagers replied that they had used marijuana in the previous month, about half of those who reported using alcohol. **The NSDUH data for Hampton Roads also reveal the need for substance abuse care, in that about 2% of teenagers and 12% of those ages 18 to 25 reported having an alcohol dependence disorder.**



GRAPH 5

USAGE OF ALCOHOL, TOBACCO AND MARIJUANA IN THE PREVIOUS MONTH: HAMPTON ROADS, 2016



Source: National Survey of Drug Use and Health, 2014-2016 Substate Survey. Hampton Roads is Virginia Region 5. Available at <https://pdas.samhsa.gov/saes/substate>.

Marijuana Possession And Arrests

Because marijuana possession is illegal in Virginia, enforcement of the law requires that individuals in possession of marijuana, in almost every circumstance, be subject to a law enforcement action. The Virginia State Police (VSP) collects and makes publicly available crime data from law enforcement agencies within the state. In general, two types of data are captured: incident data and arrest data. Since the VSP notes that arrest data are the primary measure of police activity as it relates to crime, we use arrest data in this section.³¹

This decade, law enforcement officers made almost 383,000 arrests for drug-related crimes in Virginia. Fifty-nine percent of all drug arrests from 2010 to 2018 in the Commonwealth were for marijuana-related crimes, and marijuana possession or concealment was the charge in a preponderance of these arrests. Graph 6 illustrates that for each year this decade, almost 52% of all drug arrests were for marijuana possession or concealment.

A potential critique is that an individual could be arrested for multiple offenses; that is, assault and marijuana possession or theft and marijuana possession. The marijuana offense would be incidental, overshadowed by the more egregious crime. To examine whether this critique is valid, we filtered the data to exclude arrests where the number of offenses was two or more or where the arrest type was not for a drug or narcotics offense. Of the 198,386 arrests for marijuana possession or concealment from 2010 to 2018 in Virginia, 84.3% were for a single drug or narcotics offense. Marijuana possession was the primary driver of total drug arrests in the Commonwealth.

Regardless of one's opinion about the legal status of marijuana in the Commonwealth, the data clearly illustrate that a majority of drug arrests in Virginia this decade were for the possession or concealment of marijuana. Furthermore, the Virginia State Crime Commission (VSCC) estimated that 84% of marijuana possession arrests from 2007 to 2016 were first-time arrests.³² Even though it is rare for an offender to receive confinement for a first-time offense, the VSCC found that on one day in July 2017, 127 inmates were in jail solely for a marijuana charge. The estimated cost to taxpayers was over \$10,000 a day to incarcerate these inmates. In a recent opinion piece, Virginia Attorney General Mark Herring stated that marijuana enforcement costs amounted to at least \$81 million a year.³³ This figure does not include the "opportunity costs" of enforcement – that is, the effort and attention that could be redirected to other crimes.

We now turn our attention to arrests in the Virginia cities and counties within the Hampton Roads metropolitan area. In Graph 7, we present the arrests per 100,000 residents for possession or concealment by racial group in Virginia, Hampton Roads, and selected cities and counties in Hampton Roads. We divide the number of arrests by the population of each racial group to allow a direct comparison. We note that an individual could be arrested multiple times in a year for the same offense, so the arrests closely (but do not perfectly) correspond to the arrest rate for the population of each group.

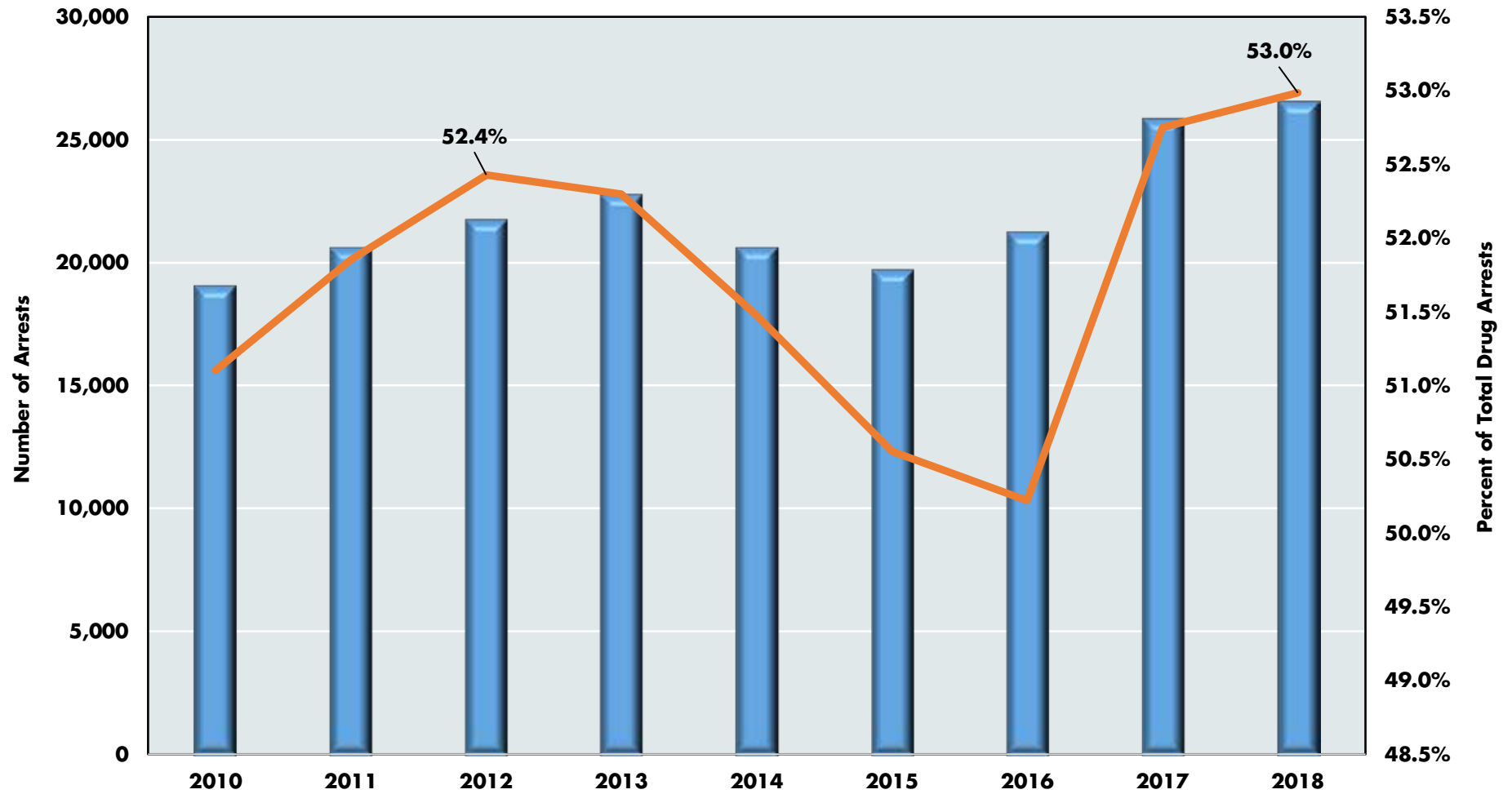
31 As noted by the Crime in Virginia Report (2018), "Although law enforcement arrest policies vary, particularly with respect to juveniles, agencies are instructed to count one arrest each time an individual is taken into custody for committing one or more offenses. A juvenile arrest is counted when an offense is committed and the circumstances are such that if the juvenile had been an adult, an arrest would have been made." The Crime in Virginia data are publicly available and located at: <https://va.beyond2020.com/>.

32 Virginia State Crime Commission (2017), <http://vscc.virginia.gov/reports.asp>. The data may overrepresent the percentage of first-time arrests and should be viewed as an upper bound on first-time arrests.

33 <https://www.dailypress.com/news/opinion/local-voices/dp-edt-oped-herring-decriminalize-marijuana-0616-story.html>.

GRAPH 6

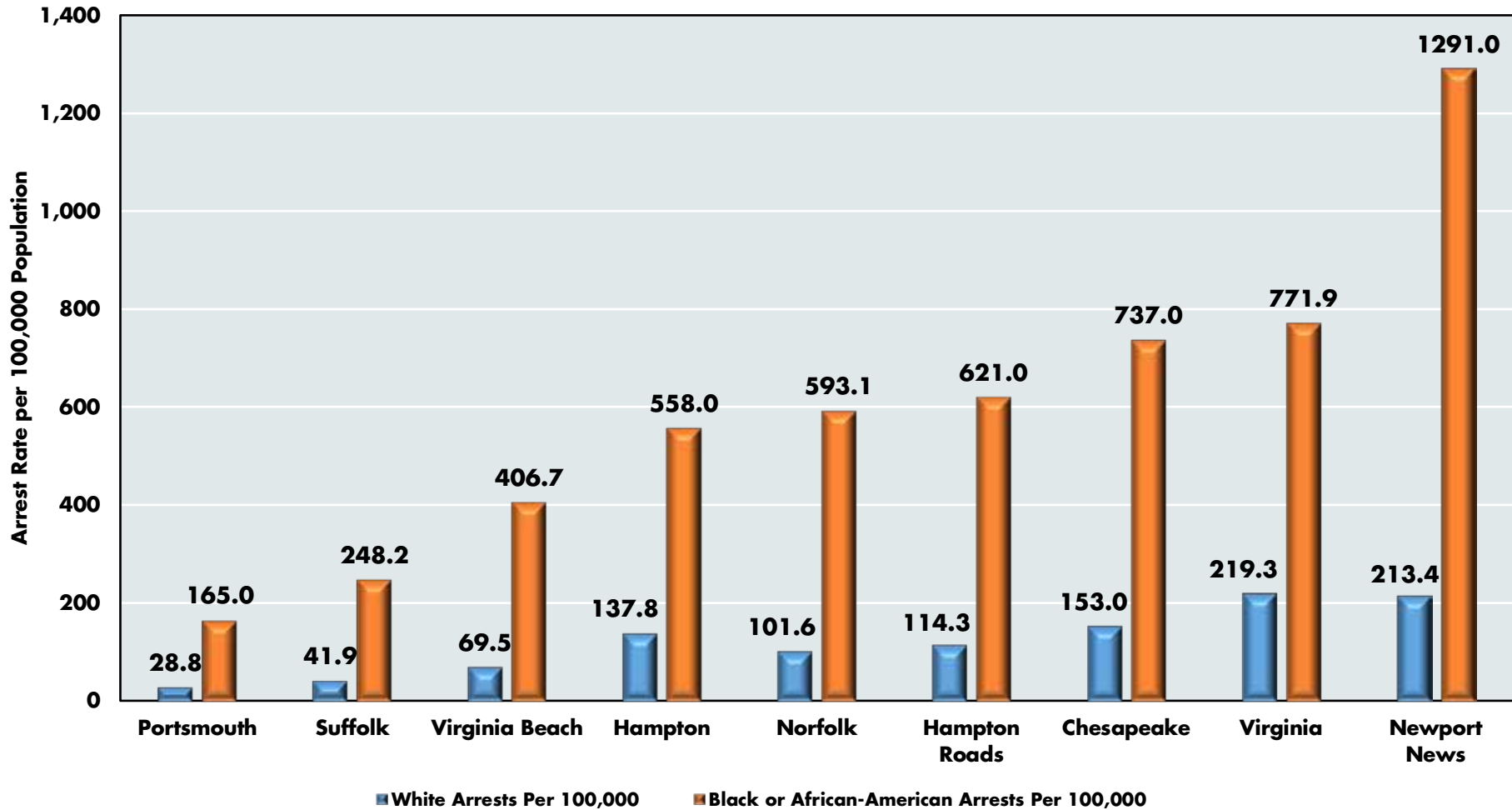
ARRESTS FOR MARIJUANA POSSESSION OR CONCEALMENT:
TOTALS AND AS A PERCENTAGE OF ALL DRUG ARRESTS IN VIRGINIA, 2010-2018



Source: Virginia State Police, Virginia Crime Data: Arrest Drug Activity, various years; Marijuana Arrests for Possessing/Concealing and Totals for Arrest Drug Type for Records with Drug Identifier. Data obtained July 29, 2019.

GRAPH 7

ARRESTS FOR MARIJUANA POSSESSION OR CONCEALMENT PER 100,000 POPULATION:
SELECTED CITIES IN HAMPTON ROADS, 2018



Sources: Virginia State Police (2019), Crime in Virginia Microdata; U.S. Census Bureau, American Community Survey 2013-2017 5-Year Estimates; and the Dragas Center for Economic Analysis and Policy, Old Dominion University. All possession and concealment arrests are included in the analysis. Small jurisdictions are not presented, as the small African American populations in these cities and counties may result in arrest rates that are potentially outliers. As an individual may be arrested multiple times for the same offense over a year, arrests are not necessarily equal to individuals.

We first remind the reader that national surveys do not show a stark difference in marijuana usage by race. For the most recent survey in 2017, whites were about 7 percentage points more likely than blacks or African Americans to have used marijuana in their lifetime. Blacks or African Americans, on the other hand, were about 2 percentage points more likely to have used marijuana in the previous year or month. In 2018, there were 219.3 arrests of individuals who identified as white per 100,000 white residents and 771.9 arrests of individuals who identified as black or African American per 100,000 black or African American residents of the Commonwealth. For the Virginia portion of Hampton Roads, arrests per 100,000 residents were 114.3 for whites and 621.0 for blacks or African Americans.

The disparity between white and African American arrests per 100,000 residents is apparent for every jurisdiction in Hampton Roads. Even though arrests per 100,000 residents in Portsmouth and Suffolk, for example, were well below the Virginia and regional averages in 2017, the disparity between white and African American arrests relative to the population of each group was still prevalent. Relative to the population of each race in Suffolk, for example, African American arrests per 100,000 were five times higher than white arrests per 100,000. In Virginia Beach, even though the arrests per 100,000 were below the regional average, African American arrests per 100,000 were 5.8 times higher than white arrests per 100,000. While the arrest rates may fluctuate from year to year, the disparities between the arrest rates of whites and African Americans are persistent over time.

There are several possible explanations for the disparities in arrests relative to the population of each racial group. First, the arrest data do not capture the residence of the offender. If a significant number of out-of-state offenders were being arrested in Virginia and, more specifically, in Hampton Roads, this possibly could bias the arrest data. However, the volume and persistence of the disparities across jurisdictions cast doubt on this argument. Second, explicit racial bias may occur, which would lead to a higher number of encounters for African Americans, and thus a higher number of arrests. However, the increasing prevalence of mobile phones, police body cameras and civil rights

monitoring may cast doubt on this hypothesis. Third, unconscious racial bias may result in more frequent “chance” encounters that, in turn, lead to arrests. The argument, for example, that “driving while black” is a form of profiling continues to reverberate throughout popular culture and there is mounting empirical evidence that profiling occurs.³⁴ Fourth, policing decisions may lead to the concentration of scarce resources in areas overrepresented with minority populations. More police presence to deter crime creates more contacts with residents, which, in turn, leads to more arrests. Fifth, there is a possibility (however remote) that marijuana usage rates in Hampton Roads differ dramatically from the nation and thus the disparities in arrests reflect these differences in use. Finally, it is entirely possible that there is no single reason, and that the disparities are a result of many socioeconomic factors. While these debates are outside the scope of this chapter, we recognize these discussions are worth having to improve our region. We must also recognize that these disparities are, in part, driving the discussion of what to do about marijuana in Virginia.

Decriminalization Versus Legalization

With a growing number of legislators and government officials calling for action to change the consequences of marijuana possession or the legal status of marijuana possession for personal use in Virginia, we briefly review the differences between the two broad policy actions: decriminalization and legalization.³⁵ There are significant legal and policy differences between legalization and decriminalization, including the amount of marijuana in question, which may vary from an ounce (in most legalized states) or less (in most decriminalized states). Furthermore, either of these actions would occur in an environment where the federal government still classifies marijuana as a Schedule 1 substance.

³⁴ <https://www.economist.com/graphic-detail/2019/03/15/black-drivers-in-america-face-discrimination-by-the-police>.

³⁵ We do not include a discussion of removing the jail sentence for possession of marijuana. The Virginia State Crime Commission noted in 2017 that jail time is rarely imposed for many possession charges. Furthermore, removing the prospect of jail time would remove the right of indigent defendants to counsel.

Decriminalization: Dipping A Toe Into The Legalization Pool

Decriminalization reduces or eliminates the criminal penalties for possessing small amounts of marijuana for personal use. Marijuana possession is typically punished with a civil or criminal fine for the first offense. Subsequent offenses may result in the same fine, an increased fine or an increased fine and confinement. Subsequent offenses may remain civil (noncriminal) or may result in a criminal offense. As illustrated in Table 4, the penalties for a first offense of the possession of recreational amounts of marijuana vary from \$50 in New Mexico to \$300 in Minnesota and Nebraska. Among those states that have decriminalized possession of recreational amounts of marijuana, North Carolina's approach is considered among the most punitive, as the offender may be issued a summons or arrested. A recent investigation in Charlotte found that African Americans are more prone than whites to be arrested than cited for possession.³⁶

What is common among the states that have decriminalized marijuana is that it remains illegal to consume it in public, to cultivate it for personal use, or to distribute or sell recreational amounts of marijuana. If one is in possession of more marijuana than allowed in the statute, penalties can range from a criminal misdemeanor to a felony. In Delaware, for example, possession of more than one ounce is punishable by up to three months in jail and a \$575 fine. In Connecticut, possession of more than half an ounce is punishable by up to one year in jail and a \$2,000 fine.

One motivation for decriminalization is that it (generally) removes the criminal penalty for first-offense marijuana possession for personal use. Lowering the penalty for possession should not only benefit the individual, but should also lower the number of arrests and thus the expenditure of resources for enforcing marijuana laws. Examining data collected by the Federal Bureau of Investigation, we compare arrest rates for marijuana possession per 100,000

residents for Virginia and selected decriminalized states for 2010 and 2017 (Graph 8).³⁷

Among the states in Graph 8, Connecticut and Maryland recently changed the penalty for the first offense for marijuana possession for personal use. Since 2011, possession of a half-ounce or less in Connecticut is a civil violation. Arrests for possession fell from 8,322 in 2010 to 1,946 in 2017, a decline of 76%. Maryland decriminalized possession of 10 grams or less of marijuana in 2014. Arrests for possession declined from 23,390 in 2010 to 15,170 in 2017, a drop of 35%. It is worth noting that Maryland's arrest rate per 100,000 residents for marijuana possession in 2017 remains among the highest among decriminalized states. Decriminalization has reduced arrests but not as dramatically as proponents would argue.

Even if decriminalization reduced arrests by the same proportion as in Connecticut, two problems would remain: the disproportionate burden of the civil penalties relative to income and the lack of public defense for indigent offenders. Even if the civil fine is relatively low, there are additional court costs to consider (as anyone who has had to appear in court for a traffic ticket can attest). Failure to pay could lead to other fines and even jail time. **As a percentage of income, the civil penalties would be the greatest burden on those with the least means to pay them.**

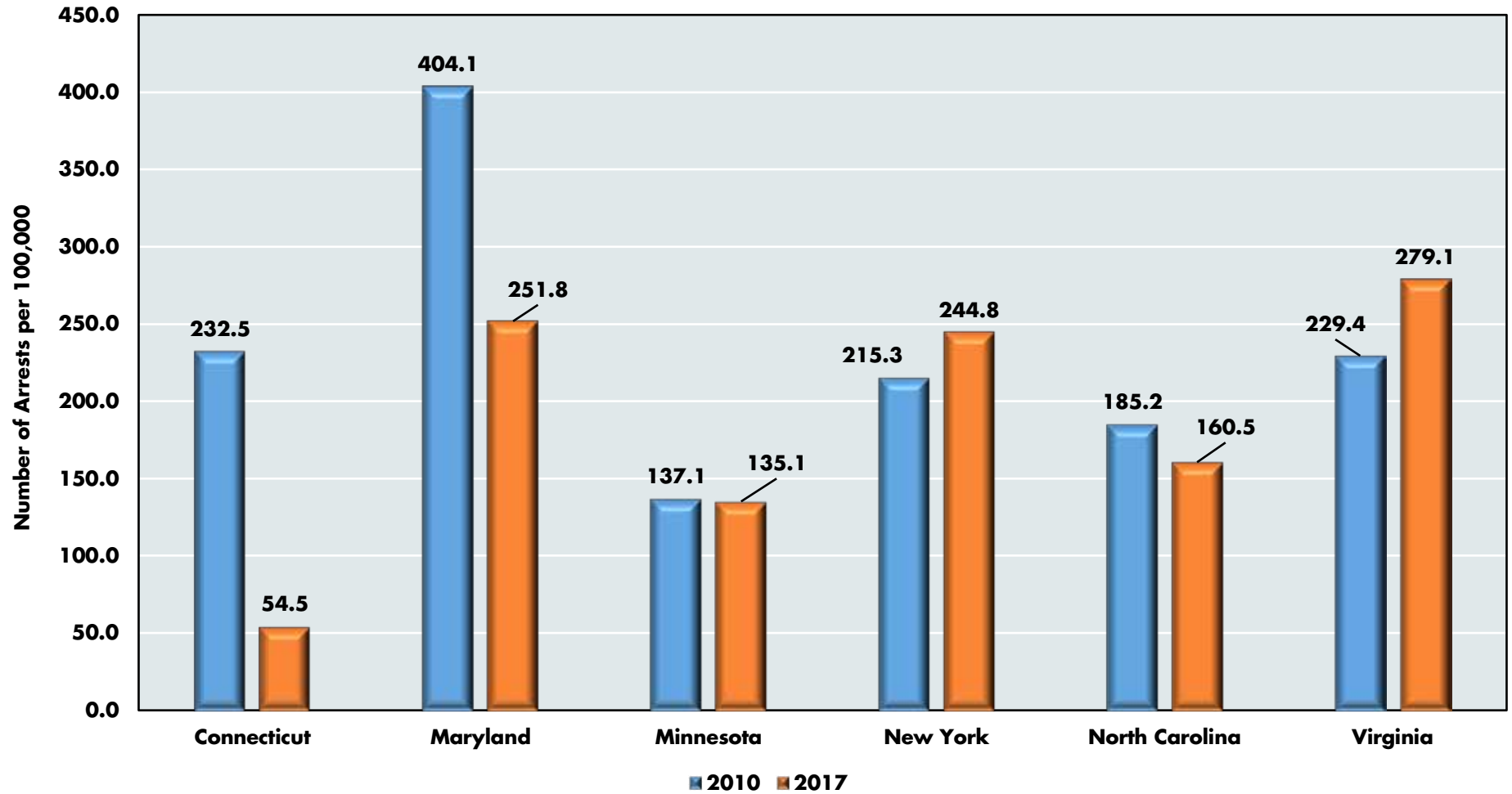
Another concern is that the shift from criminal to civil penalties removes the obligation for the state to provide counsel to defendants who could otherwise not afford a legal defense. We interviewed Gregory Underwood, commonwealth's attorney for the city of Norfolk, who directed his prosecutors to dismiss all marijuana-possession cases. He noted that "decriminalizing marijuana possession would strip the poor of the right to be appointed lawyers who could test the constitutional basis for their citations and the sufficiency of the evidence against them. In a decriminalized system, the wealthy could afford to hire lawyers to defend them. The poor would be on their own, and they would face an even higher comparative rate of conviction than they do now."

³⁶ <https://www.charlotteobserver.com/news/local/crime/article60170981.html>.

³⁷ As a person may be arrested multiple times a year, the arrest data do not show the number of individuals arrested but rather the number of times individuals are arrested.

GRAPH 8

NUMBER OF MARIJUANA POSSESSION ARRESTS PER 100,000 RESIDENTS:
VIRGINIA AND SELECTED DECRIMINALIZED STATES, 2010 AND 2017



Sources: Federal Bureau of Investigation, National Incident-Based Reporting System, Marijuana Possession Arrests, and the U.S. Census Bureau, 2018 Population Estimates

TABLE 4

SUMMARY OF STATE DECRIMINALIZATION LAWS AS OF JUNE 2019

State	Amount of Marijuana	Civil or Criminal First Offense	First Offense/Conviction	Second Offense/Conviction
Connecticut	0.5 ounce or less	Civil	\$150 fine	\$200 to \$500 fine
Delaware	One ounce or less	Civil	\$100 civil fine if 18 or older	Same as first offense for 21 and older, \$100 criminal fine for ages 18-20
Hawaii	Up to 3 grams (0.105 oz)	Civil	Up to \$130 fine	Same as first offense
Maine	2.5 ounces or less Six plants	Civil	No penalty for 21 and older Under 21: \$350 to \$1,000 fine	Same as first offense
Maryland	10 grams (0.35 oz.) or less	Civil	\$100 fine	Second offense: \$250 fine Subsequent: \$500 fine
Minnesota	42.5 grams (1.5 oz.) or less	Criminal misdemeanor	\$300 fine	Same as first offense
Mississippi	30 grams (1.06 oz.) or less	Civil	\$100 to \$250 fine	Within two years – \$250 fine and 5 to 60 days in jail
Missouri	10 grams (0.35 oz.) or less	Criminal misdemeanor	\$250 to \$1,000 fine	Up to one year in jail and a fine up to \$2,000
Nebraska	One ounce or less	Civil	\$300 fine	Second offense: \$400 fine, up to 5 days in jail Third offense: \$500 fine, up to 7 days in jail
New Hampshire	0.75 ounce or less	Civil	Adults: \$100 fine	Second offense: \$100 fine Third offense: \$300 fine Fourth offense within 3 years: up to \$1,200 criminal fine
New Mexico	0.5 ounce or less	Civil	\$50 fine	Same as first
New York	25 grams (0.88 oz.) or less	Civil	Fine up to \$100	Second offense in 3 years: up to \$200 fine Third offense in 3 years: \$250 fine and/or 15 days or less in jail
North Carolina	0.5 ounce or less	Criminal misdemeanor	21 and older: \$200 fine Possibility of arrest	Third infraction within a year may become Class B misdemeanor with 30 days in jail
Ohio	100 grams (3.5 oz.) or less	Civil	\$150 fine	Same as first offense
Rhode Island	One ounce or less	Civil	18 or older: \$150 fine	Third conviction within 18 months – misdemeanor punishable by \$200 to \$500 and/or six months in jail

Sources: Marijuana Policy Project (2019) and the Virginia State Crime Commission (2017), various state laws (2019). Information current as of June 2019. <https://www.mpp.org/issues/decriminalization/state-laws-with-alternatives-to-incarceration-for-marijuana-possession/>.

Legalization: Jumping In With Both Feet?

Table 5 lists the 11 states and the District of Columbia that have legalized the possession of marijuana for personal use. Legalization completely removes the civil and criminal penalties for marijuana possession for personal use in one's private residence. Legalization, however, typically does not entirely remove the penalties for public consumption. Possession of amounts that are greater than the legal limit may result in a fine, arrest, or both. The sale and distribution of marijuana is typically tightly regulated by the state and is only allowed in state-licensed dispensaries. Person-to-person private transactions are, in general, subject to a criminal charge, ranging from a misdemeanor to a felony, depending on the amount being sold. Contrary to popular belief, individuals can still be arrested for marijuana possession in legalized states, primarily for possession of more than the legal amount or consuming in a prohibited public space.

Proponents of legalization argue that it is more equitable than decriminalization, frees up more law enforcement and judicial resources and brings a shadow economy into the light. Legalization at the state level allows the state to regulate the production and sale of marijuana within its boundaries. Legalization also allows states and local governments to levy taxes on the production and sale of marijuana and marijuana-infused products. The Colorado Department of Revenue, for example, has recorded more than \$6 billion in marijuana sales since January 2014 and has collected over \$1 billion in revenue from taxes, licenses and fees since February 2014.³⁸

Unlike decriminalization, where the supply side of the market remains illegal, legalization removes the risk for arrest from legal growers, processors and retailers. Transparency in supply and competition among suppliers increases, increasing the potency and decreasing the price of marijuana. According to the Colorado Department of Revenue, the average retail price of a pound of marijuana fell from \$1,876 in January 2014 to \$850 in July 2019, a decline

³⁸ Colorado Marijuana Sales Data and Marijuana Tax Data (2019), available at <https://www.colorado.gov/pacific/revenue/colorado-marijuana-tax-data>.

of nearly 55%.³⁹ According to Beau Kilmer, the director of RAND's Drug Policy Research Center, the fall in prices in Washington and Colorado means that the cost of getting high by using marijuana is less than a couple of dollars, significantly less than the cost of the amount of alcohol to achieve the same effect.⁴⁰

To provide an equal comparison with the decriminalized states, we examine the change in marijuana possession arrests from 2010 to 2017 for states that have legalized the possession of marijuana for personal use (Graph 9). To say that the declines in arrests have been dramatic might be an understatement. California, which reported 55,911 possession arrests in 2010, had only 3,741 arrests in 2017. Shaun Rundle, deputy director for the California Peace Officers' Association, argued that legalization might factor into police behavior. "If someone is going to be out of jail [in] six months and back on the streets – and six months is even unlikely these days – then the agencies need to divert their time and resources to the most dangerous and violent crime prevention."⁴¹

"Marijuana legalization and regulation will ensure that all Virginians, no matter where in the Commonwealth they live, will no longer be subject to fines and jail for possessing marijuana. They will help lift the burden that marijuana enforcement imposes on the poor and on minority communities. They will bring business benefits to Virginia that many of our fellow states already enjoy. And they will ensure that a strong regulatory framework will exist so that legalization is consistent with public safety. Justice demands it."

– Greg Underwood, Commonwealth's Attorney
for the city of Norfolk

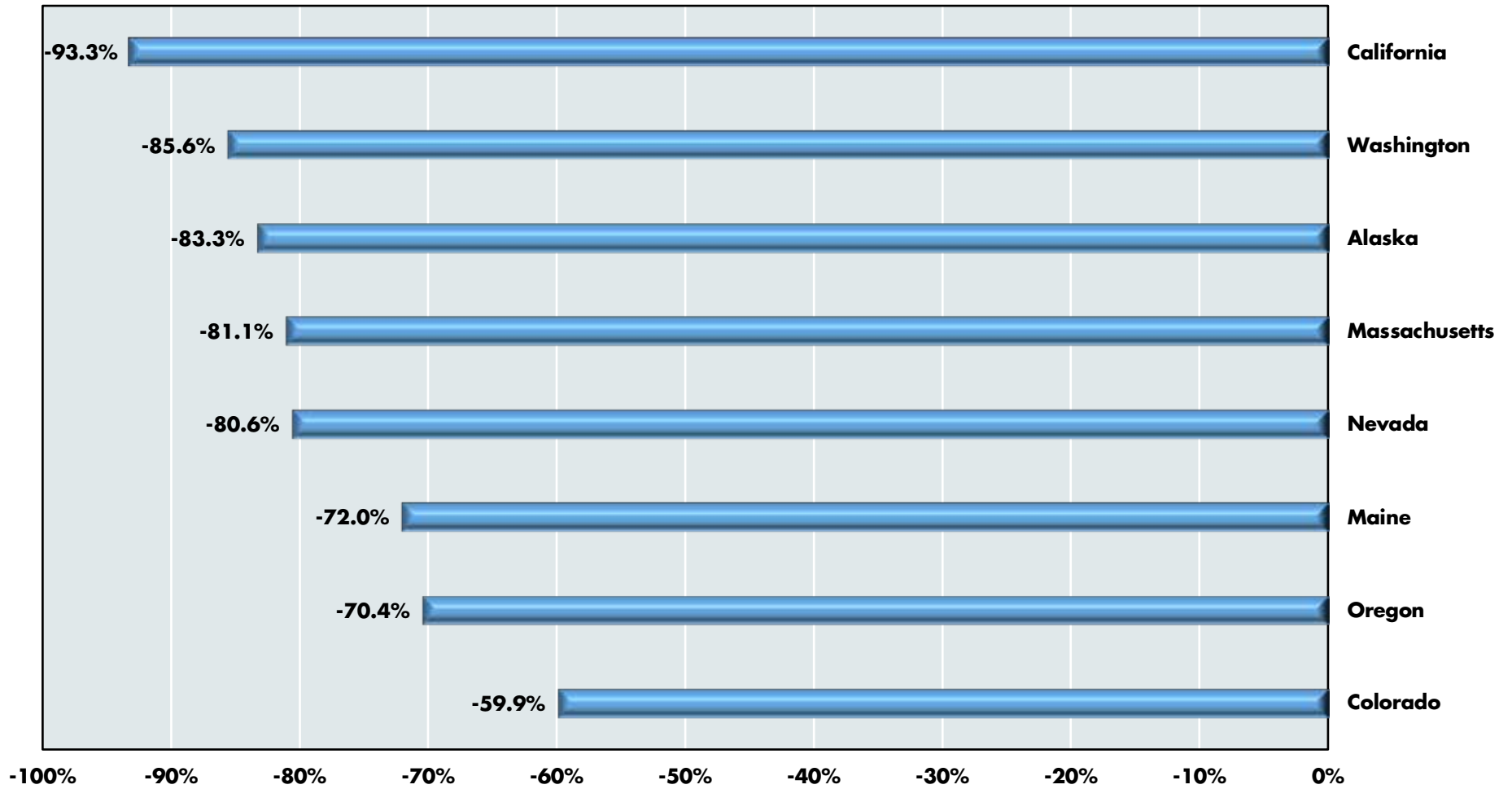
³⁹ https://www.colorado.gov/pacific/sites/default/files/AMR_PriorRates_Oct2018Edit.pdf.

⁴⁰ <https://www.rand.org/blog/2018/12/navigating-cannabis-legalization-20.html>.

⁴¹ <https://www.mercurynews.com/2018/07/11/prop-64-didnt-legalize-every-cannabis-crime-but-arrests-are-falling-fast/>.

GRAPH 9

PERCENT DECLINE IN MARIJUANA ARRESTS: SELECTED LEGALIZATION STATES, 2010-2017



Source: Federal Bureau of Investigation, National Incident-Based Reporting System, marijuana possession arrests. Michigan and Vermont legalized marijuana in 2018 and data are not yet available regarding the change in arrests.

TABLE 5

SUMMARY OF STATE LEGALIZATION LAWS AS OF JUNE 2019

State	Year of Legalization	Age	Legal Amount of Marijuana	Public Consumption
Alaska	2014	21 years or older	1 to 4 ounces, six plants in private	Civil violation, \$100 fine
California	2016	21 years or older	Up to 1 ounce, six plants	Criminal misdemeanor to loiter in public with intent to commit marijuana offenses
Colorado	2012	21 years or older	Up to 1 ounce, six plants	Civil violation to display or use more than 2 ounces, \$100 fine
District of Columbia	2014	21 years or older	Up to 2 ounces, six plants	Criminal misdemeanor, citation and release
Illinois	2019	21 years or older	10 grams (0.35 oz) or less	Civil violation, \$200 fine
Maine	2016	21 years or older	Up to 2.5 ounces, three plants	Civil infraction, \$100 fine
Massachusetts	2016	21 years or older	Up to 10 ounces in private, up to 1 ounce in public, six plants	Civil infraction, \$100 fine
Michigan	2018	21 years or older	Up to 10 ounces in private, up to 2.5 ounces in public, less than 12 plants	Civil infraction, \$100 fine
Nevada	2016	21 years or older	Up to 1 ounce, six plants	Criminal misdemeanor, \$600 fine
Oregon	2014	21 years or older	Up to 1 ounce in public, up to 8 ounces in private, four plants	No fine or penalty for up to 1 ounce in public
Vermont	2018	21 years or older	Up to 1 ounce, six plants	Civil violation, \$100 fine
Washington	2012	21 years or older	1 ounce or less for private consumption	Civil penalty, 1 ounce or less, \$100 fine

Sources: National Organization for the Reform of Marijuana Laws (2019), various state laws (2019). Information current as of June 2019, <https://norml.org/legal/legalization>. Vermont Marijuana Laws (2019), <https://statelaws.findlaw.com/vermont-law/vermont-marijuana-laws.html>. National Conference of State Legislatures (2019), Marijuana Overview (2019). Information current as of May 2019, <http://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx>. Illinois becomes effective 2020.

Would Legalization Be A Revenue Windfall For Virginia Cities And Counties?

If Virginia decided to legalize marijuana for personal use, cities and counties in Hampton Roads would likely be able to tax the production and sale of marijuana. Marijuana legalization would also likely reduce the number of arrests for possession; however, we would reasonably expect that law enforcement resources would be reallocated to deal with other crimes. Let's take a quick look at what the revenue impact might be from marijuana legalization.

We assume that adults in Hampton Roads would respond to legalization by consuming more marijuana. The question is how much? We use the response of adults in Colorado and Oregon to form our low and high estimates (Table 6). Legalization likely would result in approximately 10% to 12% of the adult population in Hampton Roads using marijuana on a monthly basis.

What might legalization in the Commonwealth look like? Virginia House Bill 2371, introduced earlier this year, proposed to legalize recreational marijuana. The proposed excise tax in Virginia would have been 9.7% at the state level (combined with the 5.3% normal sales tax levy, it would total 15%) with an additional 5% local excise tax option. Although the bill failed in committee, we use it as a framework to estimate the potential tax revenues for local governments.⁴²

While we do not have data on how much Virginia residents currently spend on marijuana, we do have survey data on how much marijuana consumers in other states spend. Headset Inc., a Seattle-based cannabis market intelligence firm, recently estimated that the average marijuana consumer spends about \$645 a year, or approximately \$54 a month.⁴³ After legalization and assuming that residents of Hampton Roads respond like those in Colorado or Oregon, Table 7 estimates that marijuana sales could approach \$80 million to \$100 million a year, resulting in approximately \$4 million to \$5 million in

⁴² <https://lis.virginia.gov/cgi-bin/legp604.exe?191+sum+HB2371>.

⁴³ <https://www.headset.io/blog/what-does-the-average-cannabis-consumer-look-like>.

excise tax revenues to local governments. Of course, our estimate does not include jobs that would be created to produce, distribute and sell marijuana for personal use. Our estimates also do not factor in the costs to society, to include the potential for increases in car accidents, hospitalizations or absenteeism. Our estimates suggest that marijuana legalization would generate a modicum of additional tax revenue but should not be viewed as means to improve financial stability of governments in the region.

TABLE 6
ESTIMATED CHANGE IN MARIJUANA USE IN THE PAST MONTH FOR ADULTS 18 AND OLDER: COLORADO, OREGON AND HAMPTON ROADS

	Colorado Low Response	Oregon High Response	Hampton Roads Low Response	Hampton Roads High Response
Before legalization	12.9%	12.6%	7.6%	7.6%
After legalization	16.6%	20.0%	9.8%	12.1%
Percent Change	28.7%	58.7%	28.7%	58.7%

Source: National Survey of Drug Use and Health. Colorado liberalization went into effect in January 2014 and Oregon in July 2015. Comparison is between last full year with data available prior to change versus next full year post liberalization. Colorado is 2012-2013 and 2015-2016. Oregon is 2013-2014 and 2016-2017. Hampton Roads usage for preliberalization is from 2014-2016.

TABLE 7

EXCISE TAX REVENUE ESTIMATES FOR THE LEGALIZATION OF MARIJUANA, HAMPTON ROADS

	Low Estimate	High Estimate
Population 18 and Older	1.3 million	1.3 million
Usage in the Previous Month	9.8%	12.1%
Monthly Marijuana Consumers	127,400	157,300
Average Monthly Spending	\$54	\$54
Estimated Monthly Spending	\$6,879,600	\$8,494,200
Estimated Annual Spending	\$80,611,200	\$101,930,400
Estimated Excise Tax Revenue	\$4,030,560	\$5,096,520



Final Thoughts

The decision of whether to maintain the status quo, decriminalize or legalize the personal possession of marijuana will reverberate throughout the Hampton Roads economy. Maintaining the status quo is a policy choice under increasing pressure at the state and local level. The attempts of the commonwealth’s attorneys of Norfolk and Portsmouth to dismiss some (Portsmouth) or all (Norfolk) misdemeanor possession cases are a sign that the region is moving from conversation toward action on marijuana.

If, as evidenced by the increasing number of states decriminalizing and legalizing the personal use of marijuana, change does come to Virginia and Hampton Roads, what would it mean? **First, marijuana is not a cure for the ills of local governments.** While Colorado has generated \$1 billion in marijuana taxes, fees and licenses, this was over almost five years. It’s an additional revenue source, not a replacement for property taxes or other taxes at the local level.

Second, many of the claims about marijuana and CBD-infused products are unproven and research will take time to investigate them. CBD-infused products do appear to have some medicinal benefits for pain relief. Whether or not these products have benefits for anxiety, depression, gout, weight loss, weight gain and a host of other physical ailments remains to be seen. The rush of CBD-based products to markets appears to follow similar fads of the past. As for marijuana, the health benefits are also mixed, with some studies showing benefits, others not. Claims that marijuana use reduces opioid overdoses, for example, are promising and intriguing, but require further research to determine whether the relationship exists.

Third, marijuana decriminalization or legalization does not eliminate the black market for marijuana. When marijuana is decriminalized, there are still no legal outlets for consumers to purchase it, so the black market may grow as penalties for consumers decrease. When marijuana is legalized, the legal dispensaries are taxed and regulated, and the quality of marijuana increases relative to what is available on the black

market.⁴⁴ Consumers are willing to pay more, but not too much more, and some consumers may find legal prices are too high when compared to the black market. Part of the problem is the federal classification of marijuana, which presents significant barriers to the operation of marijuana businesses. Another is that the black market is not taxed like the legal market, so it can offer cheaper (but riskier) prices. If the federal government were to change its position on marijuana, some of these barriers might go away. Increased competition within and among states would lower prices and reduce the size of the black market.

Fourth, Hampton Roads' interdependence with the federal government and the military means that many residents have a job that requires a drug test, security clearance, or both.

Even if marijuana were completely legalized for personal use in the U.S., the military and individuals working for or with the federal government in sensitive positions would likely continue to face restrictions on the use of marijuana. Transportation industries, to include airlines, rail and trucking, would undoubtedly have restrictions on marijuana similar to the current restrictions on alcohol consumption. As over 60% of traffic through the Port of Virginia moves by truck and another 30% by rail, marijuana decriminalization or legalization could potentially have far-ranging impacts on the availability of truck drivers and public safety.

Fifth, while marijuana legalization does not appear to increase the rate of use by minors, there is strong evidence that marijuana potency increases with legalization. Emergency department and urgent care visits by minors for adverse reactions to marijuana increased almost three-fold in Colorado after legalization.⁴⁵ Even though minors may not legally consume marijuana, a resale market exists, creating the increased likelihood of an adverse reaction or prolonged substance abuse. Care must be taken to recognize that sales competition would likely lead to increased THC content. Illinois, which recently signed marijuana legalization into law, has a unique tax structure where the tax rate on marijuana is

dependent upon THC content, perhaps attenuating future demand for high-THC marijuana.

Sixth, decriminalization or legalization will create new burdens on law enforcement.

A 2018 study by the Insurance Institute for Highway Safety and the Highway Loss Data Institute found that car crashes increased by as much as 6% in Colorado, Nevada, Oregon and Washington after these states legalized marijuana for recreational use.⁴⁶ Adults 18 to 20 still can be cited in legalized states and the prevention of sales to minors is an obvious concern. New law enforcement training, procedures and equipment would be needed to adapt to a new normal. On the other hand, Virginia will likely benefit from not being an early adopter of either decriminalization or legalization, thus putting itself in a position to learn from best practices developed by other states.

Lastly, marijuana legalization is likely to be more efficient than decriminalization in addressing inequities in enforcement.

The racial and socioeconomic disparities in arrests for marijuana possession in Virginia and Hampton Roads are troubling and worthy of discussion. Evidence from decriminalized states, however, suggests that these disparities persist even after decriminalization. Furthermore, because civil fines do not graduate with income, the burden of civil penalties is higher on those with lower incomes. Decriminalization removes the provision of a legal defense from those least able to afford one, which may increase disparities in judicial outcomes. Decriminalization should not equate “punishable by fine” with “legal for people with means.”

Marijuana is coming (and it's already here). The exact date is unknown, but the momentum is clear. We should not shy away from discussing what may occur and keep in mind that challenge and opportunity are two sides of the same coin. In the words of Winston Churchill, “To improve is to change; to be perfect is to change often.”

⁴⁴ Michael Armlung, Derek Reed, Vanessa Morris, Elizabeth Aston, Jane Metrik and James MacKilop (2018), “Price elasticity of illegal versus legal cannabis: a behavioral economic substitutability analysis, *Addiction* 114 (1), 112-118.

⁴⁵ <https://www.ncbi.nlm.nih.gov/pubmed/29609916>.

⁴⁶ <https://www.iihs.org/news/detail/crashes-rise-in-first-states-to-begin-legalized-retail-sales-of-recreational-marijuana>.



