

# ISSUE BRIEF **03.10.17**

## Marijuana Reform: Fears and Facts (Update)

**Katharine A. Neill, Ph.D.**, Alfred C. Glassell, III, Postdoctoral Fellow in Drug Policy

**William Martin, Ph.D.**, Director, Baker Institute Drug Policy Program

In 1972, a National Commission on Marijuana and Drug Abuse, comprising establishment figures chosen mostly by President Richard Nixon himself, issued a report that declared that “neither the marijuana user nor the drug itself can be said to constitute a danger to public safety” and recommended that Congress and state legislatures decriminalize the use and casual distribution of marijuana and seek means other than prohibition to discourage use.<sup>1</sup>

President Nixon, intent on pursuing his newly announced War on Drugs, ignored the report and Congress declined to consider its recommendations, but during the 40-plus years since its publication, at least 44 states have acted to refashion a crazy-quilt collection of regulations, nearly always in the direction favored by the commission. The specifics vary by state, but most reform legislation has followed one of three formulas: decriminalization of marijuana possession, legalization of marijuana for medical use, or legalization of marijuana for adult use.

This report is an update to a report we published in February 2015 on the same topic. Then, as now, the Texas Legislature was considering several bills to reform marijuana laws. The goal of the 2015 report was to present evidence about the effects of various marijuana reform options, with the hope that existing research—which overwhelmingly supported the assertion that ending marijuana prohibition benefits society in numerous and significant ways that outweigh potential negative impacts—

would motivate elected officials to enact pragmatic policy reforms. That did not happen in Texas. During the current 2017 session, the legislature is again considering several bills that would reduce penalties for marijuana possession and allow legal access to medical marijuana for patients with a variety of conditions. We again have the opportunity to improve marijuana policy, this time with additional evidence to support the case for doing so. We present much of that new research below.

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### MARIJUANA DECRIMINALIZATION

Marijuana decriminalization generally involves lowering the status of an offense or reducing or removing penalties for possession of small amounts of the substance. Since 1989, possession of less than 2 ounces has been a Class B misdemeanor in Texas, with possible penalties of 180 days in state jail, a \$2,000 fine, and, most damaging of all, a criminal record. At least 21 states have now reclassified low-level marijuana offenses as fine-only misdemeanors with no prospect of jail time or as civil violations punishable with a modest fine but no criminal charge or record. The amounts of the drug subject to decriminalization vary, ranging from as low as half an ounce (Connecticut and Maryland) to just under 4 ounces (Ohio). Incongruities exist. In Mississippi for example, possessing up to 30 grams is a civil violation with a maximum penalty of \$250, but possession of paraphernalia to use it—e.g., a pipe, a



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vaporizer, or a bong—is a misdemeanor with a possible \$500 fine and six months in a county jail.<sup>2</sup>

In Harris County, Texas, a marijuana diversion program took effect March 1, 2017, which allows individuals found in possession of 4 ounces or less of marijuana the opportunity to avoid charges, arrest, ticketing, and a criminal record if they agree to take a four-hour drug education class, regardless of past criminal history. This diversion plan is estimated to keep roughly 12,000 people out of the criminal justice system per year, free law enforcement manpower to spend more time on the street, and save taxpayer dollars.<sup>3</sup> While not technically decriminalization, because the possibility of arrest remains if a person does not take the drug class, Harris County's marijuana diversion plan is one of the more progressive plans implemented in a state that has long upheld prohibitionist policies.

The 2017 Texas Legislature will consider House Bill 81 (HB 81), which would replace jail time with a maximum fine of \$250 for individuals possessing up to 1 ounce of marijuana. Offenders would not have a criminal record and would thus be saved from the quite real threat of compromised educational and housing opportunities and lasting difficulties in finding employment. Other measures to reduce penalties for marijuana possession have been introduced this session, but HB 81 is the only one that removes criminal penalties entirely. While decriminalization is a welcome move away from prohibition, it falls short of effective marijuana policy. Under many decriminalization schemes, people can still be arrested, and inability to pay the fines associated with civil penalties will result in incarceration for some people, most likely minorities and the poor. Decriminalization also fails to address the needs of individuals who can benefit from the plant's medicinal properties. Its greatest flaw, however, is that as long as growing and selling marijuana remain illegal, criminals decide what and to whom to sell, and they get to keep the money, tax-free.

## MEDICAL MARIJUANA

Twenty-eight states have laws allowing for the use of marijuana—properly called cannabis—for specified medical purposes. Currently more than half the U.S. population has access to marijuana for medical use, and an estimated 2.3 million people are using it for relief.<sup>4</sup> States differ in what they consider legitimate medical use of the drug and in how they control access. While the majority of states authorize licensed dispensaries, some do not. States that do not have dispensaries—as well as many that do—allow patients to grow their own marijuana plants.<sup>5</sup>

A recent trend has been the proliferation of laws that allow for access to strains of marijuana that are quite low in THC (the cannabinoid compound in the plant that produces the “high”) and high in cannabidiol (or CBD, the compound most well-known for its medical properties). Sixteen states now have some variation of a limited access or “CBD-only” medical marijuana provision. These laws have attracted support, particularly in southern states, because they are seen as a way to provide patients with the medicinal qualities of the marijuana plant without allowing individuals to “get high.”

A key drawback of CBD-only laws is that they place strict limits on the number and types of qualifying medical conditions. Further, numerous ailments known to benefit from marijuana require the use not just of CBD, but of THC and other of the estimated 100-plus cannabinoids found in the whole cannabis plant. Dr. Raphael Mechoulam, the Israeli professor of medicinal chemistry who first isolated THC as the primary psychoactive agent in cannabis and who pioneered the study of CBD and other cannabinoids and their effect on the brain, speaks of an “entourage effect”—the many components of this complex plant work better together than in isolation. While CBD-only marijuana might protect people from experiencing any pleasure, it also produces little or no relief for most conditions.

In 2015, the Texas Legislature passed and Gov. Greg Abbott signed into law the Compassionate Use Act (CUA), which allows patients with intractable epilepsy access

to low-THC cannabis oil. Specifically, the medicine cannot contain a concentration of THC higher than 0.5 percent. With the law's passage, the state of Texas recognized that cannabis is medicine. This is a significant policy advancement, but critics say the new law is too restrictive because it applies to only one medical condition and places strict limits on the amount of THC allowable. An additional challenge to the CUA is that unlike similar legislation passed in other states, it requires doctors to "prescribe" rather than "recommend" cannabis for patients. This adds legal obstacles for doctors under federal law that may deter them from issuing prescriptions to patients.

The Compassionate Use Program is under the jurisdiction of the Texas Department of Public Safety, which has until September 2017 to issue licenses to at least three businesses to sell the cannabis oil. Thus, the program will not be operational until the conclusion of the 2017 legislative session. Given the challenges with the law as currently written, a bill has been introduced this session (SB 269) that would amend the CUA to expand access to patients with a wider range of conditions, including Parkinson's disease, cancer, PTSD, autism, HIV, severe pain, and nausea, and would leave decisions regarding the amount and form of cannabis accessible by patients to doctors' discretion.<sup>6</sup>

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## MARIJUANA LEGALIZATION

Eight states—Colorado, Washington, Oregon, Alaska, California, Nevada, Massachusetts, and Maine—have legalized adult use of marijuana. (District of Columbia voters approved legalization by a two-to-one margin, but Congress has continued to block the D.C. Council's efforts to implement a legal regulatory framework.) States are experimenting with legalization in different ways. Colorado integrated its adult-use market with its existing medical marijuana program and allows for vertical integration among marijuana growers, processors, and retailers. Washington, which left medical marijuana largely unregulated, had to build a new program for adult-use marijuana and prohibits marijuana growers and

processors from being retailers. Colorado allows residents to grow up to six plants for personal use; Washington prohibits it.<sup>7</sup> In Alaska, the state Marijuana Control Board is considering rules for cannabis cafes. The states that legalized adult use in 2016—California, Nevada, Massachusetts, and Maine—are currently working on program implementation. All states differ to some degree in the restrictions and taxes they place on users and on the plant, but all programs limit access to individuals over the age of 21 and have strict rules about driving under the influence of marijuana and about control of quality and packaging.

The most popular model for adult-use regulation has been a commercial market run by for-profit companies. However, a state could regulate adult-use marijuana in several ways, such as limiting sales to state-run or nonprofit entities, which might reduce concern over possible conflicts of interest between businesses with a profit incentive to increase the amount of marijuana people consume and a public health interest in limiting consumption. Full legalization is the most controversial of the marijuana reforms, but it is also the only action that ensures that people will no longer face criminal sanctions for marijuana use.

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## WHAT WILL HAPPEN IF TEXAS CHANGES ITS MARIJUANA LAWS?

Opponents of marijuana reform argue that relaxation of prohibition will result in a number of negative consequences, including increased drug use among teens, increased crime, and increased traffic fatalities. Such fears are understandable, but overblown.

### Teen Drug Use

Fear of increased teen use stems from the expectation that the main reform options—decriminalization, legal medical marijuana, or legal adult use—will increase teen access to marijuana or lead teens to think that using it is acceptable social practice. Several studies in the U.S. and abroad have found that decriminalization does not lead to increased use.<sup>8</sup>

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**DUI laws should apply to marijuana users as stringently as to users of alcohol, but there is no question that alcohol poses the greater threat...[And] texting while driving is estimated to be 23 times more likely to cause an accident than marijuana or alcohol.**

Legal medical marijuana also appears not to drive up illegal use. A study using 2002–2009 data from the National Survey on Drug Use and Health found medical marijuana laws have no discernible effect on marijuana use or the perceived riskiness of use among adolescents or adults.<sup>9</sup> More recent research indicates that legalizing medical marijuana is associated with increases in adolescents' perceptions of harmfulness of marijuana and that medical marijuana legalization does not impact adolescents' views about the risks of using marijuana in any way, although national trends indicate increasingly permissive attitudes about marijuana use more generally.<sup>10</sup>

Data comparing teen use of marijuana before and after the passage of medical marijuana bills suggest that the overall impact of legalizing marijuana on teen use is negligible or negative. For example, in Arizona, where medical marijuana became legal in 2010, current marijuana use among high-school students (defined as having smoked marijuana in the past 30 days) has remained stable: current use was 23.7 percent in 2009 and 23.3 percent in 2015.<sup>11</sup> In Nevada, which legalized medical marijuana in 2000, current marijuana use among high-school students increased slightly from 25.9 percent in 1999 to 26.6 percent in 2001, then decreased significantly to 19.3 percent in 2015.<sup>12</sup> Connecticut, which legalized medical marijuana in 2009, experienced an increase in teen use from 23.2 percent in 2007 to 26 percent in 2013, but this rate decreased to 20.4 percent in 2015.<sup>13</sup> This fluctuation may or may not be related to legal medical marijuana. If it is, the experience of other states suggests that while increased availability may initially spur some teens to experiment, it is likely that usage rates will eventually return to original levels.

Fewer data exist on the effects of full legalization, but in Colorado, where marijuana has been legal for adults since January 2013, teen use has decreased. In 2011, 22.7 percent of high-school teens reported using marijuana in the previous 30 days.<sup>14</sup> In 2015, 21 percent of high-school students reported past-month marijuana use, slightly lower than the 2011 rate and consistent with national trends that

estimate that 22 percent of high-school students used marijuana in the last 30 days.<sup>15</sup> It is also worth noting that for almost 40 years, between 81 and 90 percent of U.S. 12th graders “have said they could get marijuana fairly easily or very easily if they wanted some.”<sup>16</sup> Availability has never been a major deterrent to teen use. Further, with sharply reduced involvement of criminals in the distribution of marijuana, fewer teens would sell it and fewer dealers would encourage the use of more dangerous drugs, including forms of fake pot sold under such names as kush, Spice, and K2.

### Crime Rates

Another common fear is that marijuana reform will cause crime rates to increase. Data from Washington do not support this claim. Between 2011, a year before its marijuana legalization initiative was passed, and 2015, both violent and property crimes decreased by over 16 percent.<sup>17</sup> Data from Denver indicate that between 2013, when marijuana first became fully legal, and 2016, there has been a slight uptick in violent and property crimes overall, but a decrease in burglary rates, thefts from motor vehicles, and arson.<sup>18</sup> It is not possible from this raw data, however, to determine whether the increases experienced in Denver are due to changes in marijuana laws or other factors.

Research that has tried to determine the effect of marijuana laws on crime rates by controlling for other factors has found no relationship between marijuana reform and increasing crime rates. A study using data from 1997 to 2009 found no positive relationship between passage of medical marijuana laws and property or violent crime rates, and that states with medical marijuana laws had slightly lower rates of violent crime than states without such laws.<sup>19</sup> An earlier study using 1991–2006 data produced similar results.<sup>20</sup>

### Traffic Accidents and Fatalities

Reform has also not translated into large increases in marijuana-induced traffic accidents and fatalities. Researchers have encountered challenges in distinguishing between the presence of THC in drivers

involved in accidents and the role that THC may have played in driver impairment. An analysis of fatal crashes in Washington carried out by the AAA Foundation for Traffic Safety found that the percentage of THC-positive drivers involved in fatal crashes increased from 8.3 percent in 2013 (shortly after legalization took effect) to 17 percent in 2014. However, the AAA president and CEO noted that despite these findings, “It’s simply not possible today to determine whether a driver is impaired based solely on the amount of drug in their body.”<sup>21</sup> Also worth noting is that two-thirds of THC-positive drivers involved in fatal crashes tested positive for alcohol, other drugs, or a combination of both.<sup>22</sup> This further complicates the ability to determine if and to what extent marijuana-related impairment contributes to traffic fatalities and highlights the need for improved methods of testing for marijuana-related impairment.

This is not to contend that driving while intoxicated on marijuana is safe. It is not, and DUI laws should apply to marijuana users as stringently as to users of alcohol, but there is no question that alcohol poses the greater threat. A review of numerous studies of the impact of marijuana or alcohol on motor vehicle crashes found that driving while using marijuana raises the chances of accident by 1.3 to 3 times, compared to 6 to 15 times for alcohol.<sup>23</sup> Other such analyses have found similar differences.<sup>24</sup> Alcohol-impaired drivers have been involved in about 30 percent of Colorado traffic fatalities for the last several years. Legislators seriously interested in reducing traffic accidents should consider lowering the permissible level of blood alcohol concentration (BAC). They might also crack down further on the use of cell phones while driving, which quadruples the risk of an accident. Texting while driving is estimated to be 23 times more likely to cause an accident than marijuana or alcohol.<sup>25</sup>

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## MARIJUANA REFORM CAN BRING SIGNIFICANT BENEFITS TO SOCIETY

In addition to evidence that should allay the fears of marijuana skeptics, there is also ample reason to view marijuana reform as a

net positive for society. Significant benefits include cost savings, increased tax revenue, relief for medical patients, and reduction in marijuana arrests and the consequences that come with a criminal record.

### Cost Savings from Marijuana Reform

Removing marijuana use from criminal status means federal, state, and local governments no longer need to spend money to arrest, process, and jail defendants; to provide taxpayer-funded legal counsel to indigent defendants; to incarcerate convicted offenders; or to monitor these offenders through probation and parole after they are released. According to the Texas Criminal Justice Coalition, incarceration for drug possession costs Texas taxpayers nearly \$725,000 per day.<sup>26</sup> Jeffrey Miron and Katherine Waldock of the Cato Institute estimate that Texas spends \$330 million (2008 dollars) per year just on marijuana prohibition.<sup>27</sup> That considerable sum could be used to greater benefit if directed to such needs as education, transportation, public health, and human trafficking.

### Tax Revenue from Medical Marijuana and Marijuana Legalization

States that legalize some form of marijuana not only see substantial savings, but they also enjoy increased tax revenue. Colorado collected nearly \$200 million in 2016 from taxes on retail marijuana sales.<sup>28</sup> In fiscal year 2015, Washington collected \$62 million in excise taxes on retail marijuana sales (excluding medical marijuana); excise tax revenue is expected to increase to \$134 million in fiscal year 2016. Based on demand in Colorado and Washington, the Tax Foundation estimates that Texas could bring in between \$453 million and \$755 million in tax revenue from marijuana sales, depending on tax structure.<sup>29</sup>

### Relief for Medical Patients

The strongest and most important reason to legalize medical marijuana is that it will bring relief to many patients. Despite frustrating barriers federal agencies have erected to thwart research into potential

**The substantial evidence supporting marijuana’s effectiveness for treating chronic pain offers hope that it could replace more addictive painkillers, a valuable resource at a time when addiction to powerful prescription drugs is increasing.**

**If existing laws were fully enforced, “nearly one-tenth of the total population of the state of Texas would be put behind bars and supported at public expense by the remainder of the citizenry...The ranks of teachers, doctors, housewives, labor union members, lawyers, and even public officials would be visibly reduced. When the disparity between felonious conduct and actual social practice becomes as wide as this, it is necessary to remind ourselves that ‘the law is made for the people—not the other way around.’”**

— Marijuana in Texas, Report to the Senate Interim Drug Study Committee, March 1972

therapeutic benefits of marijuana, a growing body of scientific research performed in other countries and in the United States with private and other non-federal funds has found marijuana to be useful in treating several medical conditions. A recent National Academy of Sciences report reviewing thousands of studies on marijuana’s medicinal effects found “substantial” evidence that marijuana is an effective treatment for chronic pain, chemotherapy-induced nausea and vomiting, and spasticity symptoms associated with multiple sclerosis. The report also found “moderate” or “limited” evidence of marijuana’s effectiveness to treat a wide variety of other conditions, including sleep apnea and sleep problems associated with fibromyalgia, loss of appetite associated with HIV/AIDS, anxiety, and symptoms of Tourette’s syndrome and PTSD. The report concluded that current evidence supports claims of marijuana’s therapeutic benefits, but more research is needed to fully understand the plant’s possibilities and limitations as medicine—research that is currently hampered by lack of funding and government regulatory barriers.<sup>30</sup>

The substantial evidence supporting marijuana’s effectiveness for treating chronic pain offers hope that it could replace more addictive painkillers, a valuable resource at a time when addiction to powerful prescription drugs is increasing. One recent study found that while there were increases in overdose deaths from prescription painkillers nationwide between 1999 and 2010, such deaths were 25 percent fewer in states with legal medical marijuana.<sup>31</sup> Another study found that from 2010 to 2013 “the use of prescription drugs for which marijuana could serve as a clinical alternative fell significantly, once a medical marijuana law was implemented.” The decline in the use of prescription drugs also resulted in an estimated reduction of \$165.2 million in Medicare expenditures.<sup>32</sup>

### **Reduction in Marijuana Arrests**

States that have decriminalized marijuana have seen significant drops in low-level marijuana arrests: 90 percent in

Massachusetts, 86 percent in California, and 67 percent in Connecticut. High-level marijuana arrests also decreased: Massachusetts saw a 23 percent drop, California saw declines of 20 percent, and Connecticut saw a 43 percent decrease.<sup>33</sup> Full legalization of marijuana would result in even greater decreases. Between 2010 and 2014, Colorado saw marijuana possession charges decrease 78 percent, distribution charges decrease 97.8 percent, and cultivation charges decrease 78.4 percent. There was also a 23 percent decline in all drug-related charges during the same time period, highlighting the central role marijuana plays in enforcement of drug prohibition.<sup>34</sup>

The impact of marijuana reform on minorities would be substantial. As of 2010, blacks were 3.73 times more likely nationwide to be arrested for marijuana possession than whites and 10 times more likely to be incarcerated, despite similar usage patterns.<sup>35</sup> In Texas, blacks were 2.33 times more likely to be arrested for marijuana possession than whites, but rates vary widely by county. In 2010, Van Zandt County had the largest racial disparity in marijuana possession arrests in the nation, with blacks 34.1 times more likely to be arrested than whites. Cooke County ranked fourth, with blacks 24.7 times more likely to be arrested.<sup>36</sup> Marijuana reform is by no means a panacea, but it would help reduce glaring racial disparities in the criminal justice system in Texas and elsewhere in the United States.<sup>37</sup>

Fewer marijuana arrests would lessen the burden of the collateral consequences associated with arrest and conviction. Individuals with a criminal conviction may have greater difficulty finding employment and housing, reduced earning power, and higher levels of distrust toward police.<sup>38</sup> Arrests and convictions also have consequences for the families of offenders. According to a 2010 Pew Charitable Trusts study, “one in every 28 children in the United States ... has a parent in jail or prison.” For black children, the rate is one in nine, four times higher than 25 years earlier. Having an incarcerated parent can negatively impact a child’s development and economic well-being and have future adverse consequences

that affect society as a whole in the form of lower productivity, greater dependency on social welfare services, and greater potential to commit crimes.<sup>39</sup>

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## CONCLUSION

The arguments for marijuana reform do not rest on the assumption that all resulting consequences will be positive. Particularly in the case of widespread legalization, complete with a fully commercialized for-profit market—not, it should be noted, the only viable alternative to prohibition—it is possible, even likely, that marijuana use will increase. But the proportion of people who develop a problem with any drug, including alcohol, tends to remain stable over time, albeit with some periodic spikes in the use of individual drugs. Between 2002 and 2015, the number of people who had used marijuana in the past month increased from 14.6 million to 22.2 million, but the number of problem users remained constant at just over 4 million.<sup>40</sup> Most marijuana use is experimental or occasional and does not develop into monthly use, much less problematic use, suggesting that legalization would not result in a drastic rise of “potheads.” But even if the number of marijuana users, including problem users, were to increase, the social costs of this increase would be far less than the price society now pays for arresting and incarcerating them.

The public recognizes this. A 2016 national Gallup poll found 60 percent of the public supports marijuana legalization.<sup>41</sup> A Texas Lyceum poll found that 74.5 percent of Texans support marijuana decriminalization and 46 percent support full legalization.<sup>42</sup> A University of Texas/Texas Tribune poll found greater support for marijuana reform, with 53 percent of Texans agreeing that marijuana should be legal in small amounts (32 percent) or any amount (21 percent). An overwhelming 83 percent expressed support for medical access for patients, and only 17 percent of those polled opposed all forms of marijuana legalization, down from 24 percent who said they opposed legalization in 2015.<sup>43</sup> Eventually, marijuana

will be legal across the United States. Texas can choose to lag along, and then fall into line somewhere down the road, losing millions in revenue and injuring the lives of countless citizens in the process. Or, it can maintain its reputation as a leader in policy innovation, take its place closer to the head of the line, and guide the rest of the nation toward responsible, practical, and effective marijuana policy.

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## ENDNOTES

For a full list of endnotes, please visit <http://bit.ly/2nkZVty>.

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## AUTHORS

**Katharine A. Neill, Ph.D.**, is the Alfred C. Glassell, III, Postdoctoral Fellow in Drug Policy at the Baker Institute. Her current research focuses on the consequences of drug prohibition and on finding and implementing public health based policy responses to drug use.

**William Martin, Ph.D.**, directs the institute’s [Drug Policy Program](#). He is also the Harry and Hazel Chavanne Senior Fellow in Religion and Public Policy at the Baker Institute and the Chavanne Emeritus Professor of Sociology at Rice University. His research and writing focus on two major areas: the political implications of religion and the importance of the separation of religion and government, and ways to reduce the harms associated with drug abuse and drug policy.

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