

# Marijuana Decriminalization: Should Pittsburgh Follow Philadelphia's Lead?

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## **Abstract**

Pittsburgh Councilman Daniel Lavelle recently introduced a bill to decriminalize possession of small amounts of marijuana within city limits. This legislative action follows on the heels of the passage of a similar bill in Philadelphia last year. We undertook in-depth research and analyses of decriminalization efforts from a legal, historical, public health, and social scientific perspective. In this presentation, we recommend that the City Council pass the bill, which proposes a new, civil violation law enforcement option in addition to penalties prescribed by state and federal drug laws. Based on analysis of the experiences of other cities, states, and nations that have decriminalized marijuana possession, we conclude that the risk posed by decriminalization policy in terms of health and social costs are small if not insignificant, compared to its potential to address racial disparities in marijuana possession arrests, community police relations, and the significant costs of enforcing these laws borne by those arrested and taxpayers generally.

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“Penalties against possession of a drug should not be more damaging to an individual than the use of the drug itself; and where they are, they should be changed. Nowhere is this more clear than in the laws against possession of marijuana in private for personal use...”<sup>1</sup>

- President Jimmy Carter, August 2, 1977.

## **I. Executive Summary**

Marijuana is currently the most widely used illicit drug in the United States.<sup>2</sup> In the past decade in the United States, attitudes toward marijuana policy have been shifting towards acceptance. Years of harsh penalization of marijuana possession and use have had negative consequences. A simple possession arrest can have lasting adverse effects on an individual in both economic and social terms, and racially disparate arrest rates for possession are seen both nationally and in Pittsburgh despite similar levels of marijuana use across racial lines.

In response to these adverse outcomes, many states and cities are seeking policy alternatives that address both the harms presented by the drug itself and the social harms of marijuana policy enforcement. In particular, our research is motivated by the City of Philadelphia’s recent (2014) marijuana decriminalization. With Philadelphia as a model, we will address the implications of a potential marijuana decriminalization policy in the City of Pittsburgh. We do this by examining the social and cultural origins of marijuana prohibition in the United States, the public health implications of marijuana use, and implications of marijuana policy for community-police relations. As part of this project, we have conducted extensive historical, legal, medical, and social scientific research. We have also conducted more than a dozen semi-structured interviews with academic experts in fields relating to marijuana decriminalization, including lawyers, politicians, police officers, and community stakeholders in the City of Pittsburgh.

In our analysis, we found our ethical framework on the principles of harm reduction and fairness. We also acknowledge that, to a degree, risk taking behavior is a right in a society such as ours which values individual liberty. We remain neutral on extraneous moral dimensions of marijuana use, and recognize that people decide to use this drug for a variety of reasons. In order

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<sup>1</sup> Carter, Jimmy. "Jimmy Carter: Drug Abuse Message to the Congress." Jimmy Carter: Drug Abuse Message to the Congress. August 2, 1977.

<sup>2</sup> "Drug Facts: Nationwide Trends." National Institute on Drug Abuse. June, 2015.

to provide the best possible policy advice, we analyze the harms of both marijuana use and marijuana criminalization policies.

Beginning with a historical analysis of the origins of drug prohibition in the United States, we argue that harsh marijuana prohibition laws were not inevitable and were not based on the best available evidence from medicine, sociology, or public policy. Instead, as medical opinion advocating the reduction of marijuana possession penalties went largely ignored, attitudes toward marijuana were shaped largely by racial, anti-immigrant, and class politics which associated marijuana with marginalized populations and larger societal fears of crime and social degeneracy. Despite a brief period of marijuana decriminalization in several US states and cities in the 1970s, these attitudes toward marijuana, which view the harms of the drug through the hyperbolic lens of Prohibition Era rhetoric, continue to shape our marijuana restriction policies today.

Current drug possession laws are divided into three tiers descending from the federal to state to local levels. Marijuana possession is currently a criminal offense at all three levels in the City of Pittsburgh. At the state and local level, possession of a small amount of marijuana (30 grams plant material, eight grams hashish concentrate) is a misdemeanor level offence punishable by up to 30 days in jail and or a \$500 dollar fine. Even if jail time is not ordered, this leaves users with a substance abuse record that could harm their ability to find employment or receive benefits and can only be expunged through complicated and costly legal procedures. Daniel Lavelle's proposed decriminalization legislation would reduce small possession offences in the City of Pittsburgh to a civil violation with a fine of \$25 and no permanent criminal record. Marijuana will remain illegal in accordance with state and federal law. As such, we also consider the question as to whether or not the City of Pittsburgh has the legal authority to enact this legislation, which could be construed as a challenge to the supremacy of state and federal marijuana laws.

We draw on empirical analysis and qualitative case studies to summarize the effects of marijuana possession arrests and convictions on individuals. Caulkins et. al offer a clear summary of marijuana arrest rates generally across the United States and the factors that cause them to fluctuate. The ACLU provides profiles of individuals across the United States who have

been convicted for simple possession of marijuana and the consequences they have been subjected to other than incarceration. Finally, an interview with lawyer and social work professor Jeff Shook revealed the process for juveniles and young adults who are arrested for marijuana possession.

We address the most prominent public health concerns surrounding marijuana use. Marijuana is a potentially addictive substance in that it poses a risk of dependency with mild withdrawal symptoms. Marijuana intoxication impairs driving ability and increases the risk of motor vehicle accidents by a factor of two to three times. While research is ongoing, marijuana poses a significant risk to brain development of adolescents, possibly with permanent consequences. We conclude that marijuana is neither the demonic drug it has been made out to be in American drug policy, nor a completely harmless substance that poses no risk to society. That said, more research is needed to study the long-term impacts of marijuana use, especially on marijuana use in combination with that of other drugs.

Next, we draw on case studies from across the United States and the world to examine the social, health, and economic impacts of past marijuana decriminalization laws. From these cases, we derive the following conclusions: first, marijuana decriminalization has not had a drastic impact on drug usage rates, and public health communication plays a large role in marijuana usage rates post-decriminalization. Second, for a Philadelphia-style decriminalization to be successful given tension with state law, the Pittsburgh Police must support and collaborate with the measure. Finally, a Philadelphia-style decriminalization law could drastically reduce marijuana possession arrests that are highly racialized, with black individuals burdened unfairly by marijuana criminal laws.

For the reasons mentioned above, we recommend that City Council pass Dan Lavelle's proposed marijuana decriminalization bill. We also stress the importance of public communication and coordination with local law enforcement as key components of the bill's implementation. As informed by our case studies, it is especially important for the police to be on board with any new enforcement and penal policy. It is also crucial for the public to know that marijuana remains illegal, and that sale, possession of large amounts, and marijuana DUI will still be punished under criminal law. As marijuana laws relax in Pittsburgh and across the

nation, it is also important to develop public health mechanisms to help individuals who abuse marijuana and to educate, especially adolescents, against the biological and social risks of marijuana use. It is our hope that these recommendations will help inform the deliberations of City Council and reduce marijuana related harms both from the drug itself and from years of disproportionate enforcement penalties.

## **II. Introduction**

This report is the culmination of the senior capstone course for the Ethics, History, and Public Policy major at Carnegie Mellon University in Fall 2015. In this report, we analyze the topic of marijuana decriminalization at the request of Pittsburgh City Councilman Dan Gilman. During a meeting with Councilman Gilman at the beginning of the semester, he expressed his concerns regarding the effectiveness of the city's current marijuana policy. Noting that Philadelphia had enacted a marijuana decriminalization policy one year prior, Councilman Gilman expressed an interest in studying the effects of a similar policy in Pittsburgh.

Councilman Gilman's concerns focused primarily on two issues: equity and cost. He expressed concern about the known racial disparities in marijuana arrest rates, both nationally and in Pittsburgh (i.e., that black individuals are arrested at a much higher rate than white individuals even though most public health studies have concluded that white individuals and black individuals use the drug at roughly equivalent rates). Another primary concern was the cost of enforcing current marijuana laws, in terms of both economic cost to the city, and social cost to those charged with a criminal violation for possession of a small amount of marijuana.

Councilman Gilman asked us to analyze the extent to which a decriminalization policy could reduce economic and social costs for the city and its residents without impeding law enforcement's ability to fight crime. This was the foundation of the research that we carried out during the fall 2015 semester. Toward the end of the semester, as we were formulating our initial draft of this report, City Councilman Daniel Lavelle introduced a decriminalization bill into City Council. This proposal caused us to shift our strategy from arguing that council should introduce such a bill, to analyzing the newly proposed policies that will be debated in Council over the next

few months. We hope this report can contribute to those conversations and City Council's deliberations on the proposed marijuana decriminalization law.

## **Methodology**

We began our analysis by exploring the historical roots of marijuana and drug prohibition in the United States and developing an ethical framework to analyze relevant policies and policy proposals. Next, we examined the experiences of cities, states, and countries that had, at a minimum, provided a non-criminal option for personal possession of small amounts of marijuana in order to better understand the effects of such a policy. Some of these examples (Philadelphia and Ann Arbor) were chosen based on their relative demographic or cultural similarity to Pittsburgh. Certain others (South Australia and Chicago) provide insight into unexpected or negative effects of marijuana policies. The Netherlands and Portugal offer insight from a different cultural context, providing fresh examples for how marijuana decriminalization policies might be handled.

We then proceeded to consider the legal feasibility of marijuana decriminalization in Pittsburgh, given potential conflicts with current state and federal law. We conducted interviews with several lawyers and also completed our own independent legal research. Additionally, we interviewed Pittsburgh police officers (both in the Narcotics division and zone 4) in order to better understand the law enforcement perspective on decriminalization. Further, we attended a town hall on community police relations hosted by State Representative Ed Gainey. In addition to legal and policy research, we also investigated the social and biological harms of marijuana use to understand how decriminalization might affect public health and well-being. We spoke to several social scientists and Pittsburgh community stakeholders, whose invaluable feedback and guidance has helped shape this report.

Before moving on, it should be noted that this report is not exhaustive. Rather, it is an attempt to convey the current landscape of marijuana decriminalization policies as they apply to the context of Pittsburgh, and to make policy recommendations accordingly. Given our limited time and the ongoing nature of marijuana research and public policy analysis, we conclude most sections with a recommendation for more research and study. Finally, we argue that any current



marijuana policy remain open to revision in the face of rapidly changing cultural views on marijuana use, use practices, and new, emerging marijuana-related research.

### III. Terminology

**Marijuana decriminalization:** for the purposes of this report, we define decriminalization as either de-penalization or the creation of civil (non-criminal) charges for the possession of small amounts of marijuana plant material. This is distinct from marijuana *legalization* in that the possession of marijuana is not rendered legal, and that civil penalties, such as a ticketed fine, still provide some form of punishment. Under decriminalization, the possession of over thirty grams of marijuana, the purchase and sale of marijuana, and driving under the influence of marijuana would all remain illegal.

**Marijuana:** dried plant material from the *Cannabis sativa*, which contains cannabinoids and/or psychoactive compounds that produce a “high” when consumed through inhalation of combusted plant matter or digestion of food products containing the plant or its extracts.

**THC:** also known as delta-9-tetrahydrocannabinol. THC is the primary psychoactive component of the marijuana plant. The potency of marijuana plant material and marijuana by-products are measured by their THC content; typical marijuana plant material can contain anywhere from five percent to more than 20 percent THC.<sup>3</sup>

**Hash Oil, Hashish, and Marijuana Concentrates:** processed marijuana plant material that is reduced (either chemically or manually) into an oil or resin; can be added to ingestible items, or consumed directly through ingestion or inhalation through combustion. Hash oil can have THC concentrations as high as 60 percent per volume.

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<sup>3</sup> "Marijuana: Know the Facts." The White House. October, 2010.

**Paraphernalia:** The Controlled Substances Act defines paraphernalia as “any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under this subchapter. It includes items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, PCP, or amphetamines into the human body.”<sup>4</sup> The most common forms of marijuana paraphernalia are pipes, water pipes, carburetion tubes and devices, knives for “hot knifing,” and bongos.

**Synthetic Marijuana:** often referred to by brand names such as “Spice” or “K2”, synthetic marijuana is dried common plant material (non-cannabis) that has been coated with synthetic psychoactive chemicals. Although similar to natural marijuana in appearance and name, synthetic marijuana is distinct in its chemical makeup, and can thus be sold through legal loophole in some areas. However, it can cause significant side effects and even death. In 2011, the Drug Enforcement Agency called for an emergency addition of five synthetic cannabinoid substances to the Controlled Substances Act, rendering those specific chemicals illegal. Other synthetic cannabinoids, however, still remain legal.<sup>5</sup> While we express the concern of marijuana being laced with other drug chemicals, for these reasons, we exempt synthetic marijuana from our discussion of marijuana decriminalization, and do not consider it marijuana proper for our purposes.

**Arrest:** “An arrest is using legal authority to deprive a person of his or her freedom of movement. An arrest is generally made with an arrest warrant. An arrest may be made without a warrant if probable cause and exigent circumstances are presented at the time of the arrest.”<sup>6</sup> Arrests can be either custodial - involving handcuffs and time in a holding cell - or non custodial - which involve a court summons.

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<sup>4</sup> "Controlled Substances Act." US Food and Drug Administration. 1970.

<sup>5</sup> "Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I." Federal Register. March 1, 2011.

<sup>6</sup> Wex Legal Dictionary, Cornell University School of Law Legal Information Institute.

## **IV. History of Drug Prohibition in the United States**

### **Introduction**

Marijuana prohibition in the United States has its roots in a more generalized culture of temperance, or a generalized norm against chemical intoxication. Throughout American history, this culture has manifested itself not just in the denunciation of narcotics and narcotics users, but also in the prohibition of more widely accepted and used substances such as alcohol. We find a historical trend of general opposition to anything deemed intoxicating - an opposition that has fueled moral and sociobiological arguments for drug restriction policies from the 17<sup>th</sup> century through the modern era.

Our historical analysis provides several insights that are crucial to understanding our current situation. First, marijuana prohibition has its origins in alcohol temperance movements, which were rooted in moral and spiritual arguments before the development of public health science. Second, there was a time when marijuana was consumed legally in the US both as a recreational and medicinal substance. Marijuana criminalization policies as they exist today are a product of historical factors mostly unrelated to the health impacts of the drug itself, including anti-Mexican immigration sentiment that emerged in the early 20<sup>th</sup> century. Finally, calls to decriminalize marijuana in the United States, like the one being considered in Pittsburgh, are not new. Notable examples advocating for marijuana decriminalization include the 1939 LaGuardia report published by the New York Academy of Medicine and the 1972 Shafer Commission discussed below.

### **Colonial Times Through the 19<sup>th</sup> Century**

Alcohol has a much longer history of cultural significance in Western culture than marijuana. Thus alcohol, rather than marijuana, was the focus of the first American colonial prohibition laws. In 1619, at the same time that the Virginia colony was requiring colonists to grow hemp for industrial purposes (i.e. rope and fabric production), moralistic laws were passed

against drunkenness and other behaviors seen as ‘intemperate,’ including idleness and gambling.<sup>7</sup> Around the same time, the Dutch Reformed Church in Manhattan took a strong public stance against any display of “excessive drunkenness.”<sup>8</sup> As early as 1633, the Massachusetts Bay Colony began to restrict the sale of alcohol by requiring that vendors obtain an official permit. Generally speaking, the Protestant culture of the time valued the concept of sober mindedness, and often punished violations of this ethic with public reprimand or humiliation.<sup>9</sup>

While the moral argument against intoxication would continue well into the 20<sup>th</sup> century, the London Gin Epidemic of the early 18<sup>th</sup> century marked the emergence of biological and social scientific arguments advocating for the restriction of drug use. In response to rising rates of premature death and falling birth rate, both attributed to a spike in gin consumption, the London College of Physicians argued in 1725 that distilled spirits caused especially the “weak and feeble” of society to fall victim to its addictive and biologically ruinous properties. As these victims lost their ability to contribute to society, they became damaging to themselves and to those around them. They were perceived as a threat to the development of society at large.<sup>10</sup>

In the 19<sup>th</sup> century United States, there emerged a renewed emphasis on moralistic arguments for temperance. In his 1826 *Six Sermons*, Presbyterian minister Lyman Beecher cited scripture to argue that intoxication and drunkenness leads to eternal damnation, as it interferes with one's ability to attain divine salvation.<sup>11</sup> While moralistic temperance was becoming a central feature of American cultural discourse in the 19th century, the country was getting its first taste of the substances that are categorized as narcotics today, often in the form of medicine. Medicine and pharmacology as we know them today were still in their infancy, and the mechanisms by which diseases and medicines functioned were still largely shrouded in mystery. In such a setting doctors and individuals selected medications by their power to alleviate pain and suffering, of which narcotics were prime candidates.<sup>12</sup> Cocaine, opiates, and cannabis extracts were initially hailed as wonder medications and frequently found their way into the

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<sup>7</sup> PBS Frontline, *Marijuana Timeline*.

<sup>8</sup> E. H. Cherrington. “The Evolution of Prohibition in the United States.” *Drugs in America*, 14.

<sup>9</sup> *Ibid.* 15.

<sup>10</sup> College of Physicians, London, *Petition to the House of Commons*, 1725. *Drugs in America*, 25.

<sup>11</sup> Lyman Beecher, *Six Sermons on the Nature, Occasions, Signs, Evils, and Remedy of Intemperance*, 1826.

<sup>12</sup> Michael Cohen, *Jim Crow's Drug War*, 2006, 61.

initially unregulated market of tonics and patent medications that claimed to cure just about any ailment through semi-magical healing properties.<sup>13</sup> By the end of the 19th century, narcotics use in the United States had become notorious. As historian Michael M. Cohen puts it in an essay on drug prohibition history in the United States, in the late 19th century America became the “drug-habit nation,” torn between “‘just say no’ and the ‘miracle of medicine.’”<sup>14</sup> It was during this period that Americans first used cannabis recreationally. An ad for Hasheesh Candy in an 1862 issue of *Vanity Fair* magazine blurs the lines between medicine and recreational drug, describing hashish as “a most wonderful drug...a pleasurable and harmless stimulant.”<sup>15</sup>

During the first decade of the 20<sup>th</sup> century, as the potential dangers of often unlabeled patent medications came to light, the first restrictions of marijuana and its extracts arose at the state level. In 1905, a U.S. Bureau of Chemistry bulletin indicated that 29 U.S. states had laws regulating cannabis; most required only that substances containing cannabis be labeled, although Louisiana and Wisconsin required doctor’s prescriptions for the purchase of cannabis.<sup>16</sup> At the Federal level, the 1906 Pure Food and Drug act mandated that products containing cannabis be labeled in all states.<sup>17</sup> This began to change again in 1910, however, when a new influx of Mexican immigrants, fleeing the violent revolution in their country brought with them the practice of smoking marijuana recreationally in cigarette form.<sup>18</sup> In fact, the term “marijuana” itself became first widely used in the United States at this time. Coming from the Spanish “marihuana,” anti-drug advocates began using this term instead of the previously universal “cannabis” in order to underscore the “Mexican-ness” of the drug and gain support from anti-immigrant sentiment.<sup>19</sup> It is during this period that the first laws criminalizing marijuana possession first arose in the US. Beginning in 1914 and enacted first at the local level in Mexican border states, these laws served in part to help curb immigration, and were used to warrant search and deportation of Mexican immigrants.<sup>20</sup>

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<sup>13</sup> Ibid. 55.

<sup>14</sup> Ibid. 55.

<sup>15</sup> *Vanity Fair*, July 5th, 1862. Vol. 6 No. 162.

<sup>16</sup> United States Bureau of Chemistry Bulletin no. 96, 1905.

<sup>17</sup> "Pure Food and Drug Act 1906." Federal Food and Drugs Act. 1906. Accessed December 11, 2015.

<sup>18</sup> "US Marijuana Prohibition Timeline." PBS. Accessed September 24, 2015.

<sup>19</sup> "The Mysterious History Of 'Marijuana'" NPR. July 22, 2013.

<sup>20</sup> Booth, M. (2015). *Cannabis: a History*. Macmillan, 161.

## Early to Mid-20th Century

It wasn't until 1922 that the United States Federal Government passed its first piece of legislation regulating marijuana. The Narcotic Drugs Import and Export Tax made possession of marijuana without a corresponding prescription presumptive evidence of illegal importation.<sup>21</sup> Very few marijuana users, even those who may have had prescriptions, would be able to produce such documents. Thus, possession of marijuana became a de facto federal crime. Shortly thereafter, cannabis regulation became a subject of debate at the Second International Opium Convention in 1925. Delegates at this convention gathered in Geneva in hopes of stopping the international trade of various drugs, with a focus on opium. Marijuana was not mentioned at the convention until an Egyptian delegate brought up the notion of outlawing the Indian hemp or hashish that had been flooding Egypt. At the time, the United States supported Egypt largely out of solidarity. The decision had little to do with the government's stance toward marijuana itself. Mr. Porter, the U.S. delegate, reminded the nations that "we are asking [Egypt] to help us destroy the vice of opium, coca leaves and their derivatives, and I believe that this is a good time to practice a little reciprocity. They have their troubles and we have ours."<sup>22</sup> Ultimately, Chapter IV of the treaty ended up only tightening the import and export of marijuana, but did not criminalize the drug. This was mainly due to concerns from India over use for religious purposes, as well as the practicality of controlling a wild plant that grew easily in many parts of the world.<sup>23</sup>

Marijuana use became part of American popular culture during the Great Depression, as unemployed Americans picked up the habit of rolling marijuana cigarettes from Mexican immigrants. African-American jazz musicians of the period also played a key role in bringing the then-relatively unknown drug into the public eye. Ella Fitzgerald, Fats Waller, and Duke Ellington all sang about "tea", "mezz", "weeds", and "the stuff". Duke Ellington even switched some of his song lyrics from "get a little drunk" to "smoke a little tea."<sup>24</sup>

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<sup>21</sup> "US Marijuana Prohibition Timeline." PBS. Accessed September 24, 2015.

<sup>22</sup> W.W. Willoughby, "Chapter XIX: Indian Hemp (Hashish)." In *Opium as an International Problem: The Geneva Conferences*. Baltimore: Johns Hopkins Press, 1925.

<sup>23</sup> "International Convention, Adopted by the Second Opium Conference (League of Nations), and Protocol Relating Thereto. Signed at Geneva, February 19, 1925." League of Nations Treaty Series. 1925. Accessed September 19, 2015, pg. 333.

<sup>24</sup> "That Cat Is High: Drug Culture in Jazz During the Great Depression." That Cat Is High. Accessed September 19, 2015.

As marijuana was becoming more popular during the 1930s, Harry J. Anslinger, the first chief of the newly-created Federal Bureau of Narcotics was largely focused on other drugs; the FBN mainly dealt with drug trafficking into the United States, and marijuana was difficult to control.<sup>25</sup> Instead, Anslinger called on the states to take responsibility in combating drug trafficking. Initially, the Uniform State Narcotic Drug Act of 1939 was adopted by only nine states.<sup>26</sup> A year later, the number of states where marijuana possession was illegal rose to thirty-one, plus the territory of Hawaii.<sup>27</sup>

Concerns about the drug were initially concentrated in particular regions of the country and were fundamentally linked with race and ethnicity. Mexicans in the Southwest and African-Americans in the Northeast were stereotyped by anti-drug activists as dope fiends and dangers to society. It was not until Anslinger spearheaded a fierce propaganda campaign in the Hearst line of newspapers in 1937 that the fear of “killer weed” spread nationwide and went mainstream. The same hysteria surrounding the 1936 film “Reefer Madness” can be seen in an article by Anslinger titled “Marijuana: Assassin of Youth” authored by Anslinger. Borrowing from the foreboding rhetoric of the temperance movement of the previous decades, Anslinger tells of how “not long ago the body of a young girl lay crushed on the sidewalk after a plunge from a Chicago apartment window. Everyone called it suicide, but actually it was murder. The killer was a narcotic known to America as marijuana, and to history as hashish.”<sup>28</sup>

At the same time, only four years after the end of alcohol prohibition, the 1937 Marihuana Tax Act was passed with the support of the moralistic rhetoric of temperance. The act essentially made it illegal for anyone to buy or possess marijuana in the United States. It was technically possible to pay an importation tax and to obtain a tax stamp; however, in practice, almost no stamps were printed, and even doctors and scientists had difficulty obtaining marijuana under the new provisions. Section Six of the Act required physicians to maintain records containing the name and address of marijuana patients, which was subject to review, thus destroying any semblance of doctor-patient confidentiality.<sup>29</sup>

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<sup>25</sup> "Marijuana Timeline." PBS. Accessed September 29, 2015.

<sup>26</sup> David F. Musto. *Drugs in America: A Documentary History*. New York: New York University Press, 2002, 423.

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*, 433.

<sup>29</sup> *Ibid.*, 432.

The heavy-handed legislation resulting from the Anslinger campaign was subject to considerable skepticism. In 1938, Fiorello LaGuardia, the mayor of New York City at the time, commissioned the New York Academy of Medicine to investigate the effects of marijuana.<sup>30</sup> Further, despite the rhetoric and legislation surrounding marijuana at the time, with the outbreak of World War II, the Department of Agriculture launched a “Hemp for Victory” program, and gave military deferments, hemp seed handouts, and tax stamps to those who grew hemp for the war effort.<sup>31</sup> The same plant that was previously demonized as a “coiled rattlesnake”<sup>32</sup> was now necessary to make marine cordage, parachutes, and soft goods. Thus, what was previously the foreign menace of “marihuana” now became the patriotic “hemp” that would win the war. Six years later, with the war coming to a close, the LaGuardia Report was released. It concluded that marijuana was less dangerous than the Federal Bureau of Narcotics had claimed, and that it did not result in violence, sex crimes, or addiction. It stated that “in general the subjects who are withdrawn and introversive stay that way, those who are outgoing remain so, and so on. Where changes occur the shift is so slight as to be negligible. In other words reactions which are natively alien to the individual cannot be induced by the ingestion or smoking of the drug.”<sup>33</sup> Despite this contradictory evidence, the report had little impact, though it was the subject of an anonymous 1945 editorial in the *Journal of the American Medical Association* that used Anslinger-style rhetoric to condemn it.<sup>34</sup>

### **Post-War Era through 1970s**

After the war, marijuana remained part of American popular culture as an accessory for the Beat Generation; it did not receive much further legal or political attention until the 1960s. During this era, use of marijuana was viewed as being limited to the “lower class.” The Federal Government expanded criminal penalties for marijuana with the Boggs Act of 1952 and the Narcotics Control Act of 1956.<sup>35</sup> Unlike future legislation, these laws were not aimed specifically

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<sup>30</sup> Ibid, 454.

<sup>31</sup> "Marijuana Timeline." PBS. Accessed September 29, 2015.

<sup>32</sup> Musto, 433.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid, 458.

<sup>35</sup> "Marijuana Timeline." PBS. Accessed September 16, 2015.



at marijuana. Rather, they regulated a wider scope of drugs and were passed in the context of moralistic temperance rhetoric.

Marijuana use became increasingly popular the United States during the 1960s. Marijuana developed an appeal as a counter-culture drug and symbol of rebellion. Gallup polls conducted during this time found that most people believed that marijuana use was widespread, but that only around four percent of adults in 1969 actually used marijuana.<sup>36</sup> This conception of marijuana was reinforced by anti-marijuana information disseminated in the 1960s and 1970s, which mainly consisted of the same moralistic temperance rhetoric as that of the Prohibition Era. Such rhetoric has since been shown to have a limited impact in preventing students from using marijuana.<sup>37</sup>

American marijuana regulations were thrown into turmoil by the Supreme Court in 1969; in *Leary v. United States* (395 U.S. 6), the Court overturned the Marijuana Tax Act of 1937, finding that it infringed upon the Fifth Amendment protections of the U.S. Constitution due to its conflict with state and municipal laws making marijuana possession illegal; compliance with the provisions of the Marijuana Tax Act requiring registration and record-keeping would have forced self-incrimination.<sup>38</sup> In response to *Leary*, Congress published the Controlled Substances Act in 1970, making marijuana possession illegal at a Federal level and establishing a system of drug schedules. Schedule I drugs are drugs which the government believes to present no medical benefits that present a high risk of harm to users through dependency or abuse. Initially, the Federal Government placed marijuana on Schedule I pending the results of a commission chaired by former Pennsylvania Governor Raymond Shafer, officially called the National Commission on Marijuana and Drug Abuse, and informally referred to as the “Shafer Commission.”

In 1972, after analyzing the harms of marijuana use and finding them to be relatively mild, the Shafer Commission argued that decriminalizing marijuana would be the most sensible policy for the Federal government and that use should be controlled through other, non criminal

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<sup>36</sup> "Decades of Drug Use: Data From the '60s and '70s." Gallup. Accessed September 25, 2015.

<sup>37</sup> "Scare Tactics: Does Fear Influence Your Opinion About Drug Abuse?" NIDA for Teens. Accessed September 25, 2015.

<sup>38</sup> "*Leary v. United States* 395 U.S. 6 (1969)." Justia Law. Accessed September 25, 2015.

factors.<sup>39</sup> However, neither President Nixon nor many politicians at the time agreed with the Commission's findings. As a result, the report was discarded and marijuana remained a Schedule I drug. Shortly after the Shafer Commission delivered its report, the Drug Enforcement Administration was established, unifying multiple government departments into one anti-drug agency. Today, the DEA is still currently the leader in investigating domestic drug trafficking (along with the FBI and DHS's Immigration and Customs Enforcement), and is the main investigator of international drug trafficking cases of interest to the United States.

During the rest of the 1970s, rates of marijuana use only continued to increase, and attempts at marijuana decriminalization were made at the state level. While four percent of Americans reported having tried marijuana in 1969, that figure had risen to 25 percent by 1978.<sup>40</sup> Public portrayal and perception of marijuana both glamorized and demonized it; while marijuana was more prevalent than ever in the media, surveys from the time suggest a high level of public disapproval of marijuana use, including opposition to marijuana decriminalization.<sup>41</sup> Despite apparent disapproval of marijuana use among certain sectors of the American public, in the mid to late 1970s, several US states decriminalized marijuana possession, and in 1976 then President Jimmy Carter famously called for marijuana decriminalization, arguing that the penalties for possessing a drug should "not be more damaging than the drug itself."<sup>42</sup> This trend toward the relaxation of marijuana laws, however, came to a crashing halt with the election of Ronald Reagan in 1980.

## **Reagan Era**

As president, Ronald Reagan ushered in a new era of American drug policy, which he called the "War on Drugs." Reagan's "War" was largely characterized by zero-tolerance drug policies, surging incarceration rates, and a shift in Americans' perception of marijuana. The Reagan Administration's crusade against illicit drug use began on the campaign trail in 1980 in response to a surge of violent crime across the nation. Then-Governor Reagan denounced

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<sup>39</sup> Shafer, Raymond. "Report of the National Commission on Marihuana and Drug Abuse." 1972 Shafer Commission. March 1, 1972.

<sup>40</sup> "Decades of Drug Use: Data From the '60s and '70s." Gallup, 1972.

<sup>41</sup> Ibid.

<sup>42</sup>"The United States War on Drugs." Stanford University Ethics of Development in a Global Society.

marijuana as “probably the most dangerous drug in America today.”<sup>43</sup> In 1982, President Reagan declared that illicit drugs were a threat to U.S. national security. As part of the effort to counter this perceived threat, Reagan adopted a zero-tolerance attitude towards drugs. In order to enlist manpower for his fight, Reagan expanded the power and funding of Federal agencies, including the DEA and U.S. Marshals, increasing the budget for drug-focused law enforcement “from \$4.9 million in 1982 to over \$1 billion by the end of his term.”<sup>44</sup>

This zero-tolerance attitude towards illicit drug use was also reflected in a series of legislative reforms, beginning with the passage of the Sentencing Reform Act in 1984. As part of the Comprehensive Crime Control Act of 1984, this piece of legislation created the United States Sentencing Committee, which set federal sentencing guidelines and removed much of the discretion that trial judges had previously had in regards to sentencing. These laws also abolished Federal parole, under which prisoners could previously have been eligible for early release from prison. Two years later, the Anti-Drug Abuse Act of 1986 “greatly increased the penalties for federal drug offenses, [and] established mandatory minimum sentences<sup>45</sup>” for drugs including marijuana. Because judges were now compelled by law to impose minimum sentences for certain crimes, they were unable to take into consideration mitigating factors or grant any sort of leniency as they had been able to do in the past. Once convicted, non-violent drug offenders became more likely to go to prison (whereas pre-1986, judges had the authority to impose any penalty ranging from probation to the maximum statutory punishment) and to stay there for longer. Between 1980 and 1997, the number of imprisoned non-violent drug offenders increased from approximately 50,000 to more than 400,000<sup>46</sup> - an 800 percent increase.

Along with legislative changes, the 1980s were also marked by cultural changes in the popular perception and awareness of marijuana. This is attributable in part to efforts to bring public awareness to the problems then seen to have been posed by drug abuse. For example, the “Just Say No” advertising campaign, championed by First Lady Nancy Reagan, warned against

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<sup>43</sup> Gerber, Rudolph J. *Legalizing Marijuana: Drug Policy Reform and Prohibition Politics*. Westport, Conn.: Praeger, 2004. 34.

<sup>44</sup> *Ibid.*, 35.

<sup>45</sup> *Ibid.*, 40.

<sup>46</sup> "A Brief History of the Drug War." The Drug Policy Alliance.  
<http://www.drugpolicy.org/new-solutions-drug-policy/brief-history-drug-war>.

the dangers of illegal recreational drugs. The First Lady further sought to teach children how to avoid drugs through her video messages for distribution, and touring of elementary schools across the country. The Reagan administration also supported the D.A.R.E. (Drug Abuse Resistance Education) program, which “[enlisted] police officers to teach fifth and [sixth] graders about the perils of marijuana” and other drugs.<sup>47</sup> These programs, along with others like them, had a profound effect on the public consciousness even if they had little effect on usage rates: in 1985, only two to six percent of Americans polled believed that drug abuse was the nation’s “number one problem”; by 1989, that number had risen to a staggering 64 percent.<sup>48</sup>

### **1990s – Present Day**

While the Clinton Administration offered a rhetorical departure from Reagan’s War on Drugs by advocating for the reform of crack cocaine laws, the political environment of the time powerfully affected Clinton’s policies. In the late 1980s and early 1990s, violent, mostly urban crime continued to be a central issue in national political debates. Fear of violence was used to garner support for harsher sentencing laws. In the context of this rhetoric, the Clinton Administration facilitated the passage of the Violent Crime Control and Law Enforcement Act of 1994. This bill was aimed at expanding federal sentencing power through habitual offender rules (three strikes laws), expanding police forces, and, among other things, eliminating Federal funding for inmate education.<sup>49</sup> In the wake of this piece of legislation, paired with a continuation of Reagan-era sentencing laws, the proportion of marijuana possession arrests in relation to total arrests tripled.<sup>50</sup>

As arrests for marijuana possession increased during the 1990s and 2000s, state and municipal governments once again sought more local approaches to marijuana regulation. The waves of new legislation, beginning in California, were motivated primarily by research on medical applications for marijuana, liberalizing attitudes towards recreational use and strained

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<sup>47</sup> Gerber, 34.

<sup>48</sup> "A Brief History of the Drug War."

<sup>49</sup> Carrie Johnson. "20 Years Later, Parts of Major Crime Bill Viewed As Terrible Mistake." NPR. September 12, 2014.

<sup>50</sup> Christopher Ingraham. "The Share of Arrests for Marijuana Possession Has More than Tripled since 1991." Washington Post. August 13, 2014.

law enforcement budgets. One of the most significant developments in American marijuana regulation has been the trend for states to pass laws that exempt licensed medical users from marijuana regulation. After California passed such a law by popular ballot in 1996, the Clinton administration actively pursued the prosecution of medical marijuana users under the Controlled Substances Act of 1970.<sup>51</sup> This policy was reaffirmed by two Supreme Court cases- *United States v. Oakland Cannabis Buyer's Collective* in 2001, and *Gonzalez v. Raich* in 2005. Both cases involved a medical user suing the federal government for denying them access to lifesaving medicine; in both cases, the Court held that the Controlled Substances Act is supreme over the state laws in question, and medical marijuana users have continued to be prosecuted until very recently. However, medical marijuana has increasingly gained legislative support, and at the time of writing of this report, 23 states in addition to the District of Columbia have implemented legal exceptions for medical marijuana users.

Other recent developments in state laws have focused on reducing legal penalties for marijuana for all users, not just medical users. As mentioned above, in the 1970s 11 U.S. states decriminalized marijuana in the wake of the Shafer Commission's report. Recently, a number of cities including Philadelphia, Chicago, and New York have decriminalized small amounts of marijuana possession or effectively decriminalized marijuana by ordering their police force to not make any marijuana possession arrests.<sup>52</sup> According to the Congressional Research Service, decriminalization poses no conflict with federal law because in decriminalized states, marijuana remains illegal, which is consistent with the Controlled Substances Act.<sup>53</sup>

The future of executive policy for marijuana prohibition is uncertain because it depends heavily on the results of hotly contested elections. The 2014 Congressional ban on the use of Federal funds to prosecute medical marijuana users, however, may signify a shift in the Federal government's pursuit of marijuana use as a serious criminal problem. In 2016, 10 states have ballot initiatives to legalize recreational marijuana use. As more state and municipal governments reduce criminal penalties for marijuana use and possession, the Federal government

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<sup>51</sup> Bruce Barcott and Michael Scherer. "The Great Pot Experiment." *Time*. May 14, 2015.

<sup>52</sup> Malcolm Brunley. "Is Philly the New Model for Pot Reform?" *Next City*. March 9, 2015.

<sup>53</sup> Lisa Sacco and Kristin Finklea. "State Marijuana Legalization Initiatives: Implications for Federal Law Enforcement." Congressional Research Service, 2014.

will have to address crucial decisions regarding the legal and cultural status of marijuana in the United States.

### **Important Lessons from the History of Marijuana Prohibition**

Until the 1937 Marihuana Tax Act, cannabis was legally available in the United States as both a recreational and medicinal drug. The legislative efforts to criminalize marijuana that followed the Tax Act throughout the rest of the 20th century have generally drawn on the same types of arguments. These arguments generally characterize marijuana as a life threatening substance with demonic power to corrupt a person's moral character. Similar rhetoric was used to argue successfully for the prohibition of alcohol. Rather than drawing on scientific arguments, early proponents of marijuana criminalization worked hard to rhetorically link marijuana use and drug use more broadly to racial minorities and violent crime. In taking advantage of the American fear of the 'other', people like Harry Anslinger set the tone for of drug policy rhetoric going forward.

## **V. Ethical Framework**

In a 2014 interview by the *New Yorker's* David Remnick, President Obama presented a perspective on the harm of marijuana use that, at the very least, suggests that Federal drug scheduling policy is misguided: "As has been well documented, I smoked pot as a kid, and I view it as a bad habit and a vice, not very different from the cigarettes that I smoked as a young person up through a big chunk of my adult life. I don't think it is any more dangerous than alcohol."<sup>54</sup> Just as remarkable as the President's stance that an illicit substance is no more harmful than a licit substance, however, is the broader context of how he is suggesting we should approach (and are approaching) drug laws in America.

Remnick begins the article by describing the scene on Air Force One as he interviews the President. Seated at his desk as they spoke, Obama kept an eye on the Miami Dolphins-Carolina Panthers game on his television. Remnick asked the President if reports of head trauma and early

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<sup>54</sup> Remnick, D. (2014, January 27). Going the Distance: On and off the road with Barack Obama. *The New Yorker*.

onset dementia among NFL veterans brought about any mixed feelings about being a fan of the sport. While Obama's immediate answer was 'No', he went on to elaborate that "there's a little bit of a caveat emptor. These guys, they know what they're doing. They know what they're buying into. It is no longer a secret. It's sort of the feeling I have about smokers, you know?"<sup>55</sup> In other words, professional football players understand that they are more likely to die young, and smokers understand they will develop lung cancer.

The underlying premise of the President's statements on tobacco, alcohol, marijuana and football is that it is acceptable for people to make decisions that put their own well-being at risk provided that they are adequately informed. In the United States, the notion that it is okay to take certain risks is central to political and moral discourse. Yet, despite the centrality of risk taking to American culture, certain substances categorized as 'drugs' have been deemed socially unacceptable. There are, it seems, two primary justifications for the designation of drugs as illegal and immoral. One holds that drug use has repercussions that go beyond individual risk taking. Much of the rhetoric surrounding harsher sentencing for crack cocaine use, for example, focused on the impact of use by parents on their children.<sup>56</sup> The other justification constructs 'drugs' as "an omnipotent demon with the power to curtail free will and drag the unsuspecting victim into addiction, crime and death."<sup>57</sup> In this formulation, drugs have an agency that acts to propagate other immoral behavior in society.

The objectives of a policy reflect a particular set of values or ethics. We believe that the chief policy goal for any drug policy should be "to reduce the harms to society arising from the production, consumption, distribution, and control of the drugs."<sup>58</sup> We interpreted this policy objective in part through utilitarian philosopher Jeremy Bentham's theories of crime and punishment. He argues that crimes and their punishments must be classified only on the basis of the harm that the crime causes and the efficacy of the punishment as a deterrence.<sup>59</sup> In other words, the harm caused by a punishment should not be greater than the harm caused by the crime

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<sup>55</sup> *Ibid.*

<sup>56</sup> Wilson, J. (1990). Against the Legalization of Drugs. *Commentary*, 89(2), 21-29.

<sup>57</sup> Bretherton, L. (2014, January 6). Drug-fuelled culture of control: Thinking theologically about the legalization of marijuana. Australian Broadcasting Corporation.

<sup>58</sup> Reuter, P. & Caulkins, J. (1995). "Redefining the Goals of National Drug Policy: Recommendations from a Working Group." *American Journal of Public Health*, 85, p. 1059.

<sup>59</sup> Troyer, John (ed.) *The Classical Utilitarians: Bentham and Mill* Indianapolis, IN, Hackett. 2003.

for which it is issued. In the context of marijuana laws, this means that the punishment for marijuana offenses should not have greater harm for the individual being punished than the harm created by the individual's use or possession of small amounts of marijuana. If marijuana criminalization deters marijuana use, and marijuana use is deemed to be socially harmful in a significant manner, then there may be some value to criminalization policies. If, however, the harms created by marijuana criminalization and subsequent punishments are greater than those of marijuana use, then a non-criminalized penal scheme may be appropriate.

In the context of drug policy, Bentham's philosophy aligns with a harm reduction policy goal. Harm reduction is a policy objective that can be viewed as an alternative to use reduction. There are many problems with a use reduction policy, the most important of which is that it does not work. While overall prevalence of drug use has fallen with intensified law enforcement, heavy and problem use has, by some metrics, been on the rise.<sup>60</sup> A use reduction framework seems to ignore the important fact that drug use is highly individualized; it "tends to overlook real differences among drugs, drug use patterns...populations, and the many harms associated with drug distribution, enforcement, and control as opposed to drug use."<sup>61</sup> We can define harm reduction in the context of drug policy as an approach to drug use that seeks to reduce users' self-harm and harm to the rest of society.

With marijuana criminal laws in particular, there are ethical problems that go beyond Bentham's theory that the harm of a punishment should not be greater than the harm of the crime. These problems make themselves apparent in the application of the law. At first glance, there seem to be significant disparities in the application of these laws: most notably black Americans are significantly more likely to be arrested for marijuana possession than any other racial group.<sup>62</sup> This disparity might not be problematic if black individuals were more likely to use marijuana or even if disparities in arrests could be accounted for by riskier behaviors on the part of black Americans, like buying marijuana from a stranger or smoking in public. In the context of the history of drug prohibition, however, it seems that something more insidious and ethically dubious is going on in the enforcement of marijuana laws. As established in our

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<sup>60</sup> Ibid, 1060.

<sup>61</sup> Ibid.

<sup>62</sup> ACLU. (2013, June 1). "The War on Marijuana in Black and White: Billions of Dollars Wasted on Racially Biased Arrests."



historical analysis, drug prohibition in the United States is and has always been inextricably linked to efforts to marginalize racial minorities. Therefore, it is possible that the disparities in drug arrests between races are the result of racial profiling and targeted policing. This kind of legal discrimination would present a set of ethical issues beyond a utilitarian calculus of the respective harms created by a crime and its punishment.

Rather, here we see a discriminatory application of the law that is unjust. The conception of justice that we draw is based on a fundamental tenet of liberal democracies: equal application of the law. It is important to define, however, what exactly is meant by equal. It is not necessarily obvious that the criminalization of marijuana is inherently racially unequal; at face value, laws prohibiting marijuana seem colorblind. The impacts, however, disproportionately affect young African American men.<sup>63</sup> A focus on the colorblindness of marijuana laws and drug laws more generally distracts from an examination of how a public policy has imposed great cost on a particular community.<sup>64</sup> Equal application of the law, and indeed justice in our view, necessitates that the historical context and impact of a policy be considered along with the intent and letter of the policy itself. Because of this, in the context of the criminalization of marijuana, part of what justice means is reducing the disparate impact on the black community.

In summary, there are two primary ethical concerns that motivate and guide our analysis of marijuana decriminalization in Pittsburgh: 1) criminal punishments do not seem proportionally appropriate for marijuana use and small possession, and 2) marijuana laws seem to be applied unfairly, disproportionately burdening black Americans, males, and adolescents. Our study analyzes the validity of these contentions and makes marijuana policy recommendations based on them.

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<sup>63</sup> Loury, Glenn (1999) "Why Should We Care About Racial Inequality per se?" *Issues in Ethics*: 10:2.

<sup>64</sup> *Ibid.*

## VI. Current Drug Possession Laws

Given our ultimate recommendation that the City of Pittsburgh decriminalize the possession of up to 30 grams of marijuana and eight grams of hashish, we now turn to the question of its legal authority to do so. Currently, the possession, sale, trafficking, and cultivation of marijuana are prohibited by both federal law and Pennsylvania law.<sup>65</sup> Under Title 35 of Pennsylvania's Health and Safety Code, the possession of a small amount of marijuana- "for the purposes of this subsection, thirty (30) grams of marijuana or eight (8) grams of hashish shall be considered a small amount of marihuana"<sup>66</sup>, - with no intent to sell is a misdemeanor punishable by up to thirty days' imprisonment and a fine of up to \$500. Under federal law, a first-time marijuana possession offense of any amount of marijuana is a misdemeanor punishable by up to one year in prison or a fine of up to \$1,000. Second-time offenses carry a mandatory minimum sentence of at least fifteen days and up to two years in prison and a fine of up to \$2,500; any subsequent offenses are punishable as either misdemeanors or felonies, and carry mandatory minimum sentences of at least ninety days and up to three years in prison with a fine of up to \$5,000.<sup>67</sup> Moreover, convicted offenders "shall be fined the reasonable costs of the investigation and prosecution of the offense... except that this sentence shall not apply and a fine under this section need not be imposed if the court determines under provision of title 18 that the defendant lacks the ability to pay."<sup>68</sup>

The question of federal and state supremacy poses an interesting challenge to whether or not Pittsburgh has the legal authority to decriminalize marijuana possession. As of November 2015, many federal, state, and local municipal laws exist in conflict with each other. For example, while states such as Colorado and Washington have legalized marijuana for recreational use, both are still illegal under federal law. However, federal supremacy - the precedence of federal law over state law- is well-established in United States history and law. Article VI, Clause II of the United States Constitution (hereafter referred to as the Supremacy Clause) provides that "[the] Constitution, and the laws of the United States... shall be the

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<sup>65</sup> Controlled Substances Act (21 U.S.C. § 811); Pennsylvania Title 35 (S 780-101).

<sup>66</sup> 35 PA. Const. Stat S 780-113.

<sup>67</sup> Controlled Substances Act (CSA) (21 U.S.C. § 811).

<sup>68</sup> *Ibid.*, §844.

supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or law of any State to the contrary notwithstanding.”<sup>69</sup> The Supreme Court has consistently upheld this principle - in *Crosby v. National Foreign Trade Council* (2000), the Court found that even if a state law does not directly conflict with a federal law, it can still be unconstitutional due to Supremacy Clause preemption “where under the circumstances of a particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”<sup>70</sup> The same holds true of federal laws over local municipal laws. In *City of Burbank v. Lockheed Air Terminal* (1973), the Supreme Court held that a Burbank city ordinance that placed a curfew on jet flights from the local airport conflicted with federal regulations and environmental laws, and was therefore unconstitutional on Supremacy Clause and Commerce Clause grounds.<sup>71</sup>

Regarding marijuana laws, the Supreme Court found in *Gonzales v. Raich* that the federal Controlled Substances Act (CSA) overrode California’s 1996 Compassionate Use Act, which legalized marijuana for medical use within the state. Although the appellants argued that “the CSA’s categorical prohibition of the manufacture and possession of marijuana . . . exceeds Congress’ authority under the Commerce Clause”, the Court held that Commerce Clause powers permit Congress to regulate even purely local activities if those activities belong to an economic “class of activities” with a substantial effect on interstate commerce; because local marijuana use and prevalence has a substantial effect on the national marijuana market as a whole, the regulation of intrastate use was found to be essential to regulating the national market.<sup>72</sup> Likewise, in *Coats v. Dish Network* (2015), the Colorado Supreme Court ruled that despite Colorado labor laws prohibiting the “unlawful prohibition of legal activities as a condition of employment”, state-licensed use of medical marijuana at home during non-working hours can result in permissible termination. In order to be considered “legal,” an activity that is subject to

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<sup>69</sup> United States Constitution, Article VI, Clause II.

<sup>70</sup> See: *Ware v. Hylton*, 3 U.S. 3 Dall. 199 (1796); *Pennsylvania v. Nelson*, 350 U.S. 497 (1956); *Cooper v. Aaron*, 358 U.S. 1 (1958); *Crosby v. National Foreign Trade Council*, 530 U.S. 363 (2000).

<sup>71</sup> *City of Burbank v. Lockheed Air Terminal*, 411 U.S. 624 (1973).

<sup>72</sup> *Gonzales v. Raich*, 545 U.S. 1 (2005): the Court specifically noted that even small amounts of marijuana grown at home, even if intended solely for personal medicinal use, would likely be diverted into the national market and undermine Congress’s aim of controlling overall supply.

both state and federal law must “be permitted by, and not contrary to, state and federal law.”<sup>73</sup> However, it is necessary to note that the federal government’s stance on restrictive marijuana laws seems to have softened in recent years. In June 2015, the House of Representatives passed a bill prohibiting the Justice Department from using federal funds to “prevent such States from implementing their own State laws that authorize the use, distribution, possession, or cultivation or medical marijuana” and cutting the budget of the Drug Enforcement Administration.<sup>74</sup> If this trend towards liberalization continues, the issue of federal supremacy may naturally resolve.

## VII. Scope of Decriminalization

Decriminalization is a unique legal approach to the legal challenges presented above. Decriminalization presents a complicated and potentially contradictory framing for a behavior. The act of decriminalizing could send a message to the public that the behavior in question is both forbidden and permitted. There are potential alternative policy options, including a reconfiguration of law enforcement priorities. Without fully legalizing, however, it is unclear if a policy measure that liberalizes marijuana policy can avoid some degree of contradiction with Federal law. While this tension between Federal policy and local liberalization efforts is an ongoing problem, the Congressional Research Service has concluded that the decriminalization of marijuana is not in conflict with the Controlled Substances Act, as marijuana remains illegal under such a policy.<sup>75</sup> Furthermore, there is a great deal of legal precedence for not applying the supremacy clause to states with alternative marijuana laws.

At its core, decriminalization means that although still illegal, once criminalized behaviors lose their criminal penalties. In his paper “Toward a Working Theory of Decriminalization,” Richard Lempert argues that changing enforcement patterns are the most reliable way to determine whether a decriminalization initiative has been successful.<sup>76</sup> If a

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<sup>73</sup> *Coats v. Dish Network*, CO 44. No. 13SC394 (2015).

<sup>74</sup> Consolidated and Further Continuing Appropriations Act, 2015. Pub. L. 113-235. 128 Stat. 2130. 16 December 2014.

<sup>75</sup> Lisa Sacco and Kristin Finklea. "State Marijuana Legalization Initiatives: Implications for Federal Law Enforcement." Congressional Research Service, 2014.

<sup>76</sup> Lempert, Richard. "Toward a Theory of Decriminalization." *U of Michigan Public Law Working Paper No. 209*, 2010.

municipality changes its marijuana laws but local law enforcement continue to enforce state or federal law, then decriminalization has failed to be realized.

In the context of marijuana policy, decriminalization means that criminal penalties for marijuana possession and use are replaced by civil penalties. In order to reclassify the penalty for marijuana possession, the City of Pittsburgh would need to amend its current criminal statutes so that possession of 30 grams or less of marijuana would be a civil offense only. The maximum penalty for this offense would be a small fine, with possible alternative penalties available for people who cannot pay. Decriminalizing marijuana alone will not end unfair law enforcement practices or lift black Americans out of poverty. It can, however, reduce the unnecessary costs associated with the criminalization of nonviolent drug users, and reduce the stark annual number of racially disparate marijuana possession arrests in Pittsburgh.

### **VIII. Who Gets Arrested for Marijuana Possession, and What Happens to Them?**

In 2010, there were 1.6 million people arrested in the United States for drug violations. These arrests constituted an eighth of all arrests that year. 46 percent of these arrests were for marijuana possession. Between 1980 and 2010, marijuana possession arrests have more than doubled.<sup>77</sup> It should be noted, however, that these arrests still only represent a very small minority of marijuana users. In fact, just about 2.5 percent of all American marijuana users get arrested for possession in an average year.<sup>78</sup>

In Pittsburgh, for simple possession of marijuana with no modifiers, patrol officers are most likely to write a summons and perform a “catch and release” stop, where the suspect is stopped and “arrested,” but the suspect is not taken into full custodial arrest.<sup>79</sup> At the time of the stop, if they have ID, their name is taken down and run through the National Crime Information Center (NCIC) database to ensure that the individual has no outstanding warrants or warnings. The suspect is then told to appear at the county jail for processing, at which time they will be fingerprinted and have pictures taken. They will then proceed to the judge. The drugs will be

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<sup>77</sup> Caulkins, J. et al., “Marijuana Legalization: What Everyone Needs to Know.” 2012, 42.

<sup>78</sup> Ibid., 43.

<sup>79</sup> Narcotics Division, Pittsburgh Police. "Discussion of Law Enforcement Implications of Marijuana Decriminalization in Pittsburgh." Interview by author. October 19, 2015.

confiscated at the time of the stop and vouchered into evidence at their local zone. If the drugs are of an abnormally large quantity, clearly packaged for sale (separated into smaller bags), the suspect has no ID or cannot prove who they are, or if the suspect is uncooperative with police authorities, then different charges will be filed and a full custodial arrest will likely need to be effected. However, the vast majority of marijuana arrests are non-custodial court summons.<sup>80</sup> Upon appearance in court, the offense is usually reduced from a misdemeanor to a summary offense punishable by fine.<sup>81</sup> This reduced process however, still leaves individuals with a criminal record and eats up administrative resources, two consequences that decriminalization would eliminate.

While the above details of the process for suspects arrested for marijuana possession in this City of Pittsburgh reflects by-the-books standard operating procedures, it should be noted that the Pittsburgh Bureau of Police (PBP) has been investigated for civil rights violations several times over the past few decades by the Department of Justice. A 1997 investigation by the Department of Justice Civil Rights Division found that

“(1) PBP officers engage in a pattern or practice of the use of excessive force and of making false arrests and performing improper searches and seizures; (2) PBP officers use racial epithets or racially insensitive language against African-Americans...and (5) the PBP fails properly to supervise its officers.”<sup>82</sup>

Following these charges, the City entered into a consent decree with the federal government to improve police conduct. Despite the reforms implemented by the 1997 consent decree, Mayor Peduto expressed concern in 2014 that “Many of the of the officers who get concerned when I talk about this [Justice Department investigation] don’t realize how close we are to going into another consent decree.”<sup>83</sup> Activist Jasiri X describes the relationship between the city and the

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<sup>80</sup> "Policing Marijuana: The Law Should Reflect What Happens Already." Pittsburgh Post-Gazette. November 20, 2015.

<sup>81</sup> Ibid.

<sup>82</sup> Patrick, Deval L. "City of Pittsburgh Investigative Findings Letter." Department of Justice, Civil Rights Division. 1997.

<sup>83</sup> Benzing, Jeffrey. "Pittsburgh Police could face second federal consent decree, Peduto says." *Public Source*. July 1, 2014.

black community as “adversarial,” citing the same practices identified by the 1997 Justice Department report.<sup>84</sup>

The bulk of arrests for marijuana possession are not the result of concerted efforts by the police to find marijuana users. Two of the most common police actions that result in marijuana possession arrests are traffic stops and stop-and-frisk searches.<sup>85</sup> Marijuana charges can also be used to replace other, more difficult to prove charges, like domestic violence. The lesson from these facts is that in general, the police have a vast degree of discretion regarding whom they arrest for marijuana possession. In a study of marijuana possession arrests and police behavior in New York City, Bernard Harcourt and Jens Ludwig of the University of Chicago found that marijuana possession arrests do not necessarily reflect changes in the use of marijuana or even in drug enforcement policy. Rather, they identified order-maintenance policing as the key factor in the racially disparate climb in marijuana possession arrest rates in New York City.<sup>86</sup>

Order-maintenance policing is the practice of publicly policing petty crimes - like graffiti, turnstile hopping, and marijuana use – with the goal of establishing a stronger sense of law and order. While this kind of policing is associated with lower crime rates, it can also be associated with a demographically disparate system of mass incarceration. Nationally, African Americans are nearly four times more likely to be convicted for marijuana possession than are their Caucasian peers.<sup>87</sup>

Our research findings suggest that the causes of these racial disparities are complex and varied. For example, Pittsburgh Police Narcotics detectives argued that in many lower income communities, people of all races were much more blatant with smoking marijuana. This means that they are much more likely to be smoking on the street or in public areas, resulting in a higher risk of arrest. In areas with lower crime or higher incomes, detectives have found that people who smoke marijuana are much lower profile than those in public areas. This is likely due to more privacy in homes and possibly being in more suburban or rural areas. The detectives felt

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<sup>84</sup> X, Jasiri. "Discussion of Racial Implications of Marijuana Decriminalization in Pittsburgh." Interview by authors. November 24, 2015.

<sup>85</sup> Ibid.

<sup>86</sup> Harcourt, B. & Ludwig, J. (2006). *Reefer Madness: Broken Windows Policing and Misdemeanor Marijuana Arrests in New York*. University of Chicago Law School.

<sup>87</sup> ACLU. (2013, June 1). *The War on Marijuana in Black and White: Billions of Dollars Wasted on Racially Biased Arrests*.

that the socioeconomic disparities are one of the main reasons for the racial disparities seen in marijuana charges in Pittsburgh, with more prevalent public use of marijuana driving higher arrest rates for people from lower income areas. While these initial findings require further investigation, it is clear that decriminalization is not a “magic bullet” for addressing the deeply embedded structural nature of racial and economic inequalities.

Additionally, when controlling for usage rates males and adolescents are more likely to be arrested for marijuana possession than are women and adults.<sup>88</sup> While it is true that not very many people convicted of marijuana possession are currently incarcerated, it is important to note that a marijuana possession conviction can have a wide array of collateral consequences beyond incarceration. Even one night in prison can be damaging, “and much more dangerous than merely smoking pot.”<sup>89</sup> The ACLU found that marijuana possession convictions can, among other things, lead to the revocation of one’s driver’s license, denial of employment, civil debt, loss of child custody, loss of student loans and denial of public housing.<sup>90</sup>

Lawyer and social work professor Jeff Shook knows from his pitexperience working in the Pittsburgh juvenile court system that marijuana laws can powerfully impact the lives of young people. When a juvenile is arrested for drug possession, they will typically receive a summons to appear before a judge. This judge will decide to either begin criminal proceedings or divert them to a rehabilitation program. Shook argues that this kind of diversion does not happen nearly enough. Judges, he says, typically do not “look kindly towards young people using marijuana.”<sup>91</sup> Generally, for low levels of marijuana first time offenders typically receive the least restrictive probation with minimal supervision. This record is permanent, and while it can be expunged, Shook again argues that this does not happen enough given the complexity and costs of the required legal process. Furthermore, repeat offenses generally result in ‘residential placement,’ for anywhere from six months to one year. Residential placement is a punishment that represents a variety of detention centers and group homes for juvenile drug offenders. His

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<sup>88</sup> Nguyen, H., & Reuter, P. “How risky is marijuana possession? Considering the role of age, race, and gender.” *Crime & Delinquency*, 58(6), 2012, 879-910.

<sup>89</sup> Caulkins, J. et al., (2012). *Marijuana Legalization: What Everyone Needs to Know*. New York, NY: Oxford, p. 47.

<sup>90</sup> ACLU. (2013). *The War on Marijuana in Black and White: Billions of Dollars Wasted on Racially Biased Arrests*.

<sup>91</sup> Shook, J. Personal interview. 6 November 2015.

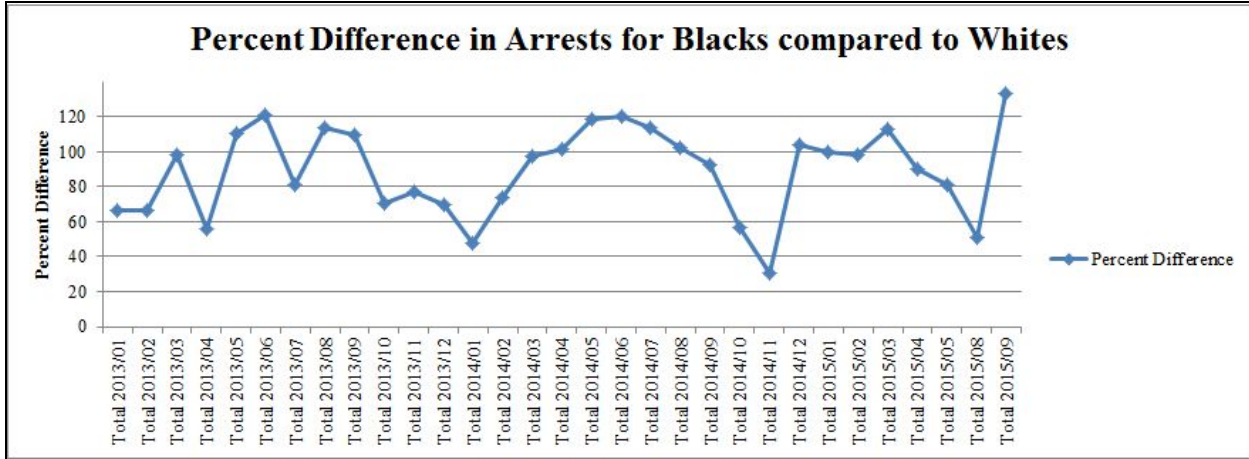
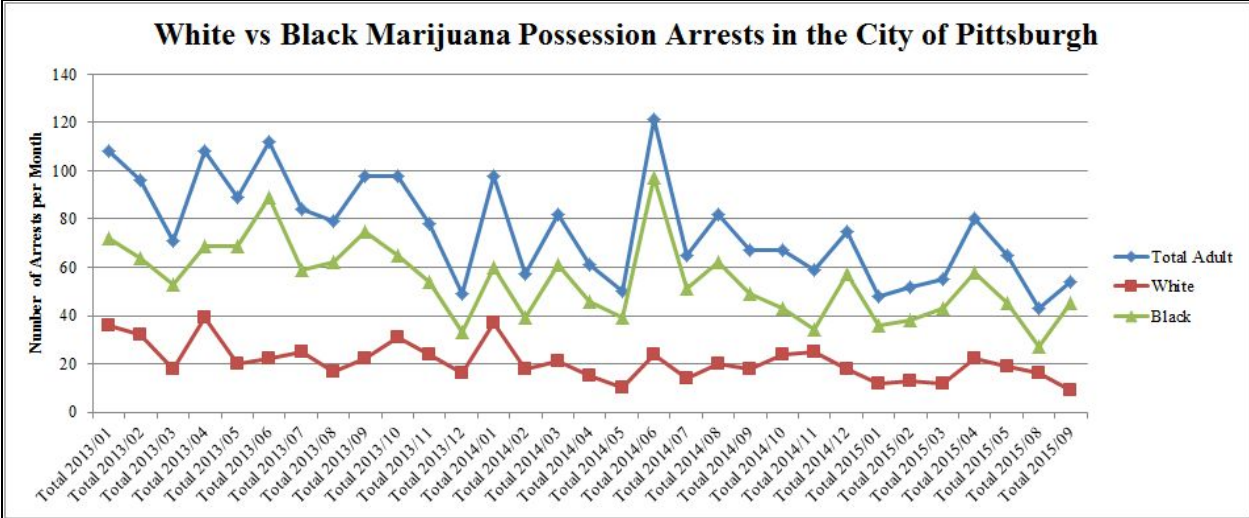


research on the distribution of drug use, sales and arrests in Pittsburgh show a disproportionate impact on black individuals. While races sell and use drugs at the same rates, “that’s not what it looks like in a juvenile court, in a jail, in the prison system.”<sup>92</sup>

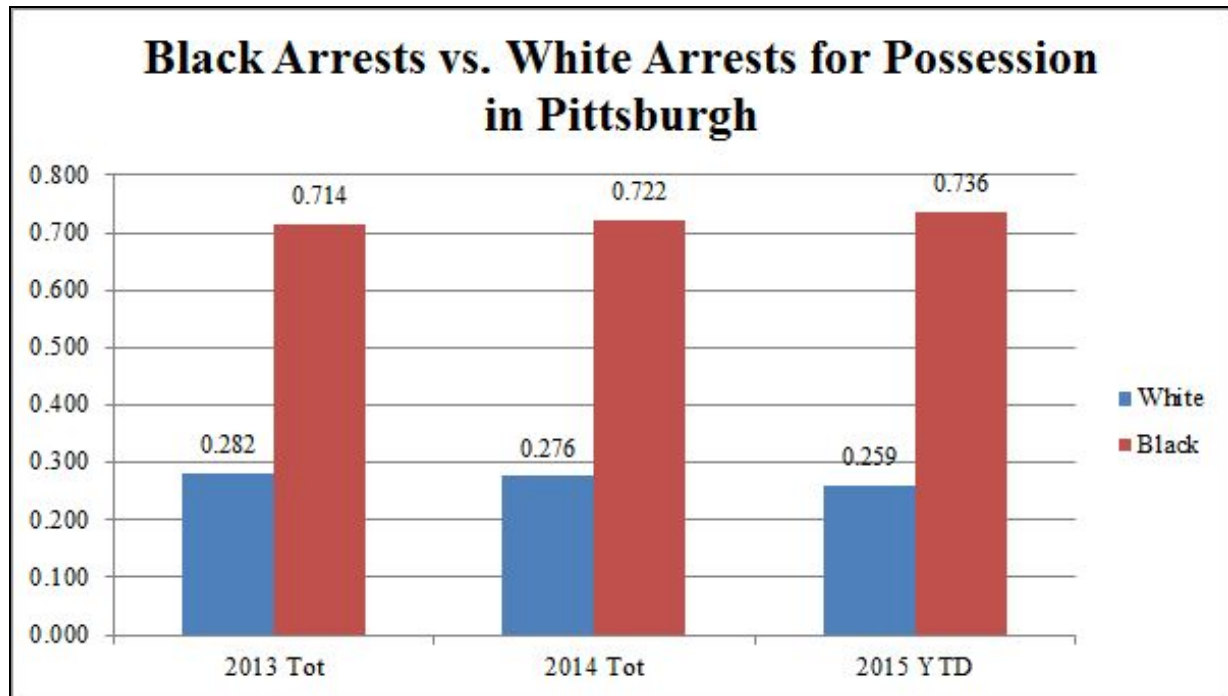
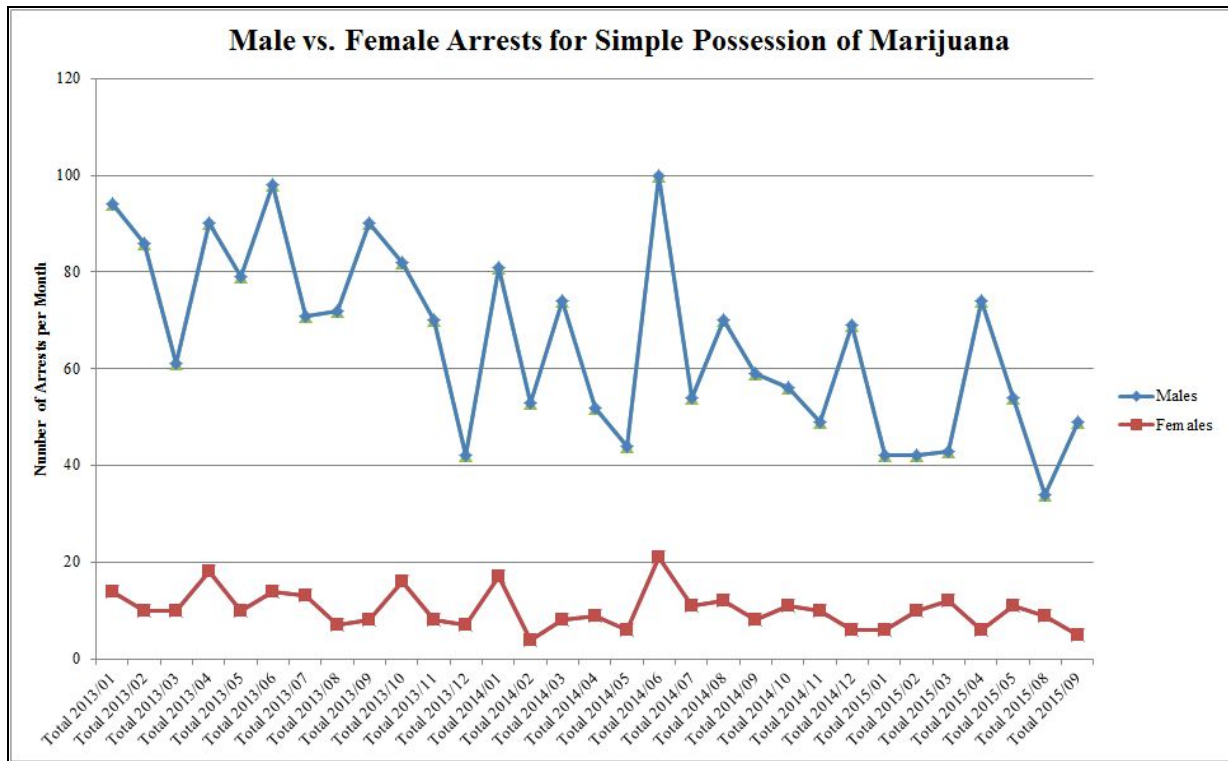
It is undeniable that the enforcement of marijuana laws creates a great deal of harm across all communities, especially among young, black males. In Pittsburgh, as the data from the state crime reporting database shows (see below graphs), black individuals are about twice as likely to be arrested for marijuana possession as white individuals, making up more than two thirds of marijuana possession arrests despite being only 26 percent of the city’s population. These harms, and the racial disparity of their distribution must be considered along with public health concerns associated with marijuana use. Furthermore, the efficacy of a decriminalization policy to reduce these harms is a crucial point of analysis.

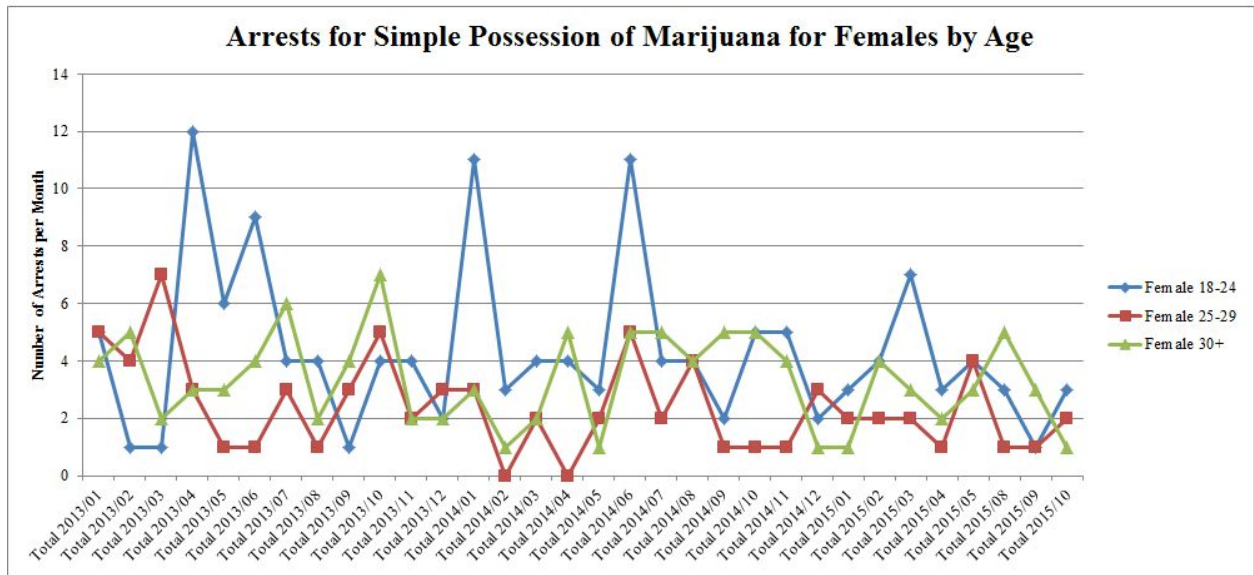
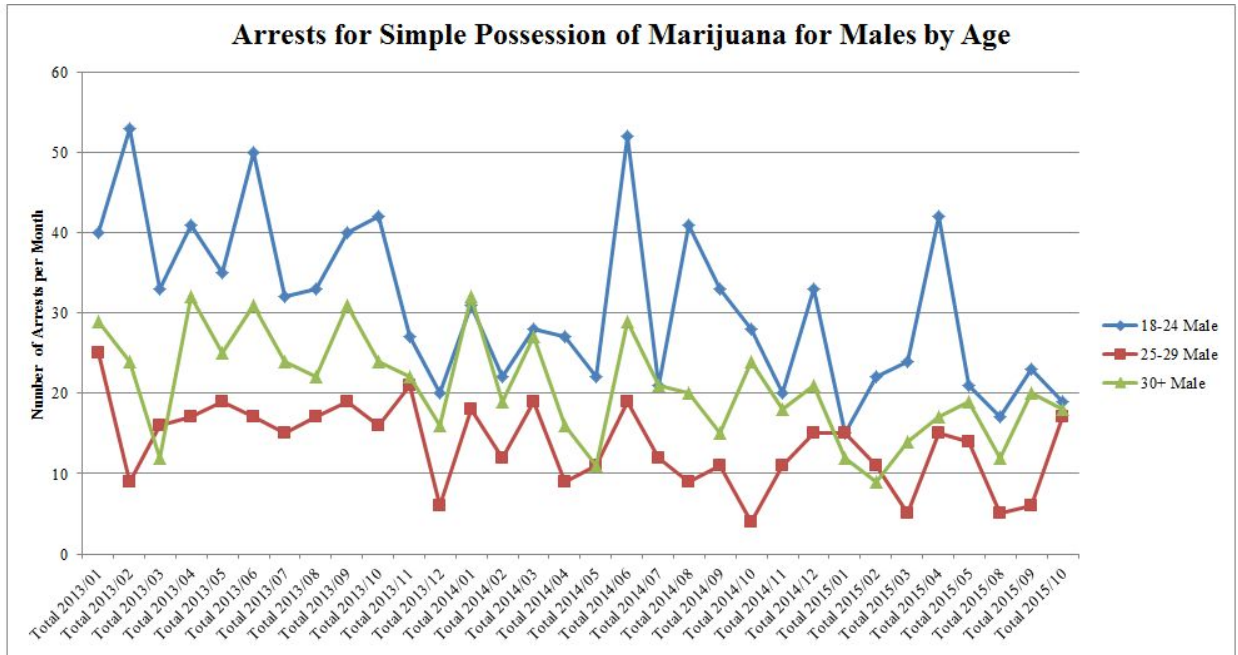
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<sup>92</sup> Ibid.



The first graph here represents the total number of adults arrested for simple marijuana possession in the city of Pittsburgh from January 1st, 2013 through the end of September, 2015 for Black and White individuals. The remainder of the percentage arrested for Marijuana comprises Asian-Pacific and American Native. Hispanic and Non-Hispanic ethnicities are recorded separately in the Uniform Crime Reporting System. The percent difference chart shows that a certain percentage more of black individuals were arrested for simple possession than white individuals each month.





The preceding graphs were sourced from the Pennsylvania Uniform Crime Reporting System. The Pennsylvania Uniform Crime Reporting System collates all of the arrest data from

State, County, and Municipal Law Enforcement agency in Pennsylvania. The data here is the arrest record from the Pittsburgh Bureau of Police (“Pittsburgh City” in the database). Charges entered into the database are recorded as the highest offense listed. Therefore, the above data only represents arrests where marijuana possession was highest, or only, arrest charge.

## **IX. Police Support for Decriminalization in Pittsburgh**

Pittsburgh Police Chief Cameron McLay has voiced public support for Daniel Lavelle’s decriminalization bill.<sup>93</sup> In general, the Pittsburgh Police have indicated support for the proposed marijuana decriminalization bill as it will free up police resources and time with officers no longer having to appear at court summons for marijuana offenses. Our discussion with Pittsburgh Police Narcotics detectives also indicates police support for the bill. For reasons mentioned above, Police support is crucial, for without it the city decriminalization bill could be ignored in favor of state law in the name of police discretion.

The Narcotics branch of the Pittsburgh police specializes in higher level drug crime, including primarily large scale dealers and harder, more dangerous drugs. While most marijuana arrests come from patrol officers, rather than the narcotics detectives, the narcotics detectives have significant exposure to the effects of marijuana on crime and the drug market generally. The detectives we spoke to estimated that around 90 percent of crime in the city is in some way related to drug movement, sales, or consumption. Additionally, while marijuana is rarely the focus of Narcotics investigations, it is by far the most common drug, frequently found at crime scenes for other drugs.

The Police support the proposed decriminalization bill insofar as it increases their discretion without taking away the ability to charge marijuana possession criminally. Given that in instances of other crime and harder drugs it is common to also find marijuana, a concern with decriminalization in general is that it would reduce the ability of the police to arrest known, serious criminals for marijuana possession in the absence of other immediate evidence. Daniel

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<sup>93</sup> "Policing Marijuana: The Law Should Reflect What Happens Already." Pittsburgh Post-Gazette. November 20, 2015.

Lavelle's proposed bill would not hamper Police's ability to make arrests in this situation as long as marijuana is still criminalized at the state level. In addition to the time the police would save in small marijuana arrests by eliminating paperwork and court hearings, the flexibility that is afforded officers in their ability to make arrests (i.e., reducing the charge for otherwise innocent offenders while enabling criminal charges against serious criminals) is essential to Police support of the bill.

## **X. Legal Overview of Decriminalization in Pittsburgh**

Pittsburgh's decriminalization bill is partly the result of inaction at the state level. Governor Tom Wolf has voiced his support for statewide marijuana decriminalization in Pennsylvania, yet the passage of a statewide marijuana decriminalization bill seems unlikely given the current political climate in the state congress.<sup>94</sup> A medical marijuana bill under consideration by the Pennsylvania congress has not been passed despite polls indicating high statewide support. An October 2015 Quinnipiac University Poll of Pennsylvania voters found 90 percent support for medical marijuana while support for marijuana legalization was roughly split at 47 percent for, 49 percent against.<sup>95</sup> The survey did not examine decriminalization. While as discussed below, it would be preferable from a legal standpoint for decriminalization to occur at the state (or federal) level rather than local level, political gridlock is presently preventing this option.

On the issue of decriminalization potentially conflicting with Pennsylvania state statutes, those statutes generally regulate the power of a city to enact ordinances. State Constitutions may also preempt local governments' authority on certain matters. The City of Pittsburgh, having adopted a home rule charter in 1974, is subject to Article IX of the Constitution of the Commonwealth of Pennsylvania specifying that "a municipality which has a home rule charter may exercise any power or perform any function not denied by this constitution, by its home rule

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<sup>94</sup> "Gov. Wolf: Decriminalize Marijuana." WPXI. May 19, 2015.

<sup>95</sup> "QU Poll Release Detail." QU Poll. October 8, 2015.

charter or by the General Assembly at any time”<sup>96</sup>. In Pennsylvania, home rule municipalities are those that have adopted and incorporated their own charters, granting them authority in areas not been limited by state law; in contrast, municipalities without home rule charters can only act where specifically authorized by state law. Pittsburgh’s home rule charter also acknowledges the supremacy of state laws, stating that “the City of Pittsburgh has all home rule powers and may perform any function and exercise any power not denied by the Constitution, the laws of Pennsylvania, or this charter.”<sup>97</sup>

Title 53 of the Pennsylvania General Assembly, which defines the scope of powers available to a home rule charter, specifies that “the home rule charter shall not give any power or authority to the municipality contrary to or in limitation or enlargement of powers granted by statutes,” including “defining or providing for the punishment of any felony or misdemeanor.”<sup>98</sup> Although this can be construed to mean that the City of Pittsburgh lacks the legal authority to in any way alter the punishment of such misdemeanors as marijuana possession, the ACLU of Pittsburgh argues that the creation of an additional penalty in the form of a civil ordinance, which can be construed as an alternative enforcement option for police officers that is in line with the spirit of state law, does not constitute “defining or providing.”<sup>99</sup>

The proposed decriminalization policy would not repeal or replace state law. Officers still have the discretion to enforce a criminal charge for marijuana possession under state law if they so choose. Additionally, decriminalization policy maintains the spirit of state and federal laws against marijuana possession. The goal of a decriminalized policy is still to reduce the spread of marijuana possession and consumption. The main difference Pittsburgh would be enacting with a decriminalization policy would be to generate, as mentioned above, an alternative enforcement mechanism, for relatively unchanged marijuana restriction laws.

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<sup>96</sup> Article IX, Local Government Section 2. “Home Rule”, Constitution of the Commonwealth of Pennsylvania.

<sup>97</sup> Pittsburgh Home Rule Charter, 1974.

<sup>98</sup> Section 2962, Title 53 of Pennsylvania Statutes.

<sup>99</sup> Walczak, Vic. "Discussion of Legal Implications of Marijuana Decriminalization." Telephone interview by authors.

## XI. Estimations of Fiscal Savings for the City of Pittsburgh

Based on the Pennsylvania Uniform Crime Reporting System database, in 2014 there were 953 arrests of adults and juveniles for marijuana possession in the Pittsburgh. A RAND study in Vermont found the costs associated with enforcing marijuana possession (up to two ounces) to be \$1,266 per arrest.<sup>100</sup> The figure was calculated using a \$24.75 hourly police wage, however, according to the U.S. Department of Labor's Bureau of Labor Statistics, Pittsburgh police earn a median hourly wage of \$29.95.<sup>101</sup> The opportunity cost of police drug arrests make up only \$134 of the \$1,266 figure, and when adjusted for Pittsburgh wages this portion becomes \$161.73. The police wage difference illustrates that any estimation made using the Vermont data must recognize the approximate nature of such a calculation. This figure was compiled using Vermont-specific information, and cannot be perfectly matched to Pittsburgh, however, it serves well as an estimate. Using the RAND Vermont figure, Pittsburgh spent roughly \$1,206,498 in 2014 on marijuana possession arrests.

After Philadelphia's decriminalization ordinance, arrests fell from 3,686 the year prior to 739<sup>102</sup>, a decrease of 80 percent, and 1,012 citations were issued<sup>103</sup> (27 percent of previous year's arrests). It is unlikely that Pittsburgh would follow exactly the same pattern however; extrapolating the 80 percent decrease seen in Philadelphia to Pittsburgh would mean just 191 arrests after decriminalization at an estimated cost of \$241,806. If Pittsburgh issued the same ratio of tickets, they would issue 257. Based on the RAND study, these tickets would cost \$20 to enforce<sup>104</sup>, making the cost of citations \$5,140. In Philadelphia, only 27 percent of tickets were paid, but it is unclear exactly how many of each value ticket were paid. An estimate based on Philadelphia would have Pittsburgh getting revenue for 69 tickets and earning an expected value of \$2,604.75.<sup>105</sup> Thus, the net cost of tickets would be \$2,535.25 and the projected approximate

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<sup>100</sup> Caulkins, Jonathan P., and Beau Kilmer. *Considering Marijuana Legalization Insights for Vermont and Other Jurisdictions*. Santa Monica: RAND Corporation, 2015, 32.

<sup>101</sup> "Pittsburgh, PA - May 2014 OES Metropolitan and Nonmetropolitan Area Occupational Employment and Wage Estimates." U.S. Bureau of Labor Statistics. May 1, 2014.

<sup>102</sup> Caulkins and Kilmer, "Legalization Insights for Vermont", 33.

<sup>103</sup> Stephanie Farr. "Marijuana Has Been Decriminalized for a Year in Philly; How's It Going?" *The Morning Call*. October 20, 2015.

<sup>104</sup> Caulkins and Kilmer, "Legalization Insights for Vermont", 32.

<sup>105</sup>  $((.83*25)+(.17*100))*69= \$2,604.75$



net cost of marijuana possession enforcement (tickets and arrests) based upon 2014 Pennsylvania Uniform Crime Reporting System statistics for Pittsburgh, the RAND Vermont study, and extrapolation of Philadelphia data would be \$244,341.75. This is a net savings of \$962,156.25 when compared to the approximate 2014 cost of \$1,206,498. These are very approximate figures, and it is impossible to predict exactly how Pittsburgh would respond to the policy, however, it is obvious that, even with a more conservative estimate or different responses to issuing or payment of tickets, a significant amount of money could be saved by decriminalizing marijuana in the City of Pittsburgh.

## **XII. Public Health Implications of Marijuana Use**

Departing from historical American attitudes toward marijuana which have tended to hyperbolize the risks of marijuana use, we now examine the drug in light of the most current medical and public health research literature. Here we attempt to address the most prominent concerns of those who oppose any relaxation in marijuana policy. While hardly the demon drug it has been cast as historically, marijuana, like most drugs, is potentially harmful. It is our contention that any public policy that regulates the public's consumption of drugs must be informed on the effects and potential harms of the substance - both for the individual using the drug, and for the society as a whole. We believe it would be ill advised to call for the relaxation of current marijuana restrictions without first understanding these effects and potential harms.

Under current federal regulations, marijuana is still listed as a Schedule I drug, meaning it is considered by the federal government to have a high potential for abuse, without having any potential medicinal use. Schedule II - V drugs, including cocaine and opiates, are considered to have some potential for medicinal use while maintaining a significant risk of dependency or abuse in users. Despite this, marijuana is the most widely used illicit drug in the United States and around the world.<sup>106</sup> <sup>107</sup> Two factors regarding the prevalence of marijuana consumption in the United States should be noted. First, marijuana use is on the rise in the United States despite

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<sup>106</sup> Degenhardt, L, et al. "Global Burden of Disease Attributable to Illicit Drug Use and Dependence: Findings From the Global Burden of Disease Study 2010." *The Lancet* 382, no. 9904 (2013): 1564-1574.

<sup>107</sup> "What Is the Scope of Marijuana Use in the United States?" National Institute on Drug Abuse. September, 2015.

being illegal to purchase and consume for non-medical purposes in 46 of 50 states. A recent national survey published by the American Medical Association found that the prevalence of past-year marijuana use has doubled over the last decade, with 9.5 percent of Americans reporting usage of marijuana in 2012-2013.<sup>108</sup> To contextualize this finding, past-year alcohol consumption was reported by 70 percent of American adults surveyed in 2013.<sup>109</sup> Secondly, marijuana is becoming more potent: in the period between 1998 and 2008, the average THC content of marijuana plant material seized by law enforcement more than doubled, from about four percent to ten percent.<sup>110</sup> Additionally, marijuana producers in states that have legalized are developing novel marijuana concentration techniques. As mentioned previously in this report, such marijuana concentrates as butane hash oil, or “dabs”, can contain THC levels as high as 60 percent. Currently, such derivatives and concentrates are far from the main mode of consumption. However, as the legal industry continues to grow and more states legalize, we are likely to see an increase in concentrate usage.

Like alcohol and tobacco, marijuana is not a harmless drug from the standpoint of public health. In this report, we will focus on the four most prominent domains of marijuana harm: marijuana abuse and usage disorders; the gateway drug effect; motor vehicle accidents stemming from driving under the influence of marijuana intoxication; and finally a brief overview of neurodevelopmental effects.

## **Abuse and Dependency**

Marijuana consumption poses a risk of dependency with regular use. As stated above, marijuana is the most widely used illicit drug in the United States, with nearly ten percent of Americans reporting past year marijuana usage. Of this ten percent, it is estimated that nearly one third have a usage disorder as defined by the Diagnostic and Standard Manual of Mental Disorders (DSM-IV) of the American Psychiatric Association.<sup>111</sup> According to the National Institute of Health, marijuana “can be addictive,” as prolonged “overstimulation of the

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<sup>108</sup> Hasin, D. et al. "Prevalence of Marijuana Use Disorders in the United States Between 2001-2002 and 2012-2013." *JAMA Psychiatry* (2015): 1-9.

<sup>109</sup> "Alcohol Facts and Statistics." Alcohol Facts and Statistics. March 1, 2015.

<sup>110</sup> "Marijuana: Know the Facts." The White House. October 1, 2010.

<sup>111</sup> Hasin, et al. (2015), 1-9.

endocannabinoid system by marijuana use can cause changes in the brain that lead to *addiction*, a condition in which a person cannot stop using a drug even though it interferes with many aspects of his or her life."<sup>112</sup> Recent research has revealed neurobiological underpinnings for mild withdrawal symptoms that can exist for frequent marijuana users.<sup>113</sup> These withdrawal symptoms typically range from irritability and anxiety to insomnia with varying degrees of severity depending on useage rates and the individual's biology.<sup>114</sup> <sup>115</sup> That said, and while more research in this area is needed, the potential for marijuana abuse and dependency does not appear to be significantly worse than similar threats posed by alcohol and tobacco. Jerrel Gilliam, program director at Light of Life, a Pittsburgh nonprofit which rehabilitates individuals suffering from drug abuse and addiction, noted in our discussions that it is rare for addicted individuals to be admitted for marijuana dependency alone. Instead, his experience suggests that the vast majority of individuals seeking treatment for drug addiction consume marijuana *in addition* to a variety of harder drugs. Future research into the effects of marijuana dependence should focus not just on marijuana use in isolation, but marijuana use compounded with other drugs. Additionally, public health initiatives focusing on marijuana should address the risks of using other drugs concurrently.

### **Gateway Drug Effect**

Opponents of the liberalization of marijuana policies frequently cite the gateway drug effect as one of the primary harms of marijuana use. Even if marijuana is comparable to alcohol and tobacco in terms of the direct harm that it produces, if it increases the likelihood that users will go on to use more damaging drugs, then its status should be approached in a more restrictive manner. However, evidence for a gateway drug effect from marijuana use is relatively weak. Cannabis use has been associated, but not causally linked, with increased likelihood of other illicit drug use later in life.<sup>116-117</sup> Conversely, the National Institute of Drug Abuse reports that

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<sup>112</sup> "Is Marijuana Addictive?" National Institute on Drug Abuse. March, 2015.

<sup>113</sup> Budney, Alan J., and John R. Hughes. "The cannabis withdrawal syndrome." *Current Opinion in Psychiatry* 19, no. 3 (2006): 233-238.

<sup>114</sup> *Ibid.*

<sup>115</sup> Gorelick, David A., et al. "Diagnostic criteria for cannabis withdrawal syndrome." *Drug and Alcohol Dependence* 123.1 (2012): 141-147.

<sup>116</sup> Hall, Wayne D., and Michael Lynskey. "Is cannabis a gateway drug? Testing hypotheses about the relationship

about two-thirds of individuals who have tried any illicit drug use began with marijuana.<sup>118</sup>

Reporting on this same study *The Economist* notes, “hardly anyone jumps straight in at the deep end. Less than one percent of drug users reported that their first-ever outing was with heroin or cocaine.”<sup>119</sup> The reasons for this association remains unclear and importantly, there has not been a causal link established between marijuana use and later illicit drug use.

Hypotheses for the association between marijuana and later illicit drug use are varied, and may explain these findings with factors that have nothing to do with marijuana itself. A variety of social factors are likely at play. It stands to reason that a marijuana user who is in contact with a drug dealer is more likely to have exposure to other illicit drugs than a non-marijuana user. Thus it should be noted that marijuana is associated with harder, more detrimental drugs in part because it is widely criminalized and thus remains on the black market with more harmful substances. Many proponents of marijuana legalization hope that their policies will erode the special gateway association with marijuana by creating safe, sanctioned spaces for the sale of marijuana, weakening its association with harder drugs.

The strongest evidence against a prominent gateway drug effect can be seen in U.S. drug usage rates. As stated above, marijuana usage has been climbing steadily over the past decade, with the number of past-month users increasing from 14.4 million in 2007 to 18.9 million in 2012. Given these increases in marijuana use, one would also expect an increase in other illicit drug use under the gateway theory. This has not been the case (see below graph). From 2007 to 2013, the number of both monthly cocaine users and methamphetamine users actually fell.<sup>120</sup>

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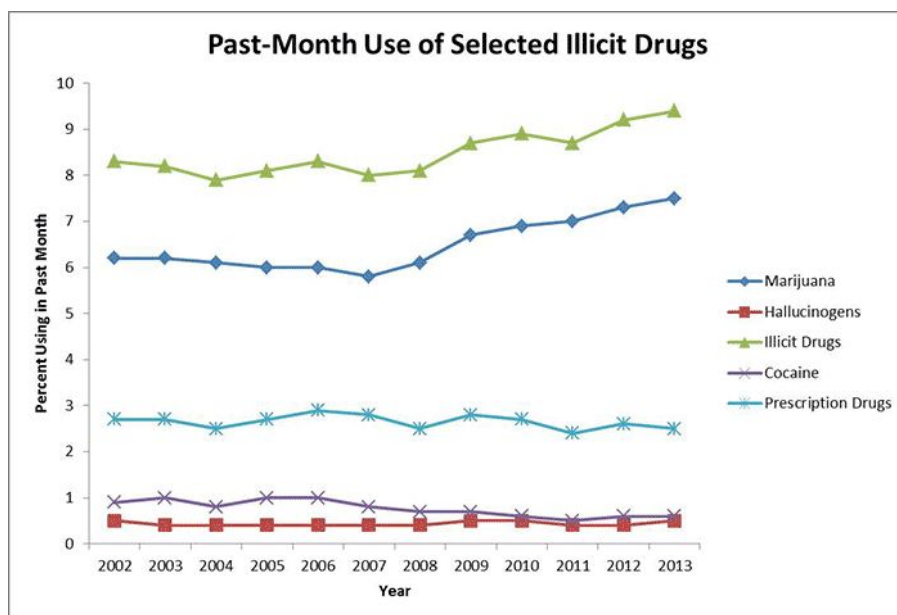
between cannabis use and the use of other illicit drugs." *Drug and Alcohol Review* 24, no. 1 (2005): 39-48.

<sup>117</sup> Fergusson, David M., Joseph M. Boden, and L. John Horwood. "Cannabis use and other illicit drug use: testing the cannabis gateway hypothesis." *Addiction* 101, no. 4 (2006), 556-569.

<sup>118</sup> "Is Marijuana a Gateway Drug?" *The Economist*. March 26, 2015.

<sup>119</sup> *Ibid.*

<sup>120</sup> *The Economist*. March 26, 2015.



Source: National Institute on Drug Abuse.<sup>121</sup>

### Motor Vehicle Accidents

Emerging scientific literature suggests that marijuana intoxication significantly increases the likelihood of being involved in an automobile accident while driving. One epidemiological review estimated that drivers under the influence of cannabis are two to three times more likely to be in an accident than drivers who are not intoxicated.<sup>122</sup> While it is difficult to accurately measure the risk of crashing as a result of drug use given variations between individuals and drug amounts, studies have shown that marijuana use impairs psychomotor skills and other cognitive functions essential to safe driving.<sup>123</sup> Alcohol-related accidental deaths should serve as a warning. In 2013, 10,076 individuals were killed in alcohol-impaired driving accidents in the United States.<sup>124</sup> While it should be noted that alcohol-impaired driving cannot act as a direct comparison to marijuana-impaired driving (given that the two drugs impair users differently, and alcohol is far more widely advertised, sold and consumed), it is paramount that future policies

<sup>121</sup> "Drug Facts: Nationwide Trends." National Institute on Drug Abuse. June 1, 2015.

<sup>122</sup> Li, Mu-Chen, et al., "Marijuana use and motor vehicle crashes." *Epidemiologic Reviews* 34, no. 1 (2012): 65-72.

<sup>123</sup> Compton RP, Berning A. "Drug and Alcohol Crash Risk [Traffic Safety Facts Research Note]." National Highway Traffic Safety Administration; 2015. DOT HS 812, 117.

<sup>124</sup> "Impaired Driving: Get the Facts." Centers for Disease Control and Prevention. November 24, 2015.

address safe limits for marijuana-impaired driving as restrictive marijuana laws continue to liberalize.

### **Risk to Adolescents**

Finally, marijuana poses a significant neurodevelopmental risk to teenagers and young adults. For the average human, the brain continues to develop for the first 25 years of life.<sup>125</sup> Thus, drug and alcohol use, including marijuana, has consistently been found to have lasting consequences on adolescent users.<sup>126</sup> While it should be noted that research into the neurological effects of marijuana on adolescents is ongoing, existing evidence indicates that with the liberalization of marijuana laws, adolescent use should remain highly restricted.

### **Public Health Conclusions**

Current evidence on the health effects of marijuana use demonstrate that it is not a drug that is without risk of harm, and that policymakers should proceed cautiously with the liberalization of laws regulating its status. Given the potential for abuse and dependency, the risk posed from driving under the influence, and the neurodevelopmental risk to adolescent users, marijuana should be understood as a drug with harms comparable to those of alcohol. It should also be noted that marijuana is, in many ways, less harmful than alcohol; unlike alcohol, marijuana has not been linked with aggressive behavior, and it is virtually impossible to overdose on marijuana. Moreover, emerging research has suggested that marijuana use does not impair driving as badly as alcohol does.<sup>127</sup> Some have gone as far to argue that if alcohol users were to substitute alcohol with marijuana, it would be a net public health benefit, with reduced motor vehicle accidents and drug induced violent crime.<sup>128</sup> While marijuana is not harmless, it is certainly not the menace that it was made out to be in the early twentieth century movement that brought about marijuana criminalization. Policymakers should strongly consider the

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<sup>125</sup> Candy, Brian. "Brain Maturity Extends Well Beyond Teen Years." NPR. October 10, 2011.

<sup>126</sup> "What Are Marijuana's Long-term Effects on the Brain?" National Institute on Drug Abuse. September, 2015.

<sup>127</sup> Li, Guohua, et. al. "Drug use and fatal motor vehicle crashes: a case-control study." *Accident Analysis & Prevention* 60 (2013), 205-210.

<sup>128</sup> Lopez, German. "Carly Fiorina Suggested Marijuana Is More Dangerous than Alcohol. She's Wrong." Vox. September 21, 2015.

scientifically founded harms presented by marijuana use when weighing the penalties for drug possession and use, and under this light it appears that marijuana criminalization may be disproportionate to the risk it presents to society.

### **XIII. Effect of Decriminalization on Marijuana Usage Rates**

One of the primary concerns of those who oppose marijuana decriminalization is that marijuana usage rates will increase in response to the policy. Admittedly, in light of the concerns mentioned above this would not be a desirable outcome. However, past examples of marijuana decriminalization indicate that usage will not dramatically increase in response to decriminalization policy. Here, we acknowledge that it is impossible to fully predict how decriminalization would affect usage rates in the specific context of Pittsburgh. Usage rates depend on a variety of complex variables, from social norms to drug prices, that are difficult to predict. In this light, we present below evidence from other cities, states, and countries, that have decriminalized marijuana in order to shed light on the range of potential outcomes.

The literature examining the effect of marijuana decriminalization policies on marijuana usage rates is far from conclusive. However, existing evidence suggests that decriminalization would have a small, if any, impact on marijuana usage rates. A comparative study of marijuana usage rates in San Francisco (where marijuana is criminalized) and Amsterdam (where marijuana is de facto decriminalized) found that there was no significant difference in drug usage rates between the cities.<sup>129</sup> The study also found that in both cities, users initiated first use at similar age, and that usage patterns were similar among both populations of users.<sup>130</sup> In 1976, Ann Arbor, Michigan decriminalized possession of small amounts of marijuana, and a study that followed the legal transition found that the change in drug policy had no measureable effect on marijuana usage rates in the city.<sup>131</sup> Weekly usage rates did not increase after the 1987 decriminalization in South Australia, and in fact weekly use was greater in Tasmania than in

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<sup>129</sup> Reinerman, Craig, Peter DA Cohen, and Hendrien L. Kaal. "The limited relevance of drug policy: cannabis in Amsterdam and in San Francisco." *American Journal of Public Health* 94, no. 5 (2004), 836-842.

<sup>130</sup> *Ibid.*

<sup>131</sup> Richard B. Stuart, Kenneth Guire, and Mark Krell. "Penalty for the possession of marijuana: An analysis of some of its concomitants." *Contemporary Drug Problems* 5 (1976), 553.

South Australia.<sup>132</sup> Finally, a more extreme example can be seen in Portugal, which decriminalized the possession of small amounts of all illicit drugs (including marijuana) in 2001. From 14 years of data, it can be seen that drug usage rates have not spiked in response to drug decriminalization.<sup>133</sup> While more information on these case studies can be seen below, these initial results do not suggest that marijuana usage rates will spike after decriminalizing possession of small amounts of marijuana. In light of the above risks that marijuana use poses to individual users and the public, we accept that a rise in marijuana usage rates in response to marijuana decriminalization does not pose a disqualifying threat to marijuana decriminalization policy.

That said, we stress the importance of public health advocacy and communication from the government with respect to drug decriminalization. In our interview, Jerrel Gilliam, who runs a drug treatment center in Pittsburgh, expressed the concern that decriminalization without an accompanying public health awareness campaign could bring about a spike in usage among individuals who were deterred from marijuana use by the stiff criminal penalties attached. He also expressed concern that adolescents could misinterpret the passage of a decriminalization bill as an endorsement of the safety of marijuana. Research into California's statewide marijuana decriminalization provides evidence of this possibility.

In September 2010, then California Governor Arnold Schwarzenegger reduced the penalty for possession of up to one ounce of marijuana from a misdemeanor to a civil violation entailing up to a \$100 dollar fine, similar to the Philadelphia model. One study that followed California adolescent's views towards marijuana in response to the recent decriminalization and found a noticeable shift in attitudes toward marijuana safety and use. Using state and national survey data to compare California adolescents to their peers in others states, the researchers found that California 12th graders in 2012, two years after decriminalization, were:

“(a) 25 percent more likely to have used marijuana in the past 30 days, (b) 20 percent less likely to perceive regular marijuana use as a great health risk, (c) 20 percent less likely to strongly

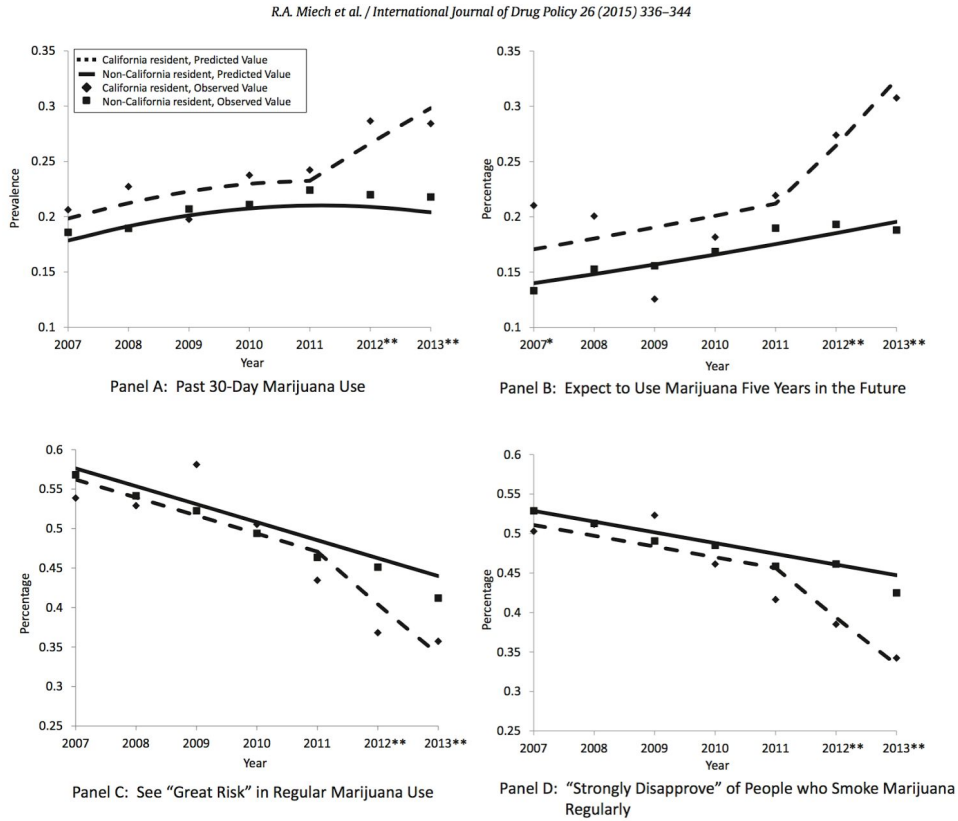
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<sup>132</sup> Neil Donnelly, Wayne Hall, and Paul Christie. "The Effects of the Cannabis Expiation Notice System on Levels and Patterns of Cannabis Use in South Australia: Evidence from the National Drug Strategy Household Surveys 1985-95: Monograph series no. 37." *National Drug Strategy and Drug and Alcohol Services Council, South Australia*, 1998, 9-10.

<sup>133</sup> Greenwald, *Drug Decriminalization in Portugal*, Cato Institute 2009, 11-13.



disapprove of regular marijuana use, and (d) about 60 percent more likely to expect to be using marijuana five years in the future.<sup>134</sup>



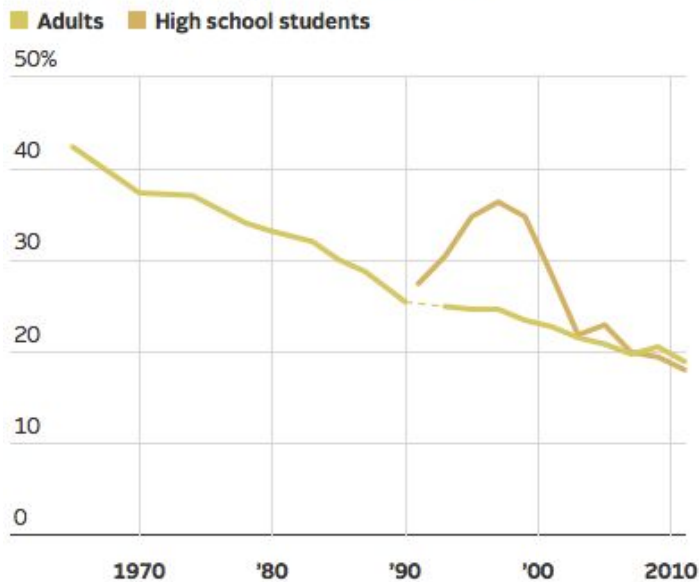
**Fig. 1.** Marijuana use and attitudes among U.S. 12th graders by year and California residency.  
 \*  $p \leq .05$ ; prevalence significantly different among California as compared to non-California residents in this year.  
 \*\*  $p \leq .01$ ; prevalence significantly different among California as compared to non-California residents in this year.

These results, which appear to be in response to California’s 2010 decriminalization are illustrated in the graphs above. Importantly, it should be noted that the passage of decriminalization seemed to exacerbate nationwide trends already underway of liberalizing adolescent attitudes toward marijuana safety.

<sup>134</sup> Miech, Richard A., Lloyd Johnston, Patrick M. O’Malley, Jerald G. Bachman, John Schulenberg, and Megan E. Patrick. "Trends in use of marijuana and attitudes toward marijuana among youth before and after decriminalization: The case of California 2007–2013." *International Journal of Drug Policy* 26, no. 4 (2015), 336-344.

The example of tobacco use rates in the United States illustrates that public health efforts outside of criminalization can significantly reduce public consumption of harmful substances. The percentage of regular adult cigarette smokers has been cut in half between 1965 and 2011, largely due to taxation, research into, and education about the harmful effects of smoking.<sup>135</sup> Thus even for use reduction policies, criminal penalties are not inherently necessary when broader public health based social movements are implemented.

## Percent of population that currently smokes



Source: Centers for Disease Control and Prevention



Graph: Trends in US tobacco consumption.<sup>136</sup>

With these results in mind, we stress the importance of public health communication with the passage of any marijuana decriminalization policy. As is done with alcohol and tobacco, public health messaging should seek to educate the public, especially adolescents, about the

<sup>135</sup> Lopez, German. "Who Still Smokes in America? The Poor, Middle-aged, and Bisexual." Vox. July 20, 2014.

<sup>136</sup> Ibid.

harms of marijuana use. If adolescents view marijuana decriminalization as a signal that it is a safe or harmless drug, then the above mentioned detriments to public health could be detrimentally exacerbated.

#### **XIV. Case Studies**

As noted earlier, it is difficult to predict precisely how decriminalization would affect Pittsburgh. However, in an effort to provide examples of relevant cities, countries, or regions which have undergone similar policy changes, we researched multiple case studies to provide a view into how a decriminalization policy in Pittsburgh may play out. These examples also helped us to understand what a good policy might look like, the limits of such policies, and potential problems (as well as potential solutions) to unexpected outcomes of such a policy.

##### **South Australia**

In April of 1987, South Australia introduced the Cannabis Expiation Notice (CEN) Scheme in an effort to reduce the harms associated with marijuana use and enforcement. For simple possession of less than 25 grams, one can avoid a criminal charge or going to court by paying the \$50 expiation fee.<sup>137</sup> Two years earlier in 1985, the nationwide National Drug Strategy had advocated for a harm reduction approach to all drugs, however criminal penalties were still in place. Following the CEN scheme of 1987, cannabis use did not increase in a significant manner.<sup>138</sup> In 1985 the South Australian rate was 26 percent, and eight years after CEN in 1995 the rate was 36 percent, which, controlled against nationwide trends, was insignificant.<sup>139</sup> It should be noted that, while Australia and the United States are similar in many ways, marijuana use among Australian youth was much higher than in the United States, with 1995 Australian use at 42.6 percent compared to 26.5 percent in the United States.<sup>140</sup>

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<sup>137</sup> Nicole Hunter and Carol Castle. "Cannabis Expiation Notices (CENs) in South Australia 1997 to 2000." *Information Bulletin* No. 27 (2001), 2.

<sup>138</sup> Donnelly, Hall, and Christie, 10.

<sup>139</sup> Hunter and Castle, 3.

<sup>140</sup> Eric Single, Paul Christie, and Robert Ali. "The impact of cannabis decriminalisation in Australia and the United States." *Journal of public health policy* (2000), 163

While usage did not significantly increase after decriminalization, the law enforcement savings were substantial. It is estimated that policing costs would have been \$2 million with a revenue from fines of \$1 million: a net loss of \$1 million. However, after CEN, costs fell and in combination with citation revenue, there was a \$500,000 (Australian Dollar, AUD) net gain<sup>141</sup>. Usage rates remained the same and costs decreased, but a surprising result of the new policy was a large instance of “net widening,” or an increase in the total number of tickets issued. In 1987/88, 6,000 tickets were issued, and by 1993/94, 17,000 were issued.<sup>142</sup> The increase was due to several factors, the first of which was the ease of ticketing and police work. The new process of handing out a ticket was easier and faster than the previous criminal charge was. In addition to the ease of issuing tickets, tickets ended up replacing informal warnings as the lowest level result of police contact. Prior to CEN, it would not have been uncommon for officers to issue a warning and have the suspect throw out a joint or small bag of marijuana and be on their way to avoid making an arrest for such a small amount. After CEN though, the quick and non-criminal option of writing a ticket replaced such warnings and ended up increasing formal police contact with small time marijuana users. A third factor in the net widening was that many South Australians simply were misinformed or misunderstood the CEN and its implications. Some thought that marijuana was no longer illegal, and ¾ of those who failed to pay their fines did not realize that doing so could result in a criminal record.<sup>143</sup> In fact, when considering the number of people who failed to pay their tickets and received a criminal conviction, it is possible that CEN brought about no reduction in the total number of people who were “criminalized” for marijuana possession. To combat this unforeseen consequence of depenalization, it became possible to pay the tickets in installments or by doing community service, and the need for proper and widespread education on the law change was realized. We recommend Pittsburgh follow these precautions if enacting any marijuana decriminalization policy.

Aside from the fiscal savings, the CEN also had social benefits. When comparing attitudes and outcomes of a police interaction involving marijuana in West Australia (criminalized prohibition) versus South Australia (decriminalization scheme), those in Western

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<sup>141</sup> Single, 168.

<sup>142</sup> Ibid, 167.

<sup>143</sup> Ibid, 169.

Australia were more fearful of police, had less trust for police, and had more problems obtaining employment after an offence.<sup>144</sup> Overall, the CEN scheme reduced policing costs and the direct harms of criminal enforcement while seeing an increase in net widening and criminal outcomes due to unpaid tickets, but also an increase in police-community relations. The surprising net widening effect highlights the need for effective and clear education on policies before they are enacted to avoid public misunderstandings.

## **Netherlands**

The current Dutch marijuana policy is often referenced as an example of responsible and effective decriminalization, however the nuances and implications of the various policies that comprise it are important when considering the results as a whole. In the 1970's the Dutch admitted the failure of their criminalization drug policy to stop drug use and aimed instead at separating hard and soft drugs - something they hoped to achieve with a formal policy of non-enforcement for possession or sale of less than 30 grams of marijuana.<sup>145</sup> Harm reduction is consistent with the long Dutch tradition of “*gedoogbeleid*,” which is the legal application of discretion,<sup>146</sup> and due to international pressure and treaties, the Dutch chose not to legally decriminalize possession or legalize sale of marijuana, but instead set forth directives for the Public Prosecutors at a meeting of the Attorney Generals. These meetings set the government stance on issues, and in setting a written policy of nonenforcement, marijuana possession became explicitly tolerated as a part of the directives. The gradual establishment of koffiesshops which sold marijuana under the de facto decriminalization and de facto pseudo-legalization allowed for the safe purchase marijuana without the risks associated with criminal drug dealers, effectively disrupting a link between hard and soft drugs. It also made sure that Dutch drug policy was not iatrogenic, wherein the “cure was worse than the disease.”<sup>147</sup>

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<sup>144</sup> Simon Lenton, Paul Christie, Rachel Humeniuk, Alisen Brooks, Mike Bennett, and Penny Heale, "Infringement versus conviction: the social impact of a minor cannabis offence under a civil penalties system and strict prohibition in two Australian states: Monograph series no. 36.", *National Drug Strategy and Drug and Alcohol Services Council, South Australia*, 20.

<sup>145</sup> Christopher Gatto. "European Drug Policy: Analysis and Case Studies." NORML Foundation. 1999, 3.

<sup>146</sup> Robert MacCoun, and Peter Reuter. "Interpreting Dutch Cannabis Policy: Reasoning by Analogy in the Legalization Debate.(Cover Story)." *Science*, October 3, 1997, 48.

<sup>147</sup> Gatto, 3.

Implementation of koffieshops was decentralized by the Ministry of Justice in 1980,<sup>148</sup> and each municipality decided what marijuana policies worked best for them. In big cities like Amsterdam, policy was lenient and shops abound, while in small towns koffieshops tend to be subject to stricter regulation. It was possible for a municipality to allow for no shops at all, however most kept at least one since it is easier to control and maintain a safe distribution when sales are regulated within the designated koffieshops.<sup>149</sup> In practice that was the idea, however, in reality hard drugs were often sold at koffieshops alongside marijuana, organized crime frequently owned or had ties to the shops, sales to minors were common, and many shops became a public nuisance at night. To help combat these issues the 1991 nationwide Public Prosecutors directives established five rules that koffieshops had to obey or be shut down.<sup>150</sup>

These were:

1. No advertising
2. No hard drug sales
3. No sales to minors
4. No sales over quantity threshold (30g; 5g after 1995)
5. No public disturbances

The Dutch policies were seen as lenient in the international community, and even though they were not technically breaking any treaties, French president Jacques Chirac did not hesitate to call the Netherlands a “rotten spot in the European combat against drug addiction”, and a “narco-state.”<sup>151</sup> The upper level Dutch policies to counter trafficking and hard drug sales were robust and hardly as permissive as a narco-state. Policing of home growing operations destroyed 558,000 cannabis plants in 1994<sup>152</sup> and the Dutch seized 332 metric tons of cannabis (44 percent of entire E.U. total) in 1995, in that same year the quantity threshold for koffieshop sales was lowered to five grams.<sup>153</sup> The lowered quantity threshold was aimed at combating claims of

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<sup>148</sup> D.J. Korf, "An open front door: the coffee shop phenomenon in the Netherlands." (2008), 138.

<sup>149</sup> Hans C. Ossebaard, and Govert F. van de Wijngaart. "Purple haze: the remaking of Dutch Drug Policy." *International Journal of Drug Policy* 9, no. 4 (1998), 265.

<sup>150</sup> Ibid.

<sup>151</sup> Ossebaard, 267.

<sup>152</sup> Tweede Kamer der Staten-Generaal, “Drug Policy in the Netherlands: Continuity and Change”, *Ministerie of Health, Welfare, and Sports, Ministerie of Justice*, 1995.

<sup>153</sup> Ossebaard, 267.

cross-border drug tourism, which is an issue due to borderless Schengen agreements. It was estimated that 2/3 of all sales in border towns on weekends were coming from foreigners.<sup>154</sup>

Surprisingly, even with the de facto depenalization and de facto legalization, Dutch marijuana use remains approximately the same as the United States and only slightly higher than its neighbors. 18 year old lifetime use in 1996 in the Netherlands was 44 percent compared to 44.9 percent in the United States.<sup>155</sup> Whether or not use increased specifically after the 1976 decriminalization and subsequent de facto legalization is more difficult to determine. Use remained effectively the same after 1976, however between 1984 and 1996, a time when de facto legalization was in effect, use increased sharply in the Netherlands.<sup>156</sup> However, use also increased in other nations such as the United States, thus, while a slight increase may be attributable to de facto legalization, it seems that drug use is more dependent upon personal factors like preference or perceived harm than policy factors like legal status or availability.

As for the initial goal of Dutch drug policy - to separate hard and soft drugs, it appears that de facto legalization via koffieshops may be helping, especially with the 1991 directives aimed at shop quality control. The directives were not merely symbolic, and the number of shops decreased from ~1,200 in 1995 to 846 in November 1999.<sup>157</sup> Nearly all hard drug users have used marijuana, however only 22 percent of Dutch people who had used marijuana had also used cocaine, while the figure was 33 percent for the United States.<sup>158</sup> In addition, only two percent of those in the Netherlands who had used both were current (within last month) users of cocaine.<sup>159</sup> While these do not prove a success in hard and soft drug separation, they support the idea that regulated public koffieshops can help minimize soft drug user interaction with hard drugs via black market dealers.

The policy has been successful on many fronts, however there remain fundamental issues. The marijuana purchased through the front door by consumers is de facto or pseudo-legal, while the marijuana that comes in the back door is still clearly sourced from illegal

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<sup>154</sup> Ibid, 268.

<sup>155</sup> MacCoun, 48.

<sup>156</sup> Ibid, 48.

<sup>157</sup> Dolin, Benjamin. "National Drug Policy: The Netherlands." *Library of Parliament*, August 15, 2001, 4.

<sup>158</sup> MacCoun, 50.

<sup>159</sup> MacCoun, 50.

operations, and in many cases comes from, and finances organized crime. Many shops have turned over to smaller domestic suppliers, and anti-trafficking operations continue to be active and vigilant, but until production of marijuana for sale is legalized, the black market will remain a large supplier. The key to Dutch success is uniform implementation of directives while still allowing for community regulation of shops. The patchwork of directives create a sensible drug policy through unconventional means, and have allowed the Dutch moderate success in separation of hard and soft drugs without the difficulties of legalization, regulation, and international treaty conflicts.

## **Portugal**

In 2001, Portugal enacted a law that decriminalized the possession and use of all drugs. Portugal's legal approach to drugs is significant for understanding generally what a decriminalization policy can look like. Portugal's now 14 year old drug policy is focused on harm reduction. In response to rising rates of hard drug use and related deaths in the late 1990s, Portugal opted to overhaul its approach to drugs. The decriminalization of all drugs was implemented with the goal of re-categorizing drug abuse as a matter of public health rather than of criminal justice. As part of the reform, Portugal also instituted an extensive drug rehabilitation program. In the years since the policy was enacted, a vast amount of data has been collected to evaluate the policy's effectiveness. There have been, however, divergent conclusions drawn from the Portuguese experience. In a 2011 interview with NPR, Keith O'Brien of the Boston Globe points out that "people who are in favor of decriminalization and legalization of marijuana or other illicit drugs, look at what's happened in Portugal over the last decade and say, here's an example of how things can go right. And people who are against decriminalization and legalization look at the very same data and say the exact opposite."<sup>160</sup>

In 2009, Glenn Greenwald and the CATO Institute published a review of Portugal's decriminalization policy. Using seven years' worth of data, Greenwald reviewed the policy's effects on drug-related trends in Portugal. Greenwald does not feel that there is much of a debate to be had about the data: "The data shows that, judged by virtually every metric, the Portuguese

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<sup>160</sup> Conan, N. & O'Brien, K. (2011). Mixed Results for Portugal's Great Drug Experiment. NPR.



decriminalization framework has been a resounding success.”<sup>161</sup> Clearly Greenwald and the CATO Institute favor liberalization of drug laws, and so the framing of the report reflects that position. Greenwald’s analysis, however, is largely empirical and is helpful for understanding what it means to decriminalize a drug.

Many European countries have varying degrees of “de facto decriminalization,”<sup>162</sup> meaning that drugs that are less stigmatized (like marijuana) are rarely treated as a criminal offense. Portugal, however, is the only European country to explicitly decriminalize drugs. In the statute, decriminalization encompasses “the purchase, possession, and consumption of all drugs for personal use.”<sup>163</sup> As is true in all drug decriminalization frameworks, drug usage in Portugal remains illegal and law enforcement can intervene to enforce its illegality. Distinguishing decriminalization and depenalization is useful for understanding the legal status of drug use under a policy of decriminalization. In 2005, the European Monitoring Centre for Drugs and Drug Addiction offered the following distinction:

“Decriminalisation comprises removal of a conduct or activity from the sphere of criminal law. Prohibition remains the rule, but sanctions for use (and its preparatory acts) no longer fall within the framework of criminal law. By contrast, ‘depenalizaion’ means relation of the penal sanction provided for by law. In the case of drugs, and cannabis in particular, depenalization generally signifies the elimination of custodial penalties.”<sup>164</sup>

Perhaps one of the most striking features of the Portuguese law is that it does not distinguish between types of drugs. Drug scheduling is central to American drug policy, and this approach represents a significant departure from how the harms of drug use have been conventionally thought and talked about. Whereas drug policy in the United States seems to focus on how individual substances harm individuals and others, the Portuguese law holds that the ingestion of a substance for its physical or psychological effects is a matter of personal decision.

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<sup>161</sup> Greenwald, G. (2009). Drug Decriminalization in Portugal: Lessons for Creating Fair and Successful Drug Policies. CATO Institute, 1.

<sup>162</sup> Ibid.

<sup>163</sup> Ibid, 2.

<sup>164</sup> Ibid.

Penalties for drug possession in Portugal are decided by Dissuasion Commissions that are administered by the Ministry of Health rather than the Ministry of Justice. These commissions are panels of three people with backgrounds in social work, medicine and law. They meet with offenders and can assign offenders to rehabilitation. The vast majority of commissions, however, result in no sanctions being imposed.<sup>165</sup>

Under the Portuguese law, the police are not allowed to make custodial arrests for drug possession. There is a degree of disagreement about the net impact of the decriminalization law on police conduct. Greenwald concludes in his analysis that, in general, the police in Portugal are “*more* [sic] inclined to act when they see drug usage than they were before decriminalization, as they believe that the treatment options offered to such users are far more effective than turning users into criminals.”<sup>166</sup> Another analysis of decriminalization in Portugal by the Beckley Foundation contended that “The law enforcement sector was seen as supportive of the reform, particularly because they perceived decriminalization and referral to education and treatment as offering a better response to drug users than under the previous legislative approach.”<sup>167</sup> The response to a new approach to drug enforcement is difficult to measure among police officers. What is clear, however, is that decriminalization has impacted drug use in Portugal.

While drug use is difficult to measure for a variety of reasons, there is actually a wealth of comprehensive analysis of the impacts of Portugal’s decriminalization policy. Glenn Greenwald concludes in his analysis that “Since Portugal enacted its decriminalization scheme in 2001, drug usage in many categories has actually *decreased* [sic] when measured in absolute terms, whereas usage in other categories has increased only slightly or mildly.”<sup>168</sup> Among 15-19 year olds, drug use has decreased in absolute terms since decriminalization. Furthermore, this group represents the most significant group in “assessing the long-term effects of drug policy and treatment approaches.” At the same time, prevalence (whether or not an individual has used a drug in their lives) for cannabis use for the group 16-18 increased somewhat between between 1999 and 2005. Greenwald makes the point, however, that marijuana use in the United States is

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<sup>165</sup> Ibid, 6.

<sup>166</sup> Ibid, 4.

<sup>167</sup> Hughes, C. & Stevens, A. (December 2007) “The Effects of Decriminalization of Drug Use in Portugal,” Briefing Paper no. 14, the Beckley Foundation Drug Policy Programme, 6.

<sup>168</sup> Greenwald, 11.

the highest in the world (42.4 percent prevalence, compared to about 10 percent in Portugal). That fact is important to keep in mind when trying to apply lessons from Portugal to the United States.

## **Philadelphia**

Prior to last year, Philadelphia remained the only municipality in Pennsylvania that still required a mandatory custodial arrest for all amounts of marijuana, which meant they were still physically arresting large numbers of people for possession.<sup>169</sup> The racial disparity of those arrests meant that black individuals were more than five times more likely than white individuals to be arrested for marijuana.<sup>170</sup> Efforts by activists Chris Goldstein and Nikki Allan Poe led to Philadelphia Councilman Jim Kenney sponsoring a new marijuana policy that decriminalized possession of less than thirty grams of marijuana and public smoking by instituting civil violation fines of \$25 and \$100 respectively. The bill passed City Council by a vote of 14-2 and went into effect on October 20th 2014.<sup>171</sup> Mayor Michael Nutter threatened to not accept the law, and Police Commissioner Charles Ramsey warned the police might not implement it, however both ended up supporting it once the law went into effect.

Even though Philadelphia is the only first class city in the state and has more legal leeway than Pittsburgh, by creating the new classification of citation and not altering or defining for existing penalties, they have avoided any potential conflicts between the state and city laws since both exist on the books at the same time. According to police department statistics, between October 1st 2013 and October 19th 2014, 3,686 arrests were made for marijuana possession.<sup>172</sup> Between October 20th 2014 and September 5th 2015(most recent data), 1,012 citations were issued.<sup>173</sup> That is 73 percent fewer citations issued this past year compared to arrests made in the previous year. It is still possible to be arrested under state law for possession, and this is mainly applied to those caught buying, driving under the influence of marijuana, found with other drugs, those with more than the thirty gram limit, those without an ID, or those arrested for other

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<sup>169</sup> Farr, "How's It Going."

<sup>170</sup> Burnley.

<sup>171</sup> Chris Goldstein. "Philly420: Philadelphia Marijuana Decriminalization at One Year." Philly.com. October 2, 2015.

<sup>172</sup> Farr.

<sup>173</sup> Ibid.

offenses in addition to marijuana. All these sorts of arrests are put in the same category, and according to the State Uniform Crime Reporting Database, between November 2014 and September 2015, 625 adults and 114 juveniles were arrested for some type of possession.<sup>174</sup>

Thus for arrests only, the one year numbers indicate a change from 3,686 to 739 arrests- a decrease of 80 percent. When including citations as well as arrests, formal police reprimand for marijuana is down by approximately 50 percent. This is good evidence that net widening due to ease of issuing citations is not occurring. Some of this may be due to a new city school program which allows lower level offenses such as marijuana possession to be diverted away from arrests or citations and towards other rehabilitation programs, while others credit the decline to police discretion. Generally, though, it seems that police have shifted their focus to other issues.

Prior to depenalization it was not uncommon to issue a verbal warning and avoid arrests for small amounts of marijuana, and now it seems that the even the citation is oft-avoided as marijuana possession has become less of a priority for the police. Testimony from an anonymous Philadelphia Police Officer exemplifies the new attitude towards possession, “We were driving down Walnut Street about two months ago, when we see the guy next to us driving with his knees and rolling a blunt. He goes from 22nd Street all the way to 46th Street. We pull him over and I tell him ‘Dude, you were just rolling a blunt for 20 blocks!’ And the guy says, ‘It’s legal now.’ I’m like, ‘Jesus Christ, it’s not legal.’ We still let him go and didn’t take his weed.”<sup>175</sup>

One major issue that remains to be resolved in Philadelphia is the public’s understanding of what a citation actually means. Of the 1,012 citations, 170 received the \$100 citation for smoking in public and 842 received the \$25 citation for possession of less than thirty grams<sup>176</sup>.

While the fines do not outright result in a criminal penalty if unpaid (the minimum for a court appearance is \$500 cumulative unpaid fines), only 275 of the 1,012 citations have been paid thus far.<sup>177</sup> Chris Goldstein has noted that fines often get backed up in the system and this may be a

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<sup>174</sup> Ibid.

<sup>175</sup> Burnley.

<sup>176</sup> Farr.

<sup>177</sup> Ibid.

reason for the low payment rate<sup>178</sup>. When someone goes to pay their fine a few days after being cited, if it is not in the system, they can't pay, and are unlikely to try again after being unsuccessful initially.

As a part of the policy, an annual report to City Council with specific statistics on citations and arrests is due this November. Until the data is released, we will not know the specifics on racial disparities for citations, however, even though arrests have plummeted, the disparity remains, and black residents are still about two times more likely to be arrested for marijuana than white residents<sup>179</sup> based on the limited data we currently have. From January to March 2015, 206 total black and white residents were arrested for marijuana- 175 (85 percent) of these were black,<sup>180</sup> even though according to U.S. census demographic data from 2013, the city is 41.5 percent white and 43.5 percent black.<sup>181</sup>

In terms of financial savings, the city certainly has saved money- not from fine revenue, but from lower police and legal costs. It is difficult to estimate the exact police savings from time and money, but a RAND report estimated that it cost the state of Vermont \$1,266 for each single marijuana offense, but just \$20 to issue a citation.<sup>182</sup> Due to widespread lack of payment thus far in Philadelphia, the cost of issuing citations is not paid for by the fines, and can be estimated at \$9,859. Applied to the savings from 2,947 fewer arrests this year, this puts the net savings at a loose estimate of \$3,721,043 for the year.<sup>183</sup> That being said, according to police spokesman Lt. John Stanford, the officer does not need to take the arrestee to the station, but they still do come off the street when turning in marijuana confiscated when issuing a citation,<sup>184</sup> so it is not clear just how much police time and money is saved compared to an arrest.

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<sup>178</sup> Chris Goldstein. "Discussion of Philadelphia Decriminalization." Telephone interview by authors. October 22, 2015.

<sup>179</sup> Chris Goldstein. "Philly420: Racial Disparities Persist in Phila. Marijuana Arrests." Philly.com. May 13, 2015.

<sup>180</sup> Goldstein, "Racial Disparities Persist".

<sup>181</sup> "American FactFinder", *United States Department of Commerce, United States Census Bureau*

<sup>182</sup> Caulkins and Kilmer, "Considering Marijuana Legalization Insights for Vermont and Other Jurisdictions," 32.

<sup>183</sup> 2,947 fewer arrests x \$1,266 cost= \$3,730,902 saved

1,012 citations x \$20 cost = \$20,240 cost

842 possession citations/ 1,012= 83% of citations

170 smoking citations/ 1,012= 17% of citations

275/ 1,012 citations paid at expected value of  $((.83 \times \$25) + (.17 \times \$100)) \times 275 = \$10,381.25$  revenue

<sup>184</sup> Goldstein, "Philadelphia Marijuana Decriminalization at One Year".

The outcomes of the Philadelphia policy are still playing out, and so far we have only seen one year of depenalization, so it is important to remember that long term effects could change. However, the results seem to be positive so far. Racial disparities have not disappeared, but they have decreased from more than five times to about two times as likely to be arrested for black individuals versus white individuals. Net widening caused by citations has not been seen, however the rate of payment is a mere 27 percent, and once racial data is released it is possible that disparities exist among citations as well as arrests. The impressive aspect of the Philadelphia policy is that arrests are down by 80 percent, and that is 2, 947 fewer lives set back by jail time, legal fees, or criminal records, as well as the financial savings associated with 80 percent less marijuana arrest related police and legal work, which can be loosely estimated at \$3,721,043 this year.

### **Ann Arbor**

Amid growing concerns about drug use in the late 1960's, civic leaders in Ann Arbor, Michigan met to coordinate a response. A commission appointed by the mayor came to the conclusion that the current felony conviction for possession of small amounts of marijuana was too harsh a punishment considering the actual potential harm of the drug itself. On March 9<sup>th</sup>, 1971, the City Council adopted the suggested policy that reduced the felony penalty with a minimum of one or more years in prison to a misdemeanor with a maximum of ninety days in jail, a \$100 fine, or both.<sup>185</sup> State courts ruled that the city could “legally pass an ordinance in contravention of state law,”<sup>186</sup> and on May 25<sup>th</sup>, 1972, bolstered by the decision, the penalty was reduced to a \$5 civil fine. The next elected city council was more conservative and repealed this ordinance on July 10<sup>th</sup>, 1973, but, a community referendum brought back the “decriminalization ordinance”<sup>187</sup> on April 2, 1974.

Among this backdrop of shifting marijuana policies, a quasi-experimental study of self-reported drug use by high school students in Ann Arbor and three neighboring communities was conducted by researchers from the National Institute of Mental Health's Center of Studies of

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<sup>185</sup> Stuart et al., 554.

<sup>186</sup> Ibid.

<sup>187</sup> Ibid, 555.

Crime and Delinquency. Unlike most other decriminalization studies which lack controls or prior data, Ann Arbor was uniquely poised to provide more than speculative information about the effects of various drug policies on use and perception. The collection periods were as follows:

1. January to March 1972 (prior to decriminalization; misdemeanor)
2. February to April 1973 (one year after decriminalization)
3. January to March 1974 (one year after penalties were re-instated)
4. January to March 1975 (one year after decriminalization was re-instated)

The communities in question were as follows:

1. Ann Arbor, an upper-middle class suburban university town with changing marijuana laws.
2. Chelsea, a semi-rural small town with no change in laws
3. Dearborn, a mixed middle class city with no change in laws
4. Willow Run, a heavily industrial satellite city of Detroit with no change in laws

The surrounding communities and Ann Arbor are all within 50 miles of each other, and used as a “control series design.”<sup>188</sup> At the start of the study, 55 percent of all high school students sampled reported having used marijuana at least once, 44 percent reported any level of current use, and 24 percent reported weekly or higher use.<sup>189</sup> By 1975, 65 percent of Ann Arbor students reported having used marijuana at least once, while the surrounding control communities reported 59 percent for the same metric, and a quarter of all students reported daily to weekly use.<sup>190</sup> These figures tell us that use among high schoolers in Michigan at the time was not uncommon, but they do not tell us much about the differences among communities with decriminalization policies and those with the state felony law in effect.

Examining the data under different policy regimes reveals that there is no significant difference between the control cities and Ann Arbor in terms of self-reported marijuana use

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<sup>188</sup> Ibid, 556.

<sup>189</sup> Ibid, 559.

<sup>190</sup> Ibid.

among high schoolers. In 1972, when possession was a misdemeanor in Ann Arbor, students there reported higher use than in the controls, but over time the percentage of students in the control cities became similar to Ann Arbor.<sup>191</sup> In the same year, students in Ann Arbor also reported higher use of hard drugs than the controls. In the following years, however, hard drug usage in control cities actually surpassed Ann Arbor hard drug usage rates, where one percent reported frequent hard drug use as opposed to 3-6 percent in the controls.<sup>192</sup> The survey authors concluded that, “There is nothing that would suggest that the Ann Arbor students’ use of marijuana was affected in any way by changes in the legal status of that drug in their community. Conversely, their use of hard drugs appeared to decline slightly during the two years in which the possession of small quantities of marijuana was comparatively penalty free.”<sup>193</sup> This effect could be purely coincidental, or it could be due to some sort of small hard-soft drug separation created by the lenient marijuana laws in Ann Arbor.

Student opinions of decriminalization were also surveyed, and when asked if they were in favor of removing penalties for each class of drugs, overall 80 percent favored removal of penalties for alcohol, over 50 percent favored this for marijuana, and between 11 - 25 percent favored this for hard drugs.<sup>194</sup> More interesting are the responses students gave when asked about the impact of decriminalization would have on their drug choices: 12.5 percent said they “did not and would not use alcohol,” 40 percent said they would not use soft hallucinogens, and 80 percent said they would not use hard drugs if they were decriminalized.<sup>195</sup> The one to three percent who said they might begin to use other drugs or use current drugs more heavily if they were decriminalized were already heavy users themselves,<sup>196</sup> indicating that decriminalization and policy alone is a poor predictor of drug use among high schoolers.

Most students responded that decriminalization of a certain drug would have little impact on their use or decision to use. Those who did not use under penalized prohibition did not predict starting use under hypothetical decriminalization, and those who used experimentally

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<sup>191</sup> Ibid, 560.

<sup>192</sup> Ibid.

<sup>193</sup> Ibid.

<sup>194</sup> Ibid, 561.

<sup>195</sup> Ibid.

<sup>196</sup> Ibid.



under prohibition did not consider increasing their use after decriminalization. The only students who thought they would increase their use were those who already used that particular drug often under prohibition.<sup>197</sup> These attitudes played out in real life in Ann Arbor, where, despite the flip-flopping criminal status of marijuana during the surveys, usage rates reported remained unaffected and similar to the rates of the control cities as well as out of state students during the four years of changing status up until 1975.<sup>198</sup> It is likely that the policies of 1972-1975, which changed yearly, did not have sufficient time to fully impact students' usage patterns, however, the main conclusion drawn here is that any legal status or policy towards illicit drugs does little to influence drug use in the future or present among high schoolers. The figures from 1972 support this concept in that drug use under prohibition was widespread (55 percent reported any use of marijuana) despite the harsh felony laws of the time. Based upon these surveys, drug use appears to be independent of legal status of any type when looking at high school students. Adults may react differently for a variety of reasons, but the Ann Arbor and control communities' survey established that marijuana decriminalization did not result in a use increase, while prohibition likewise did not significantly influence decisions on drug use for high schoolers. This suggests that the focus of future policies should be on minimizing the harm of the drug itself, as well as the harm of enforcement, since usage rates are unlikely to be affected by anything other than personal choice.

## **Chicago**

In an effort to combat rising arrests and racial disparities in the early 2000's, the City of Chicago began a conversation in 2012 about decriminalizing possession of small amounts of marijuana. Initially, the first draft seemed promising and focused on improving the disparity as well as police-community relations when it stated that, "a disproportionate number of these arrests are of minorities" and also that it was necessary to have "a conversation among experts in health and public safety fields to gather data and information."<sup>199</sup> However, following an atypically warm spring and summer, which saw spikes in violence and a 38 percent rise in

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<sup>197</sup> Ibid, 562.

<sup>198</sup> Ibid.

<sup>199</sup> Mick Dumke. "Chicago Decriminalized Marijuana Possession—but Not for Everyone." Chicago Reader. April 7, 2014. 4240.

homicides compared to the same period of 2011,<sup>200</sup> the rhetoric of the second draft took on a less hopeful community based tone, and stated that tickets "will free up precious police resources and may result in a more robust punitive and deterrent effect."<sup>201</sup> Ultimately, the decriminalization effort would be marred by this conflict between improving community relations and curbing violence.

The disparities which the first draft mentions were at a level that makes other cities appear to be doing well. Possession of small amounts of marijuana are the leading cause of arrest by the Chicago Police Department with an average of 23,000 annual arrests for the past several years,<sup>202</sup> of which 78 percent are black in a city that is 45 percent white and 32.9 percent black.<sup>203</sup> African Americans are arrested at a rate of 15 to one compared to white individuals for possession, and they are 40 times more likely to end up pleading or being found guilty.<sup>204</sup> In fact, 86 percent, almost nine out of ten, of those who are found guilty of possession in Chicago are black men,<sup>205</sup> and 92 percent of those incarcerated for marijuana possession are black.<sup>206</sup> In 2011, one year before the ordinance, a mere 1,000 of the 20,603 arrests for possession of small amounts of marijuana were white, while 15,862 were black.<sup>207</sup> The average street value of marijuana found on someone convicted for possession was just \$55.<sup>208</sup>

In addition to the disparities, the sheer number of arrests made for marijuana possession were costing the city of Chicago a huge amount of money, and tied up valuable police time and resources that could have been used to combat the violent crime wave sweeping the city. A Chicago police superintendent estimated that the arrests of more than 18,000 people for the misdemeanor possession of less than 10 grams "tied up more than 45,000 police hours,"<sup>209</sup> and that the new ordinance would cut police time in half. Some hoped that the poorer South and

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<sup>200</sup> Don Babwin. "Chicago Marijuana Ticketing Approved By City Council, Decriminalizes Low-Level Offenses." The Huffington Post. June 27, 2012.

<sup>201</sup> Dumke, "Not for Everyone"

<sup>202</sup> Mick Dumke and Ben Joravsky. "The \$78 Million Bag." Chicago Reader. October 6, 2011.

<sup>203</sup> United States Census Bureau, "QuickFacts: Chicago, Illinois."

<sup>204</sup> Mick Dumke and Ben Joravsky. "The Grass Gap." Chicago Reader. July 7, 2011.

<sup>205</sup> Dumke and Joravsky, "The Grass Gap".

<sup>206</sup> Joseph Erbentraut and Lizzie Schiffman. "The Drug War In Chicago: How The Windy City Kind Of, Almost Decriminalized Marijuana." The Huffington Post. August 28, 2012.

<sup>207</sup> Babwin, "Ticketing".

<sup>208</sup> Dumke and Joravsky, "The Grass Gap".

<sup>209</sup> Babwin, "Ticketing".

West sides of the city wouldn't lose critical officers to arrest paperwork for hours every time they made a marijuana arrest if they could issue a ticket. It is estimated that it takes two officers at least one and a half hours to process a misdemeanor arrest for marijuana possession, which amounts to around 84,000 police hours a year.<sup>210</sup> A veteran Chicago officer described the process when he explained, "They'll take him to the station, put him in lockup, maybe walk down the hall and bullshit a little with the other cops on duty, then they type up the paperwork and do the inventory. Then everything gets reviewed—sergeants approve the reports and the watch commander reviews everything. If you're good, it's two hours on the low side."<sup>211</sup> Not only is police time used in arresting, but in Cook County, every arrest also turns into a criminal case which costs at minimum \$2,500 for the city to open, not to mention that the arresting officers are paid a minimum of two hours overtime wages every time they appear as a witness in a case, no matter the actual amount of time taken.<sup>212</sup> The Chicago police's average 23,000 arrests for marijuana possession a year plus another 5,000 suburban Cook County arrests add up to about 28,000 arrests for possession, which cost at least \$70 million a year<sup>213</sup>. In addition to that figure, there are around 2,600 people arrested each year who cannot post bail bond, have felony records, or who are on probation, and have to be held in jail pending their court appearance- at a cost of \$8 million a year.<sup>214</sup> Thus it costs about \$78 million a year to process marijuana arrests, even though, of the 8,625 misdemeanor cases from 2006 to 2010 in Cook County, around 87 percent of them were dismissed, according to statistics from a Cook County Clerk of the Circuit Court.<sup>215</sup>

To combat these large disparities, as well as the rising violence and enormous police strain due to low level marijuana arrests, Mayor Rahm Emmanuel supported the modest decriminalization measure, and in August of 2012, the City Council passed it 43 to 3.<sup>216</sup> The ordinance gave police the option of writing a \$250 ticket for the first offense of possessing less than 15 grams of marijuana, and a \$500 ticket for each subsequent offense.<sup>217</sup> A key component

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<sup>210</sup> Dumke and Joravsky, "The \$78 Million Bag".

<sup>211</sup> Ibid.

<sup>212</sup> Ibid.

<sup>213</sup> Ibid.

<sup>214</sup> Ibid.

<sup>215</sup> Babwin, "Ticketing".

<sup>216</sup> Dumke, "Not for Everyone".

<sup>217</sup> Babwin, "Ticketing".

of this policy is that it is an option, and not default, to write the ticket, and the police can still make an arrest for possession if they see it fit to do so. An extreme example of this option is that there was a police directive to arrest, not ticket, any marijuana offender caught in a school or a city park.<sup>218</sup>

Three years after decriminalization in Chicago was enacted, the key challenges associated with enforcement of marijuana possession have gotten no better. Unlike in Philadelphia, where the police came on board once the law was passed and began generally ignoring minor offenses, the Chicago ordinance leaves the punishment up to officer discretion, and for a variety of reasons, they are still arresting in large numbers. Officially called an Administrative Notice of Violation or ANOV, the tickets are seldom issued. Between August 2012 and February 2014, just 1,725 were handed out, while during the same period there were 20,844 arrests for possession of less than 15 grams<sup>219</sup> (those cases which would be eligible for a ticket). Of the tickets issued in 2013, 40 percent have been ignored<sup>220</sup>, perhaps due to their high cost and a lack of education about the ANOV program. There have been fewer arrests, with 15,924 for less than 30 grams in 2013; the lowest since 2002 when there were 15,398. Those arrests, however, still cost the city \$23 million and 46,000 police hours.<sup>221</sup>

According to veteran cops, tickets aren't being written in larger numbers because they take just as long to process as arrests do.<sup>222</sup> Officers still have to take the confiscated marijuana back to the precinct and fill out paperwork, all of which takes them off the streets. Other police say that the tickets just are not a viable or practical option. They cannot be issued for someone caught smoking, and if the suspect does not have government identification on them, they cannot be issued a ticket either, and must be arrested.<sup>223</sup> The police also must run tests to determine the substance is marijuana if they are going to issue a ticket,<sup>224</sup> and those tests are perceived to take too long to make it worth it. Another one of the main reasons is that the 2012 spike in violence led police Superintendent Gary McCarthy to launch an anti-violence initiative that involved

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<sup>218</sup> Dumke and Joravsky, "The Grass Gap".

<sup>219</sup> Dumke, "Not for Everyone".

<sup>220</sup> Ibid.

<sup>221</sup> Ibid.

<sup>222</sup> Ibid.

<sup>223</sup> Ibid.

<sup>224</sup> Ibid.

flooding high violence neighborhoods with extra officers.<sup>225</sup> The officers practiced a version of stop and frisk that required a reason, however the reason could be as simple as “reasonable suspicion.”<sup>226</sup> Not only were the officers sent to saturate the high crime areas practicing stop and frisk, they were also usually rookies and on temporary duty there, meaning they had no connection to the community.<sup>227</sup>

This lack of community involvement and knowledge at the same time as the heightened violence led to an increase in arrests, the majority of which were for marijuana possession, since these officers were under pressure to stop the violence brought by gang members and drug dealers, even though they had no knowledge of the community. They arrested anyone they could to help curb the violence, but it was almost exclusively small time dealers, and the racial disparity was maintained at almost the exact same levels as pre-decriminalization. Since the August 2012 ordinance, 78 percent of those arrested for marijuana possession in Chicago were black, 17 percent were Hispanic, and four percent were white.<sup>228</sup> Even the few tickets that are issued have been issued disproportionately to African Americans; they make up 70 percent of tickets, Hispanics are 18 percent, and white individuals are 11 percent.<sup>229</sup> Arrests certainly have decreased overall, but there are still tens of thousands each year, and the bias persists. Twenty-two of the twenty-five community areas with the highest marijuana arrest rates since 2012 were predominantly African American, and the other three areas were either Hispanic or a mix of the two.<sup>230</sup> In nine of these areas, places like East and West Garfield Park on the West Side or Washington Heights on the North Side, marijuana arrest rates have actually gone up since the ordinance was passed.<sup>231</sup>

The Chicago policy is an important case study of decriminalization because of its failures. Decriminalization is not always the silver bullet for a city, and in many ways, the Chicago attempt seems to have been more symbolic than an actual agent of change in a city desperate for help. In addition to the more specific reasons the tickets were ineffective, like time

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<sup>225</sup> Ibid.

<sup>226</sup> Ibid.

<sup>227</sup> Dumke, “Not for Everyone”.

<sup>228</sup> Ibid.

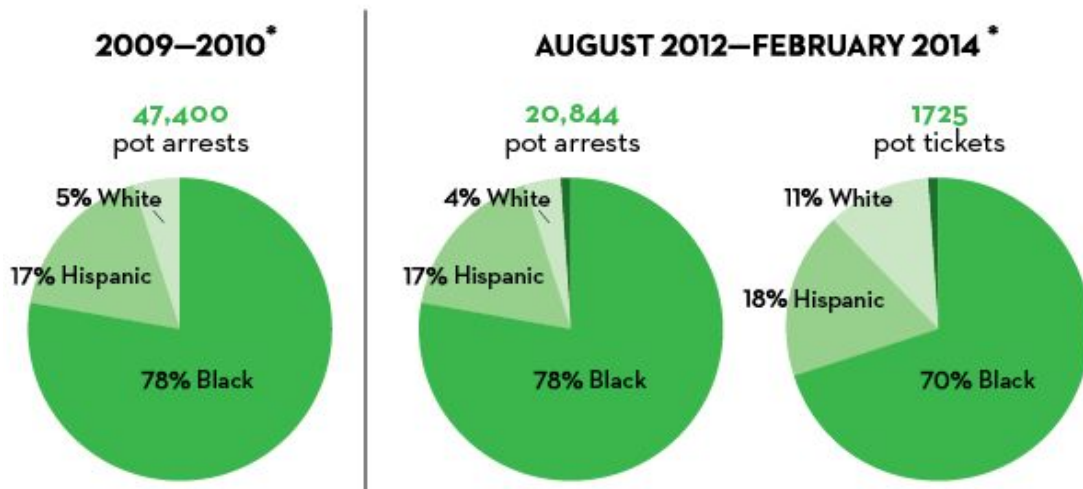
<sup>229</sup> Ibid.

<sup>230</sup> Ibid.

<sup>231</sup> Ibid.

spent, cost, or requirement of substance identification, the wave of violence that coincided with the ordinance may be the broader reason why the policy drifted away from a community relations harm reduction strategy. Chicago demonstrates that a lack of good will and proper intent behind a harm reduction decriminalization policy will produce a bad outcome.

**Police continue to make an average of 44 arrests a day for misdemeanor possession, and who's getting busted hasn't changed at all.**



\*Due to the new ticketing ordinance, 2009-10 data is for possession of 30 grams or less while 2012–2014 data is for less than 15 grams.

Source: Chicago Police Dept.<sup>232</sup>

## XV. Limitations and Topics for Further Study

Although we have gone to great lengths to produce a comprehensive report and issue actionable recommendations, there are a number of limitations inherent both in our analysis and in a decriminalization framework generally. Our research was restricted by time and the relatively short, semester long nature of this project. Additionally, we were not able to obtain all of the data necessary for a comprehensive quantitative analyses of marijuana decriminalization in

<sup>232</sup> Dumke, “Not for Everyone”.

Pittsburgh. Some of this data does not yet exist (marijuana usage days per year in Pittsburgh), and for other data, our time restrictions prevented us from obtaining it (a Freedom of Information Act request is necessary for more detailed marijuana possession arrest data). Speaking of decriminalization generally, one weakness of it as a policy is that it does not address the black market surrounding marijuana. Unlike legalization, marijuana decriminalization does not allow for a standardization in quality and potency, as well as some degree of revenue generation. The legalization experiment is underway in Alaska, Washington, Colorado, Oregon and Washington, DC, and ten more states will be voting on legalization initiatives in 2016.<sup>233</sup> While outside the scope of this project or even of the City's authority, legal marijuana may be the future for the United States, and the subject begs further research.

This research has uncovered a complex set of relationships between the criminal justice system, communities, and drug use in Pittsburgh. A broader set of problems persist in the city, none of which can be solved by decriminalizing marijuana or even by ending the drug war. Pittsburgh continues to reckon with the effects of historical segregation,<sup>234</sup> police brutality,<sup>235</sup> and a Justice Department investigation of the Pittsburgh Police Bureau's consistent violation of federal civil rights.<sup>236</sup> Furthermore, while racial diversity of Pittsburgh's police force has improved relative to past years, in 2014 there were 729 white officers who made up 85 percent of the force, while there were just 111 black officers, who made up 13 percent.<sup>237</sup> These are issues that must be addressed through stringent monitoring, evaluation, and assessment focused on making the City accountable for its violations of federal law and its perpetuation of unjust discrimination; these issues are also beyond the scope of the question of marijuana decriminalization.

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<sup>233</sup>Smith, Aaron "Forget Ohio. Ten more states try to legalize marijuana." CNN Money, November 4, 2015.

<sup>234</sup>Harvey, Peter "Commentary: Segregation / Report exposes Pittsburgh's prevailing racial disparities" Pittsburgh Post-Gazette, August 9, 2012.

<sup>235</sup>Lord, Rich and Liz Navratil "Jordan Miles jury reaches split verdict" Pittsburgh Post-Gazette, March 21, 2014.

<sup>236</sup>Patrick, Deval L. "City of Pittsburgh Investigative Findings Letter." Department of Justice, Civil Rights Division. 1997.

<sup>237</sup>"Pittsburgh Bureau of Police 2014 Annual Report." 2015, 17.

## **XVI. Recommendations**

Based on our research and analysis, we recommend that city officials:

1. Pass City Ordinance 2015-2245 introduced by Councilman Daniel Lavelle which would give Pittsburgh police the option to charge the possession of a small amount of marijuana (30 grams or less plant material, eight grams or less hashish) as a civil offense.

Currently, possession of under 30 grams of marijuana is considered a misdemeanor under Pennsylvania state law. Because misdemeanors appear in criminal record checks, they can impose some long-lasting collateral consequences on the people charged. Additionally, marijuana arrests disproportionately target adolescents, males, and black individuals. This results in an uneven and unethical distribution of the disproportionate harms of marijuana arrests. In the continued absence of action on this issue at the state level, we recommend that the City of Pittsburgh follow Philadelphia's lead in making small amounts of marijuana possession a ticketed offense with significant but not overly burdensome fines (i.e. \$25 for possession and \$100 for smoking in public). We also recommend that for juvenile offenders, officers be given the option of giving the civil offense ticket to a parent or guardian. In the absence of changes to state or federal law, open communication and collaboration between policy-makers and police in Pittsburgh will be paramount.

2. Enhance public education efforts about the scope of decriminalization and potential harms of marijuana use

In order to ensure that changes in the enforcement structure are not misinterpreted as legalization or endorsement of marijuana or marijuana use, we recommend that the City of Pittsburgh make efforts to clearly convey to the public what decriminalization entails. We believe public meetings and town halls at the neighborhood level could play an important role in information dissemination, in addition to public awareness advertising and effective



communication with local news media. Moreover, public health information should seek to educate the public, particularly adolescents on the potential harms of marijuana use (such as dependency risk or driving while impaired) in the wake of the recommended policy changes to avoid an increase in marijuana use-related harms.

3. Create mechanisms for public health interventions to identify and aid problematic drug users.

As consequences of a marijuana possession offense could help a drug user recognize and address potential dependency problems, we recommend that criminal penalties be replaced with public health interventions. Empower police officers to identify problematic drug users, or repeat marijuana offenders, and aid in their diversion to appropriate drug abuse treatment resources. As public resources are diverted from the enforcement of marijuana criminalization, we recommend that investment is transferred into drug related public health efforts including treatment education and support networks.

4. With passage of decriminalization, monitor for potential adverse effects.

The City of Pittsburgh should closely monitor and study the effects of decriminalization on such factors as arrest and incarceration rates, and public health. The city should monitor for the effectiveness of police adoption, to avoid a Chicago-like situation in which decriminalization passes, but police largely choose to enforce criminalization under state law. The city should also monitor for potential “net widening” as seen in South Australia, in which the volume of individuals charged for marijuana offenses drastically increases under decriminalization. Finally, there currently exist very few academic studies of decriminalization which include a control point from prior to decriminalization. We believe that a before-and-after study in Pittsburgh would be an important addition to the literature on the subject.

## Bibliography

- "A Brief History of the Drug War." The Drug Policy Alliance.  
<http://www.drugpolicy.org/new-solutions-drug-policy/brief-history-drug-war>.
- "Alcohol Facts and Statistics." National Institute on Alcohol Abuse and Alcoholism. March, 2015. Accessed October 11, 2015.  
<http://www.niaaa.nih.gov/alcohol-health/overview-alcohol-consumption/alcohol-facts-and-statistics>.
- "American FactFinder", United States Department of Commerce, United States Census Bureau, available online  
at:<http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=CF>
- Babwin, Don. "Chicago Marijuana Ticketing Approved By City Council, Decriminalizes Low-Level Offenses." The Huffington Post. August 27, 2012.  
[http://www.huffingtonpost.com/2012/06/27/chicago-marijuana-ticketing\\_n\\_1631783.html](http://www.huffingtonpost.com/2012/06/27/chicago-marijuana-ticketing_n_1631783.html)
- Barcott, Bruce and Michael Scherer. "The Great Pot Experiment." Time. May 14, 2015.
- Beecher, Lyman. "Six Sermons on the Nature, Occasions, Signs, Evils, and Remedy of Intemperance, 1826." In *Drugs in America: A Documentary History*. New York, NY: New York University Press, 2002.
- Benzing, Jeffrey. "Pittsburgh Police could face second federal consent decree, Peduto says." *Public Source*. July 1, 2014.
- Booth, Martin. *Cannabis: a History*. Macmillan, 2015.
- Bretherton, Luke. "Drug-fuelled culture of control: Thinking theologically about the legalization of marijuana." Australian Broadcasting Corporation. January 6, 2014.
- Brunley, Malcolm. "Is Philly the New Model for Pot Reform?" Next City. March 9, 2015.

- Candy, Brian. "Brain Maturity Extends Well Beyond Teen Years." NPR. October 10, 2011. Accessed December 1, 2015. <http://www.npr.org/templates/story/story.php?storyId=141164708>.
- Carter, Jimmy. "Jimmy Carter: Drug Abuse Message to the Congress." Jimmy Carter: Drug Abuse Message to the Congress. August 2, 1977. Accessed December 5, 2015. <http://www.presidency.ucsb.edu/ws/?pid=7908>.
- Caulkins, Jonathan. "Interview with Dr. Jonathan Caulkins." Interview by authors. October 20, 2015.
- Caulkins, Jonathan P., et. al. "Considering Marijuana Legalization Insights for Vermont and Other Jurisdictions". Santa Monica: RAND Corporation, 2015.
- Caulkins, Jonathan P., Angela Hawken, Beau Kilmer, and Mark Kleiman. "Marijuana Legalization: What Everyone Needs to Know." Oxford University Press, 2012.
- Charrington, E. H. "The Evolution of Prohibition in the United States." In *Drugs in America: A Documentary History*. New York: New York University Press, 2002.
- Coats v. Dish Network*, CO 44. No. 13SC394 (2015)
- Cohen, Michael M. "Jim Crow's Drug War: Race, Coca Cola, and the Southern Origins of Drug Prohibition." *Southern Cultures*.
- Compton RP, Berning A. "Drug and Alcohol Crash Risk [Traffic Safety Facts Research Note]." Washington (DC): National Highway Traffic Safety Administration; 2015. DOT HS 812 117. [http://www.nhtsa.gov/staticfiles/nti/pdf/812117-Drug\\_and\\_Alcohol\\_Crash\\_Risk.pdf](http://www.nhtsa.gov/staticfiles/nti/pdf/812117-Drug_and_Alcohol_Crash_Risk.pdf)
- "Controlled Substances Act (21 U.S.C. § 811)" US Food and Drug Administration. 1970. Accessed October 11, 2015. <http://www.fda.gov/regulatoryinformation/legislation/ucm148726.htm>.
- Cooper v. Aaron*, 358 U.S. 1 (1958).
- Crosby v. National Foreign Trade Council*, 530 U.S. 363 (2000).

Degenhardt, Louisa, Harvey A. Whiteford, Alize J. Ferrari, Amanda J. Baxter, Fiona J. Charlson, Wayne D. Hall, Greg Freedman et al. "Global burden of disease attributable to illicit drug use and dependence: findings from the Global Burden of Disease Study 2010." *The Lancet* 382, no. 9904 (2013).

Dolin, Benjamin. "National Drug Policy: The Netherlands." Library of Parliament, August 15, 2001.

Donnelly, Neil, Wayne Hall, and Paul Christie. "The Effects of the Cannabis Expiation Notice System on Levels and Patterns of Cannabis Use in South Australia: Evidence from the National Drug Strategy Household Surveys 1985-95: Monograph series no. 37." National Drug Strategy and Drug and Alcohol Services Council, South Australia, 1998.

Duck, Waverly. "Interview with Dr. Waverly Duck." Interview by authors. October 27, 2015.

Dumke, Mick, and Ben Joravsky. "The \$78 Million Bag." Chicago Reader. October 6, 2011. <http://www.chicagoreader.com/chicago/marijuana-busts-costing-taxpayers-millions-a-year/Content?oid=4757570>.

Dumke, Mick, and Ben Joravsky. "The Grass Gap." Chicago Reader. July 7, 2011. <http://www.chicagoreader.com/chicago/chicago-marijuana-arrest-statistics/Content?oid=4198958>.

Dumke, Mick. "Chicago Decriminalized Marijuana Possession—but Not for Everyone." Chicago Reader. April 7, 2014. <http://www.chicagoreader.com/chicago/police-bust-blacks-pot-possession-after-decriminalization/Content?oid=13004240>.

"Drug Facts: Nationwide Trends." National Institute on Drug Abuse. June 1, 2015. Accessed November 3, 2015. <http://www.drugabuse.gov/publications/drugfacts/nationwide-trends>.

Erbentraut, Joseph, and Lizzie Schiffman. "The Drug War In Chicago: How The Windy City Kind Of, Almost Decriminalized Marijuana." The Huffington Post. August 28, 2012. [http://www.huffingtonpost.com/2012/08/27/the-drug-war-in-chicago-h\\_n\\_1835087.html](http://www.huffingtonpost.com/2012/08/27/the-drug-war-in-chicago-h_n_1835087.html).

- Farr, Stephanie. "Marijuana Has Been Decriminalized for a Year in Philly; How's It Going?" *The Morning Call*. October 20, 2015.  
<http://www.mcall.com/news/nationworld/pennsylvania/mc-pa-philly-marijuana-decriminalization-1-year-later-20151020-story.html>.
- Fergusson, David M., Joseph M. Boden, and L. John Horwood. "Cannabis use and other illicit drug use: testing the cannabis gateway hypothesis." *Addiction* 101, no. 4 (2006).
- Finklea, Kristin and Lisa Sacco. "State Marijuana Legalization Initiatives: Implications for Federal Law Enforcement." Congressional Research Service. 2014.
- Gatto, Christopher. "European Drug Policy: Analysis and Case Studies." NORML Foundation. 1999.
- Gerber, Rudolph J. *Legalizing Marijuana: Drug Policy Reform and Prohibition Politics*. Westport, Conn.: Praeger, 2004.
- Gilliam, Jerrel. "Discussion of Drug Abuse in Pittsburgh." Telephone interview by authors. November 20, 2015.
- Gilman, Dan. "Project Directive Discussion." Interview by authors. September 15, 2015.
- Goldstein, Chris. "Discussion of Philadelphia Decriminalization." Telephone interview by authors. October 22, 2015.
- Goldstein, Chris. "Philly420: Philadelphia Marijuana Decriminalization at One Year." *Philly.com*. October 2, 2015.  
[http://www.philly.com/philly/news/Philly420\\_Philadelphia\\_marijuana\\_decriminalization\\_at\\_one\\_year.html](http://www.philly.com/philly/news/Philly420_Philadelphia_marijuana_decriminalization_at_one_year.html).
- Goldstein, Chris. "Philly420: Racial Disparities Persist in Phila. Marijuana Arrests." *Philly.com*. May 13, 2015.  
[http://www.philly.com/philly/columnists/philly420/Philly420\\_Racial\\_disparities\\_persist\\_in\\_Phila\\_marijuana\\_arrests\\_.html](http://www.philly.com/philly/columnists/philly420/Philly420_Racial_disparities_persist_in_Phila_marijuana_arrests_.html).

*Gonzales v. Raich*, 545 U.S. 1 (2005)

Gorelick, David A., et al. "Diagnostic criteria for cannabis withdrawal syndrome." *Drug and Alcohol Dependence* 123.1 (2012).

"Gov. Wolf: Decriminalize Marijuana." WPXI. May 19, 2015. Accessed November 11, 2015.  
<http://www.wpxi.com/news/news/local/gov-wolf-decriminalize-marijuana-its-ripping-famil/nmJ92/>.

Gray, Derrick. "Ethical Framework Discussion with Dr. Derrick Gray." Interview by authors. December 8, 2015.

Greenwald, Glenn. "Drug decriminalization in Portugal: lessons for creating fair and successful drug policies." *Cato Institute Whitepaper Series* (2009).

Hall, Wayne D., and Michael Lynskey. "Is cannabis a gateway drug? Testing hypotheses about the relationship between cannabis use and the use of other illicit drugs." *Drug and Alcohol Review* 24, no. 1 (2005).

Halper, Evan. "Congress Quietly Ends Federal Government's Ban on Medical Marijuana." *LA Times*. December 16, 2014.

Harcourt, Bernard and Jens Ludwig. "Reefer Madness: Broken Windows Policing and Misdemeanor Marijuana Arrests in New York." *Criminology and Public Policy*, 2007.

"Hasheesh Candy Advertisement." *Vanity Fair*, July 5, 1862.

Hasin, Deborah S., Tulshi D. Saha, Bradley T. Kerridge, Risë B. Goldstein, S. Patricia Chou, Haitao Zhang, Jeeseun Jung et al. "Prevalence of Marijuana Use Disorders in the United States Between 2001-2002 and 2012-2013." *JAMA psychiatry* (2015).

Hunter, Nicole, and Carol Castle. "Cannabis Expiation Notices (CENs) in South Australia 1997 to 2000." *Information Bulletin No. 27* (2001).

"Impaired Driving: Get the Facts." Centers for Disease Control and Prevention. November 24, 2015. Accessed December 3, 2015.  
[http://www.cdc.gov/motorvehiclesafety/impaired\\_driving/impaired-driv\\_factsheet.html](http://www.cdc.gov/motorvehiclesafety/impaired_driving/impaired-driv_factsheet.html)

Ingraham, Christopher. "The Share of Arrests for Marijuana Possession Has More than Tripled since 1991." Washington Post. August 13, 2014.

"International Convention, Adopted by the Second Opium Conference (League of Nations), and Protocol Relating Thereto. Signed at Geneva, February 19, 1925." League of Nations Treaty Series. 1925. Accessed September 19, 2015.

"Is Marijuana Addictive?" National Institute on Drug Abuse. March 1, 2015. Accessed October 11, 2015.  
<http://www.drugabuse.gov/publications/research-reports/marijuana/marijuana-addictive>.

"Is Marijuana a Gateway Drug?" The Economist. March 26, 2015. Accessed November 22, 2015. <http://www.economist.com/blogs/democracyinamerica/2015/03/legalising-pot>.

Johnson, Carrie. "20 Years Later, Parts of Major Crime Bill Viewed As Terrible Mistake." NPR. September 12, 2014

Korf, D. J. "An open front door: the coffee shop phenomenon in the Netherlands." (2008).

Lenton, Simon, Paul Christie, Rachel Humeniuk, Alisen Brooks, Mike Bennett, and Penny Heale, "Infringement versus conviction: the social impact of a minor cannabis offence under a civil penalties system and strict prohibition in two Australian states: Monograph series no. 36.", National Drug Strategy and Drug and Alcohol Services Council, South Australia.

Li, Guohua, et. al. "Drug use and fatal motor vehicle crashes: a case-control study." *Accident Analysis & Prevention* 60 (2013): 205-210.

Li, Mu-Chen, Joanne E. Brady, Charles J. DiMaggio, Arielle R. Lusardi, Keane Y. Tzong, and Guohua Li. "Marijuana use and motor vehicle crashes." *Epidemiologic reviews* 34, no. 1 (2012).

"London College of Physicians Petition to the House of Commons." In *Drugs in America: A Documentary History*. New York: New York University Press, 2002.

Lopez-Quintero C, Pérez de los Cobos J, Hasin DS, et al. "Probability and predictors of transition from first use to dependence on nicotine, alcohol, cannabis, and cocaine: results of the National Epidemiologic Survey on Alcohol and Related Conditions (NESARC)." *Drug Alcohol Depend.* 2011;115(1-2).

Lopez, German. "Carly Fiorina Suggested Marijuana Is More Dangerous than Alcohol. She's Wrong." *Vox*. September 21, 2015. Accessed October 19, 2015.  
<http://www.vox.com/2015/9/21/9363395/alcohol-vs-marijuana>.

Lopez, German. "Who Still Smokes in America? The Poor, Middle-aged, and Bisexual." *Vox*. July 20, 2014. Accessed December 4, 2015.  
<http://www.vox.com/2014/7/20/5914397/america-cigarettes-tobacco-demographics>.

Loury, Glenn. "Why Should We Care About Racial Inequality per se?" *Issues in Ethics*: 10:2.

MacCoun, Robert, and Peter Reuter. "Interpreting Dutch Cannabis Policy: Reasoning by Analogy in the Legalization Debate.(Cover Story)." *Science*, October 3, 1997.

"Marijuana: Know the Facts." The White House. October 1, 2010. Accessed October 11, 2015.  
<https://www.whitehouse.gov/ondcp/ondcp-fact-sheets/marijuana-know-the-facts>.

"Marijuana Timeline." PBS. Accessed September 29, 2015.  
<http://www.pbs.org/wgbh/pages/frontline/shows/dope/etc/cron.html>.

Musto, David F. *Drugs in America: a Documentary History*. New York: New York University Press, 2002.

Narcotics Division, Pittsburgh Police. "Discussion of Law Enforcement Implications of Marijuana Decriminalization in Pittsburgh." Interview by author. October 19, 2015.

Nightingale, Patrick. "Discussion of Marijuana Possession Arrests." Telephone interview by authors. October 16, 2015.



Nguyen, Holly, and Peter Reuter. "How Risky Is Marijuana Possession? Considering the Role of Age, Race, and Gender." *Crime and Delinquency*, November, 2012. 58:6, 879-910.

Ossebaard, Hans C., and Govert F. van de Wijngaart. "Purple haze: the remaking of Dutch Drug Policy." *International Journal of Drug Policy* 9, no. 4 (1998).

Patrick, Deval L. "City of Pittsburgh Investigative Findings Letter." Department of Justice, Civil Rights Division. 1997.

*Pennsylvania v. Nelson*, 350 U.S. 497 (1956).

"Pittsburgh Bureau of Police 2014 Annual Report." 2015. Accessed December 11, 2015.

"Policing Marijuana: The Law Should Reflect What Happens Already." *Pittsburgh Post-Gazette*. November 20, 2015. Accessed December 1, 2015.  
<http://www.post-gazette.com/opinion/editorials/2015/11/20/Policing-marijuana-The-law-should-reflect-what-happens-already/stories/201511300032>.

"Pure Food and Drug Act 1906." *Federal Food and Drugs Act of 1906*. 1906. Accessed December 11, 2015.  
<http://www.fda.gov/RegulatoryInformation/Legislation/ucm148690.htm>.

"QU Poll Release Detail." *QU Poll*. October 8, 2015. Accessed December 5, 2015.  
<http://www.quinnipiac.edu/news-and-events/quinnipiac-university-poll/2016-presidential-swing-state-polls/release-detail?ReleaseID=2288>.

Reinarman, Craig, Peter DA Cohen, and Hendrien L. Kaal. "The limited relevance of drug policy: cannabis in Amsterdam and in San Francisco." *American Journal of Public Health* 94, no. 5 (2004): 836-842.

Remnick, David. "Going the Distance: On and off the road with Barack Obama." *The New Yorker*. January 27, 2014.

- Reuter, Peter, and Jonathan Caulkins. "Redefining the Goals of National Drug Policy: Recommendations from a Working Group." *American Journal of Public Health*, 85.
- Sacco, Lisa, and Kristin Finklea. "State Marijuana Legalization Initiatives: Implications for Federal Law Enforcement." *CRS Report for Congress*. Congressional Research Service. December 4, 2014.
- "Schedules of Controlled Substances: Temporary Placement of Five Synthetic Cannabinoids Into Schedule I." *Federal Register*. March 1, 2011.
- Shafer, Raymond. "Report of the National Commission on Marihuana and Drug Abuse." 1972 Shafer Commission. March 1, 1972. Accessed November 9, 2015.  
<http://www.iowamedicalmarijuana.org/documents/nc1contents.aspx>.
- Shook, Jeff. "Discussion of Juvenile Criminal Justice System in Pittsburgh." Interview by authors. November 6, 2015.
- Single, Eric, Paul Christie, and Robert Ali. "The impact of cannabis decriminalisation in Australia and the United States." *Journal of public health policy* (2000).
- Smith, Timothy. "Discussion of Community Impact of Marijuana Decriminalization." Interview by authors. November 16, 2015.
- Stuart, R. B., Guire, K, and Krell, M. "Penalty For the Possession of Marijuana: An Analysis of Some of Its Concomitants," *Contemporary Drug Problems* 5 (1976).
- "That Cat Is High: Drug Culture in Jazz During the Great Depression." *That Cat Is High*. Accessed September 19, 2015.  
<http://xroads.virginia.edu/~ma04/hess/slang/jazzandweed.html>.
- "The Mysterious History Of 'Marijuana'" NPR. July 22, 2013. Accessed December 11, 2015.  
<http://www.npr.org/sections/codeswitch/2013/07/14/201981025/the-mysterious-history-of-marijuana>.
- Troyer, John (ed.) *The Classical Utilitarians: Bentham and Mill* Indianapolis, IN, Hackett. 2003.

Tweede Kamer der Staten-Generaal, "Drug Policy in the Netherlands: Continuity and Change",  
Ministerie of Health, Welfare, and Sports, Ministerie of Justice, 1995.

United States Census Bureau, "QuickFacts: Chicago, Illinois".  
<http://quickfacts.census.gov/qfd/states/17/1714000.html>

United States Constitution, Article VI, Clause II

Walczak, Vic. "Discussion of Legal Implications of Marijuana Decriminalization." Telephone  
interview by authors. October 29, 2015.

*Ware v. Hylton*, 3 U.S. 3 Dall. 199 (1796)

Wex Legal Dictionary, Cornell University School of Law Legal Information Institute.

"What Are Marijuana's Long-term Effects on the Brain?" National Institute on Drug Abuse.  
September 1, 2015. Accessed December 10, 2015.  
<https://www.drugabuse.gov/publications/research-reports/marijuana/how-does-marijuana-us-e-affect-your-brain-body>.

"What Is the Scope of Marijuana Use in the United States?" Marijuana. September 1, 2015.  
Accessed December 2, 2015.  
<http://www.drugabuse.gov/publications/research-reports/marijuana/what-scope-marijuana-use-in-united-states>.

Wiley, Harvey, ed. *US Bureau of Chemistry Bulletin No. 96*. United States Federal Government,  
1905.

Willoughby, W.W. "Chapter XIX: Indian Hemp (Hashish)." In *Opium as an International  
Problem: The Geneva Conferences*. Baltimore: Johns Hopkins Press, 1925, found online at

Wilson, James Q. "Against the Legalization of Drugs." *Commentary*: 89(2), 21-29.

X, Jasiri. "Discussion of Racial Implications of Marijuana Decriminalization in Pittsburgh."  
Interview by authors. November 24, 2015.