Pot or Not?
The Decriminalization Debate

Last November, Washington and Colorado became the first states to legalize marijuana through voter referendums. Fifteen states already have decriminalized the substance and a total of twenty states allow for its use in treating certain medical conditions.

So, where does Louisiana stand in this debate? Mandatory drug sentences cost Louisiana taxpayers millions of dollars to incarcerate people charged with simple possession of marijuana. Would a reduction in penalties encourage more usage and lead the state down a path to legalization? Does Louisiana - which ranks among the top ten states for drug use - need further reinforcements in its battle against what many call a “gateway drug”? 

*Louisiana Public Square* explores the many sides of the marijuana issue on “Pot or Not? The Decriminalization Debate.”

**NATIONAL MARIJUANA LAWS**

As part of the ballot for the 2012 presidential election, two states, Washington and Colorado, gave voters the opportunity to legalize and regulate the production, possession, and distribution of marijuana, for persons age 21 and older. The voters said yes by a 56% to 44% ratio in Washington and 55% to 46% in Colorado. Interestingly in the same November election, voters in Oregon, which was the first state to decriminalize the possession of small amounts of pot, defeated an initiative to legalize it.

While the Uniform Drug Act adopted by the U.S. in the 30’s outlaws recreational drug usage, in August the federal Department of Justice issued a formal decision that they would not sue Washington or Colorado. U.S. Attorney General Eric Holder told the governors of both states that the Justice Department will use a "trust but verify" policy: If the states can develop a workable approach to the marijuana laws, the federal government won't step in to prevent their implementation.

The passage of Washington and Colorado’s referendum has spurred similar campaigns in 4 other states. Advocates for legalization are seeking the signatures of registered voters in California, Arizona, Oregon and Alaska to put the question on ballots in 2014. Should these measures succeed and get passed, that would put pot within the lawful reach of almost 1-in-5 Americans.
As of 2013, almost half of the states in the country have either approved pot for medical use, decriminalized it for recreational use – including neighboring Mississippi - or completely legalized it.

At the federal level, HR 499, the Ending Federal Marijuana Prohibition Act of 2013 sponsored by Colorado Democrat Jared Polis would remove marijuana from the federal Controlled Substances list. Introduced in February, the bill has not yet come up for a vote.

**LOUISIANA MARIJUANA LAWS**

State law says anyone convicted of possessing any amount of marijuana -- even a single joint -- can be jailed up to six months and face a $500 fine on a first offense.

- A second offense nets a sentence of up to five years and up to a $2,500 fine.
- Anyone convicted three or more times is open to a 20-year jail sentence and up to a $5,000 fine.

The Louisiana Supreme Court recently overturned a sentence of five years as too lenient for a fourth possession of marijuana and ordered the person sentenced to at least 13 years.

Mike Wolf is a Baton Rouge attorney and was co-founder of the Louisiana chapter of the National Organization for the Reform of Marijuana Laws (NORML) in the 70’s. Wolf notes that while Louisiana’s decision to make the penalty for a first possession charge a misdemeanor was considered “liberal” at the time it was passed in 1972, today the state’s consequences look “severe” when compared to other states and the federal government.

“For simple possession, the maximum federal penalty is one year in jail or a $1000 fine; so that compares to our six months and $500. On a second offense there’s a minimum of 15 days but the max is only 2 years. That compares to 5 years for us but with no minimum. For a third or subsequent offense under Louisiana law the maximum penalty is 20 years in jail; under the federal law the penalty range is 90 days in jail up to 5 years in jail.” In 2010, SB 576 passed, increasing the penalty for second-marijuana possession offense further - a mandatory fine of at least $250 and 48 hours in jail.

According to FBI statistics, Louisiana has the 13th highest rate of marijuana possession arrests among the fifty states. Arrest rates for pot possession have increased by 10% from 2001 to 2010.

A 2013 study by the American Civil Liberties Union found that Louisiana arrests about 13,435 people per year for marijuana, with over 84% for possession only. While Louisiana’s population is 32% black, 60% of arrests for marijuana are African American. Blacks in Louisiana are 3.1 times more likely than whites to be arrested for marijuana possession.

**LOUISIANA DRUG STATS**

- Louisiana spends about $46 million annually for enforcement of marijuana possession statutes including police, judicial, legal and correction costs.
- Marijuana is the most commonly cited drug among primary drug treatment admissions in Louisiana.
- While admissions to treatment centers for crack addiction have declined since 2006; admissions for marijuana treatment have continued to rise during the same period.
**2013 MARIJUANA LEGISLATION** In the 2012 legislative session, Rep. Austin Badon, D-New Orleans, introduced legislation that would have changed the state’s marijuana possession sentences for repeat offenders:

- The maximum sentence for a second possession offense down from two years to five
- A third offense would have carried a five-year maximum sentence instead of 20
- The maximum sentence for a fourth offense would be set at eight years rather than life.
- In addition to lowering penalties and possible incarceration time for marijuana possession offenses, the proposal would have also removed marijuana possession from the list of offenses that receive mandatory minimum sentences.

The bill passed out of the House Criminal Justice Committee by a vote of 4-2 after concessions were made to appease the concerns of the Louisiana District Attorneys Association. It passed by just one vote on the House floor but failed three times in the Senate to gain enough votes to be debated. The Legislative Fiscal Office estimated the bill would have saved the state $2.2 million in 2014 in reduced incarceration costs.

Rep. Sherman Mack, R-Livingston, sits on the Criminal Justice Committee and was one of the 2 opponents of Badon’s measure. He said such a move would be the first step in opening the door to the legalization of marijuana which he is adamantly against. “Marijuana is a stepping stone drug.” Mack tells LPB. “Most drug addicts who have habitual problems will tell you ‘I started smoking marijuana as a young person or even as a kid.’” He also feels that legalization or a reduction in any marijuana-related penalties sends the wrong message to Louisiana’s youth. “You take the fear out of children and make it more accessible to children or young people and obviously we don’t want that to happen in our state or our country as well.”

But Emma Tuttleman-Kriegler, with Tulane Students for Sensible Drug Policy says current penalties are the reason marijuana users are even tempted to try harder drugs. “The presence of marijuana on the black market brings users into contact with dealers who provide other illegal substances so, it’s no surprise that users who smoke marijuana come in contact with those.”

| Estimated Marijuana Use in Past Year based on 2006, 2007 Nat'l Survey on Drug Use & Health |
|-----------------------------------------------|-----------------------------------------------|-----------------------------------------------|-----------------------------------------------|
| State                                        | 12+ year old                                  | 12-17 year old                                | 18-25 year old                                | 26+ year old                                  |
| Total U.S.                                   | 10.22%                                        | 12.83%                                        | 27.73%                                        | 6.83%                                         |
| Louisiana                                    | 10.01%                                        | 11.99%                                        | 24.14%                                        | 6.99%                                         |

Legalization of pot, Tuttleman-Kriegler contends, would allow for its regulation and prevent youth from using it. “Once marijuana comes off the street and we take it behind the counter, and away from the black market,” she says, “We’re really able to keep it for adult use only and out of the hands of children.”

**MEDICAL MARIJUANA IN LOUISIANA**

According to Gambit, in 1978, then-Gov. Edwin Edwards signed a bill cleared by the House and Senate to let doctors prescribe marijuana for glaucoma, cancer and paralysis patients. The new law called for the creation of a Marijuana Prescription Review Board to determine who would be able to obtain legal marijuana. The board never got off the ground. Louisiana's medical-marijuana law lingered until 1981, when an amended version of the 1978 bill was introduced. This one, too, authorized doctors to prescribe marijuana; it also was signed into law, this time by then-Gov. David Treen. And like its predecessor, it never saw the light of day.
In 1989, the Marijuana Prescription Review Board was deemed an inactive commission and dissolved.

In 1991, another lawmaker took a stab at reviving Louisiana's medical-marijuana law. Rep. Clark Gaudin, R-Baton Rouge, introduced the bill after a young man rolled into Gaudin's office in his wheelchair to talk to the lawmaker about his reliance on pot. "He would have some type of convulsions from time to time, and he would shake like he had 7,500 volts running in his body," recalls Gaudin, now an attorney in private practice. "He said marijuana was the only thing that gave him any kind of relief."

Gaudin, a conservative Republican, sponsored legislation allowing for the prescriptive use of marijuana under 3 conditions: diagnosed glaucoma; spastic quadriplegia, and patients suffering from symptoms related to chemotherapy cancer treatment. According to attorney Wolf, opponents then tacked on an amendment that the only physicians who could prescribe marijuana were those with permission obtained from the Federal Drug Enforcement Administration and the National Institute On Drug Abuse. "No permissions are ever given to prescribe Schedule I drugs by the DEA," Wolf says. "No physician could ever prescribe marijuana under the terms of that legislation even if they wanted to so I understand it has never been used."

Of the 20 states that allow for the medical use of marijuana, 12 of them specify "Crohn’s Disease" as one of the treatable conditions. "Jimmy" a South Louisiana resident has been suffering with Crohn’s Disease for the last 25 years. He estimates he’s had more than 13 major surgeries for the condition and had at least 75 hospital stays to deal with the pain. While there is no cure for Crohn’s disease, “Jimmy” treats the condition by currently taking 16 ounces of an opiate monthly which costs him $500 out-of-pocket.

“When you’re hurt you’ll do anything." Jimmy recently told LPB. “It’s been 12 or 15 years of trying the newest and latest and greatest thing.” After trying marijuana for his condition, he has seen unparalleled relief from the pain. “There’s no comparison,” he says, “After two or three puffs I go from coiled up like a baby with tears in my eyes from the pain…to like I don’t even know what Crohn’s Disease is; as if I’m 100 percent healthy; in a matter of ten or 15 minutes.”

While acknowledging the legal consequences, he accepts the risks. “There’s not a doctor; not a lawyer, nobody on this earth who could watch somebody they care about hurt; the way I hurt and have a marijuana cigarette next to them and tell that person do not use that because it’s against the law.” An impassioned “Jimmy” told LPB, “If you care about anybody whatsoever you could never let them suffer the pain they’re going through when knowing four or five minutes later they can be relaxed and pain free.”

THE DEBATE

Proponents of decriminalization argue that legalizing cannabis would free billions of dollars now used to prosecute users, provide several billions in tax revenue, free a substantial amount of law-enforcement resources which could be used to prevent more serious crimes, free a substantial amount of prison resources, and reduce the income of street gangs and organized crime who grow, import, process, and sell cannabis.
Emma Tuttleman-Kriegler, Tulane Students for Sensible Drug Policy

“Law enforcement is targeting minor users rather than kingpins because they’re incentivized for each prisoner. The warden gets $24.50 per prisoner. We have 13,000 prisoners for marijuana offenses in prison and multiplied by 365 days and $24.50 per prisoner, the prison system receives a $116 million incentive to keep more prisoners locked up for marijuana, minor marijuana offenses.”

Mike Wolf, Baton Rouge attorney, co-founder of the Louisiana chapter of NORML in 70’s

“It’s simply unfair to punish people for personal behavior that doesn’t hurt anyone. These are victimless crimes. There’s no victim; nobody is complaining that I was hurt by Joe’s use of marijuana. ... We’ve had two generations of people trying it so if there were serious health problems resulting from its use, they would have appeared; or if there were great increases in addictive behavior, but there have not been.”

“Jimmy” South Louisiana resident who suffers from Crohn’s Disease

“If there’s anything I can do from keep from getting on opium. Like any medication it has side effects; and I can feel the side effects - rapid heartbeat; I feel sweaty; clammy; it’s not good... Usually after you smoke the marijuana the pain is gone; ...I’ve never felt like I had to have it; no cold sweats; none of the side effects in other words.”

Opponents of decriminalization argue that cannabis on the street today has a much higher percent of THC with a stronger drug effect and that decriminalization will lead to usage, increased crime, and abuse of more dangerous illicit drugs.

Diana Drake, founder, New Beginnings at Lake Charles addiction treatment center

“I really think my biggest concern with legalization is the degradation of the family system and how that is affected not only by the growing of it but by the constant use of marijuana in the family unit and kids being exposed to it early in life.”

Anonymous Client, New Beginnings at Lake Charles addiction treatment center

“I believe it is a gateway drug to other drugs because once you begin to smoke marijuana it puts you in the environment where those other drugs are readily accessible.”

Rep. Sherman Mack, R-Livingston, House Criminal Justice Committee

“These people saying it’s clogging up our prisons, these are repeat offenders. These are people who don’t learn their lesson when they’re told, ‘We’re going to slap you on the wrist and let you have a second chance.’ Well, these are second, third and fourth felony offenders who are not going to learn a lesson ... You have to have some type of deterrent. If you don’t have a deterrent the problem is going to get worse.”
PUBLIC OPINION

A majority, or 52%, of Americans favor legalizing marijuana use, compared with 45 percent who say it should remain illegal, according to a survey by the Pew Research Center released in April. Young people are the most supportive, the survey showed.

Most Louisianans believe the state’s tough marijuana laws should be changed, according to a survey released in September by Public Policy Polling. While PPP is a left-leaning polling firm, the demographics of those surveyed skewed right and white, with 80% classifying themselves as conservative or very conservative, and 72% as white. While New Orleans and Baton Rouge metro areas represent around 44% of the state's overall population, they only accounted for 36% of the respondents contacted for the poll.

Of those polled, 64% said they are against the strict penalties for repeat offenders for possession and more than half said they would be in favor of a simple $100 fine for those found in possession of an ounce or less of marijuana.

While nearly half of respondents -- 47% -- said they would support putting a much lower cap on repeat offender penalties, more than half -- 53% -- said they would be in favor of following the example of Colorado and Washington in allowing pot to be regulated and taxed by the state.

Thirty-seven percent of respondents were opposed to both those propositions, but more checked the "not sure" box for the lowered penalties question than for legalization.

Those polled exhibited the highest level of support for medical marijuana, however, with 65% saying they would be in favor of seriously and terminally ill patients having access to it.

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Watch

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