

Location:
MARIJUANA



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MARIJUANA DECRIMINALIZATION

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You asked for information related to Senate Bill 476, which would have made possession of a small amount of marijuana punishable by a civil fine rather than a criminal penalty. Specifically, you wanted to know (1) if other states that have decriminalized marijuana used language similar to Senate Bill 476, (2) when those states decriminalized marijuana, and (3) whether marijuana usage has increased as a result.

SUMMARY

Senate Bill 476 of the 2010 legislative session would have reduced the penalties for possession of small amounts of marijuana. The bill, which died in the Judiciary Committee, provided that “[a]ny person who possesses or has under his control less than one ounce of a cannabis-type substance, except as authorized in chapter 420b of the general statutes, shall have committed an infraction.” Under current law, possession of up to four ounces of marijuana is punishable by a fine of up to \$1,000 and imprisonment for up to one year (CGS § 21a-279(c)).

In the 1970s, at least 11 states decriminalized the possession of small amounts of marijuana. Two states (Nevada and Massachusetts) decriminalized marijuana possession in the last decade. Marijuana possession is not completely legal in those states, but is punished with fines rather than imprisonment. The precise language used in the marijuana statutes varies from state to state, and the language is given in Table 1 below. It is difficult to determine whether marijuana decriminalization causes an increase in marijuana usage, and various studies have come to different conclusions. For a discussion of law enforcement costs associated with marijuana decriminalization, see [OLR Report 10-R-0052](#).

STATES THAT DECRIMINALIZED MARIJUANA POSSESSION

When a state reduces the penalty for possessing a small amount of marijuana to a fine rather than imprisonment, it is said to have decriminalized marijuana. This is distinct from the legalization of medical marijuana, which allows patients with certain conditions to legally use marijuana to relieve their symptoms ([OLR Report 07-R-0411](#)). Thirty-one states have laws on the medical use of marijuana, but they vary widely in how much protection they provide (see [Marijuana Policy Project, State-by-state Medical Marijuana Laws](#), p. 11). In states that have decriminalized marijuana, possession for personal use is still illegal but is not punished as severely as it is in other states.

In the 1970s, at least 11 states decriminalized marijuana possession. Nevada followed in 2002, and Massachusetts in 2009. Table 1 below shows the statutory or judicial language decriminalizing marijuana possession for first-time adult offenders. Connecticut's [Senate Bill 476](#) said “[a]ny person who possesses or has under his control less than one ounce of a cannabis-type substance, except as authorized in chapter 420b of the general statutes, shall have committed an infraction” (SB 476, 2010 Legislative Session).

Table 1: States that have Decriminalized Marijuana Possession

<i>State and year*</i>	<i>Citation</i>	<i>Language</i>
Alaska 1975	<i>Noy v. Alaska</i> , 83 P.3d 538 (2003); <i>Ravin v. Alaska</i> , 537 P.2d 494 (1975)	“Alaska citizens have the right to possess less than four ounces of marijuana in their home for personal use” (<i>Noy</i> , 83 P.3d at 540). Under <i>Ravin</i> , the right to possess less than four ounces of marijuana at home, for personal use, is protected by the Alaska Constitutions guarantee of the right to privacy. A statute that re-criminalized marijuana possession was declared unconstitutional by <i>Noy</i> . Marijuana decriminalization and re-criminalization bills have been passed and repealed over the years, but the constitutional guarantee stands.
California 1976	Cal Health & Saf Code § 11357(b)	“Except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars (\$100)”.
Colorado 1975	Colo. Rev. Stat 18-18-406(1)	“Any person who possesses not more than one ounce of marihuana commits a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars.”

Table 1:-Continued-

<i>State and year*</i>	<i>Citation</i>	<i>Language</i>

Maine 1976	22 M.R.S. § 2383(A)	“A person who possesses a usable amount of marijuana commits a civil violation for which a fine of not less than \$350 and not more than \$600 must be adjudged for possession of up to 1 1/4 ounces of marijuana and a fine of not less than \$700 and not more than \$1,000 must be adjudged for possession of over 1 1/4 ounces to 2 1/2 ounces of marijuana, none of which may be suspended.”
Massachusetts 2009	ALM GL ch. 94C, § 32L	“Notwithstanding any general or special law to the contrary, possession of one ounce or less of marihuana shall only be a civil offense, subjecting an offender who is eighteen years of age or older to a civil penalty of one hundred dollars and forfeiture of the marihuana, but not to any other form of criminal or civil punishment or disqualification. An offender under the age of eighteen shall be subject to the same forfeiture and civil penalty provisions, provided he or she completes a drug awareness program which meets the criteria set forth in Section 32M of this Chapter.”
Minnesota 1976	Minn. Stat. § 152.027(a)	“A person who unlawfully sells [less than 42.5 grams of marijuana] for no remuneration, or who unlawfully possesses [less than 42.5 grams of marijuana] is guilty of a petty misdemeanor and participation in a drug education program unless the court enters a written finding that a drug education program is inappropriate. The program must be approved by an area mental health board with a curriculum approved by the state alcohol and drug abuse authority.”
Mississippi 1977	Miss. Code Ann. § 41-29-139(c)(2)	“Marihuana in the following amounts shall be charged and sentenced as follows: (A) Thirty (30) grams or less by a fine of not less than One Hundred Dollars (\$100.00) nor more than Two Hundred Fifty Dollars (\$250.00).”
Nebraska 1977	R.R.S. Neb. § 28-416(13)	“Any person knowingly or intentionally possessing marijuana weighing one ounce or less shall: (a) For the first offense, be guilty of an infraction, receive a citation, be fined three hundred dollars, and be assigned to attend a course as prescribed in section 29-433 if the judge determines that attending such course is in the best interest of the individual defendant.”
Nevada 2002	Nev. Rev. Stat. Ann. § 453.336(4)	“Unless a greater penalty is provided pursuant to NRS 212.160, a person who is convicted of the possession of 1 ounce or less of marijuana:(a) For the first offense, is guilty of a misdemeanor and shall be: (1) Punished by a fine of not more than \$600; or (2) Examined by an approved facility for the treatment of abuse of drugs to determine whether he is a drug addict and is likely to be rehabilitated through treatment and, if the examination reveals that he is a drug addict and is likely to be rehabilitated through treatment, assigned to a program of treatment and rehabilitation pursuant to NRS 453.580.”

New York 1977	NY CLS Penal § 221.05	“A person is guilty of unlawful possession of marihuana when he knowingly and unlawfully possesses marihuana. Unlawful possession of marihuana is a violation punishable only by a fine of not more than one hundred dollars.”
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Table 1:-Continued-

<i>State and year*</i>	<i>Citation</i>	<i>Language</i>
North Carolina 1977	N.C. Gen. Stat. § 90-95(d)	“Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(3) [possession] with respect to: (4) [Marijuana] shall be guilty of a Class 3 misdemeanor, but any sentence of imprisonment imposed must be suspended and the judge may not require at the time of sentencing that the defendant serve a period of imprisonment as a special condition of probation.”
Ohio 1976	ORC Ann. 2925.11(C)(3)	“If the drug involved in the violation is marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish, whoever violates division (A) of this section is guilty of possession of marihuana. The penalty for the offense shall be determined as follows: (a) [For amounts under 100 grams] possession of marihuana is a minor misdemeanor.”
Oregon 1973	ORS § 475.864(3)	“Notwithstanding subsection (2) of this section, unlawful possession of marijuana is a violation if the amount possessed is less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae. A violation under this subsection is punishable by a fine of not less than \$ 500 and not more than \$1,000. Fines collected under this subsection shall be forwarded to the Department of Revenue for deposit in the Criminal Fine and Assessment Account established under ORS 137.300.”

*The year refers to the year the decriminalization statute was first passed, and statutes may have been recodified and amended over the years.

Note: One ounce is the equivalent of 28.35 grams, and represents between 26 and 56 marijuana cigarettes (Connecticut Law Revision Commission, [Drug Policy in Connecticut and Strategic Options](#), Jan. 21, 1997).

The penalties listed above apply to first-time adult offenders. Some states provide for different penalties in different circumstances. These different circumstances are described below.

Increased penalties for multiple violations

Several states have penalties that become more severe as the number of violations

increase:

- California: The fourth violation of the statute in a two-year period triggers more serious penalties. All four (or more) violations are charged together, and if the person is found guilty he or she may be required to undergo a drug treatment program or pay harsher fines (Cal Health & Saf Code § 11357(b)).
- Nebraska: The third and all subsequent offenses are punishable by a fine of \$500 and imprisonment of up to seven days (R.R.S. Neb. § 28-416(13)(c)).
- Nevada: After the second offense, the person may be assigned to a drug treatment program. The fourth offense, and all subsequent offenses, are punishable as a class E felony (imprisonment for a period of one to four years) (Nev. Rev. Stat. Ann. § 453.336(4)).
- New York: The second offense in a three-year period is punishable by a fine of \$200. The third and subsequent offenses are punishable by a fine of up to \$250 and imprisonment for up to 15 days (NY CLS Penal § 221.05).

Marijuana Possession by Minors

In California, a minor who is found to possess up to 28.5 grams of marijuana at a school is charged with a misdemeanor and may be charged a fine of up to \$250 for the first offense. For the second and any subsequent offenses, the minor may be fined up to \$500 and sent to a juvenile detention facility for up to 10 days. Adults who possess up to 28.5 grams of marijuana in or near schools may be fined up to \$500 or imprisoned for up to 10 days (Cal Health & Saf Code § 11357 (2010)).

In Massachusetts, minors are subject to the same fines as adults, but must also attend a drug treatment program. If the minor fails to complete the drug treatment program, the fine may be increased to up to \$1,000 (ALM GL ch. 94C, § 32L).

Marijuana in Motor Vehicles

In Minnesota, possession of a small amount of marijuana is a petty misdemeanor. Possession of 1.4 grams of marijuana is treated as a misdemeanor, however, “if the person is the owner of a private motor vehicle, or is the driver of the motor vehicle if the owner is not present, and possesses [marijuana] on the person, or knowingly keeps or allows [it] to be kept within the area of the vehicle normally occupied by the driver or passengers...” (Minn. Stat. § 152.027(3)). Marijuana possession in a motor vehicle is punishable by a fine up to \$1,000 and imprisonment of up to 90 days.

The law is similar in Mississippi. Normally, possession of up to 30 grams of marijuana is punishable by a fine of \$100 to \$250. Possession of between one and 30 grams of marijuana within a motor vehicle, however, is punishable by a fine of up to \$1,000 and imprisonment for up to 90 days (Miss. Code Ann. § 41-29-139(c) (2)(B)).

TRENDS IN MARIJUANA USAGE

It is difficult to determine whether marijuana decriminalization causes an increase in marijuana usage, and various studies have come to different conclusions. It has been suggested that if penalties for marijuana possession are reduced, marijuana becomes more attractive, and some studies suggest that this is the case. One study found a strong link between marijuana decriminalization and marijuana-related emergency room visits (Karyn E. Model, *The Effect of Marijuana Decriminalization on Hospital Emergency Room Drug Episodes: 1975-1978*, *Journal of the American Statistical Association*, Sep. 1993).

There is little hard evidence that marijuana decriminalization actually increases usage. An Australian study from 1997 found no increase in marijuana usage among university students after the Australian Capital Territory (ACT) decriminalized marijuana possession in 1992 (Jill McGeorge & C. K. Aitken, *Effects of Cannabis Decriminalization in the Australian Capital Territory on University Students' Patterns of Use*, *Journal of Drug Issues*; Fall 1997). An article in *The Canadian Journal of Psychiatry* reviewed studies on the impacts of marijuana decriminalization in U.S. states, Australian states, the Netherlands, and the United Kingdom. The authors did not see a causal relationship between marijuana decriminalization (or the push in the 1990s to re-criminalize) and actual marijuana usage rates (Wayne Hall & Robin Room, *Should We Recriminalize Cannabis Use? The Case Against*, *The Canadian Journal of Psychiatry*, Dec. 2008).

It is especially difficult to determine whether decriminalization in the United States increased usage, because the movement to decriminalize marijuana occurred at the same time that marijuana usage was increasing. The number of high school seniors who had used marijuana in the past year rose through the 1970s and peaked in the late 1970s to early 1980s ([Office of National Drug Control Policy, Drug Use Trends](#), Fig. 1). This rise in usage began before states decriminalized marijuana possession, and ended after. It is difficult to tell if marijuana usage increased because of decriminalization, or if states chose to decriminalize marijuana because so many people were using it anyway.

Marijuana usage actually fell in the years after the movement to decriminalize. In the 20 years after Oregon started the decriminalization trend, the number of first time users per year dropped dramatically. In 1976 and 1977, 21 out of every 1,000 people over age 12 began using marijuana, compared with only 8.5 out of 1,000 potential users in 1990

([Joseph C. Gfroerer, Li-Tzy Wu, and Michael A. Penne \(U.S. Dept. of Health and Human Services\), Initiation of Marijuana Use: Trends, Patterns, and Implications, Fig. 3.1](#)).

In recent years, the states that have decriminalized marijuana have above-average rates of marijuana usage. As Table 2 below shows, 10 out of the 13 states that have decriminalized marijuana have usage rates above the national average. It is unclear if these states have higher usage rates because of their decriminalization policies,

or for other reasons.

Table 2: Marijuana Usage in Connecticut and Decriminalized States

<i>Location</i>	<i>Used in Last Month (% of pop., avg. 2002-2004)</i>
National Average	6.12%
Connecticut	6.73
Alaska	10.34
California	6.79
Colorado	7.76
Maine	7.98
Massachusetts	7.74
Minnesota	6.16
Mississippi	4.41
Nebraska	5.38
Nevada	7.06
New York	7.53
North Carolina	5.44
Ohio	6.36
Oregon	8.36



(Source: [U.S. Dept. of Health and Human Services, Substance Abuse and Mental Health Statistics, 2002-2004 State Treatment Planning Areas, Table C2](#))

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