

## Regulating Reefer: Legalization of Recreational Marijuana<sup>1</sup>

This IPRO report presents an overview of state legislative action concerning legalization of recreational marijuana.

### Background

Reducing legal penalties for possession, distribution and use of marijuana has long been a contentious issue. California's recent debate over Proposition 19, which would legalize the recreational use of marijuana, has brought national attention to the question of recreational use of the drug.<sup>2</sup>

### Definitions<sup>3</sup>

For purposes of this report, "recreational marijuana" refers to non-medical use of marijuana. "Policies legalizing recreational marijuana" refers to any policy allowing for non-medical use of marijuana. These policies may have restrictions such as age and quantity limitations.

#### *Schedule I substance:*

A drug or other substance which has a high potential for abuse, no currently accepted medical use in the United States, and a lack of accepted safety for use under medical supervision. Examples include heroin, lysergic acid diethylamide (LSD), and marijuana.

#### *Schedule II substance:*

A drug or other substance which has a high potential for abuse, a currently accepted medical use, or a currently accepted medical use with severe restrictions in the United States. The abuse of this drug or substance may lead to severe psychological or physical dependence. Examples include morphine, cocaine, methadone, and methamphetamine.

### Federal Policy

Possession of marijuana has been illegal at the federal level since the passage of the U.S. Marijuana Tax Act of 1937. The Controlled Substances Act of 1970 classified marijuana as a Schedule I substance. Any possession or sale of marijuana is punishable by federal law; however the 2005

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<sup>2</sup> Welch, William. "Law Officers Split on California Legal Pot Fight." *USA Today*. 21 Sept. 2010. [http://www.usatoday.com/news/politics/2010-09-21-potvote21\\_ST\\_N.htm](http://www.usatoday.com/news/politics/2010-09-21-potvote21_ST_N.htm).

<sup>3</sup> "Drugs of Abuse Publication, Chapter 1: The Controlled Substances Act." *U.S. Drug Enforcement Administration*. 20 Sept. 2010. <http://www.justice.gov/dea/pubs/abuse/1-csa.htm#Schedule%20I>.

Supreme Court decision in *United States v. Booker* ruled that federal sentencing guidelines are advisory and no longer mandatory.<sup>4</sup> Furthermore, the federal government may choose not to enforce federal drug regulations, as recently was the case with California's medical marijuana program.<sup>5</sup> Offenses involving large amounts of marijuana still carry statutory mandatory minimum sentences depending on the amount cultivated or possessed and the existence of a prior drug-related sentencing. Judges in all 50 states may not reduce statutory mandatory minimum sentences.

Each state passes its own marijuana laws, but federal law overrules state or local laws. Traditionally, all drug crimes are prosecuted at the state level unless they challenge U.S. constitutionality or involve multiple jurisdictions such as interstate trafficking.

## **Iowa Policy**

Marijuana is both a Schedule I and Schedule II substance under Iowa Code. In February 2010, the Iowa Board of Pharmacy unanimously voted to recommend to the state legislature to reclassify marijuana to Schedule II status only. In light of the recommendation, S.R. 115 was introduced to convene a task force to make further recommendations regarding a medical marijuana program in Iowa. S.R. 115 did not pass before the legislative session ended.<sup>6</sup> There are no bills concerning the legalization of recreational marijuana use currently being debated in the state legislature. A *Des Moines Register* poll taken in February of 2010 indicated that 28 percent of Iowans support legalizing recreational marijuana use, while 70 percent opposes it.<sup>7</sup>

Iowa is one of 20 states that issues stamp taxes for illegal drugs including marijuana. Under state code §435B, those who possess marijuana must permanently affix the state-issued stamp onto the contraband. The tax rate is applied at \$5 per gram of 42.5 grams or more of processed marijuana and \$750 per unprocessed marijuana plant. The penalty for nonpayment of the stamp tax, a Class D Felony, is 200 percent of the tax plus interest. The primary drug stamp tax-related revenue is collected under classification of tax evasion after an arrest and criminal charges for possession.<sup>8</sup> Stamp tax revenue is distributed to the State General Fund. Very few batches of drug stamp taxes have been purchased in Iowa (only seven were purchased as of May 2003), though current data is not available.<sup>9</sup>

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<sup>4</sup> "Federal Marijuana Law." Americans for Safe Access. <http://www.safeaccessnow.org/article.php?id=2638>.

<sup>5</sup> "DEA to End Medical Marijuana Raids." MSNBC. 27 Feb, 2009. <http://www.msnbc.msn.com/id/29433708/>.

<sup>6</sup> "Senate Resolution 115-Introduced." The Iowa Legislature Bill Book. <http://coolice.legis.state.ia.us/Cool-ICE/default.asp?Category=billinfo&Service=Billbook&ga=83&hbill=SR115>.

<sup>7</sup> Leys, Tony. "Iowa Poll: Iowans give thumbs up to medicinal marijuana." *DesMoinesRegister.com*. Feb. 16, 2010. <http://www.desmoinesregister.com/article/20100216/NEWS/2160365/Iowa-Poll-Iowans-give-thumbs-up-to-medicinal-marijuana>.

<sup>8</sup> State Tax Stamp Data. The National Organization for the Reform of Marijuana Laws. [http://www.norml.org/index.cfm?Group\\_ID=6668#Iowa](http://www.norml.org/index.cfm?Group_ID=6668#Iowa).

<sup>9</sup> Iowa Drug Stamp Tax Law. *Department of Iowa Revenue*. 21 Sept. 2010. <http://www.iowa.gov/tax/taxlaw/DrugTaxLaw.html>.

## Other State Action

### California's Proposition 19

California's Proposition 19, also known as the Regulate, Control and Tax Cannabis Act of 2010, is a ballot initiative which, if successful, would make legal the possession, transportation or cultivation of up to one ounce of marijuana legal for personal, non-public use among individuals over 21 years of age.<sup>10</sup> Voters in California will vote on the controversial Proposition 19 on November 2 of 2010. The debate over this bill follows recent legislative action reducing the penalty for possession of up to one ounce of marijuana to a \$100 fine and no indication on a criminal record.<sup>11</sup> California is currently one of 14 states that have legalized marijuana for medical use.<sup>12</sup> Similar legalization bills are pending or about to be filed in Nevada, Massachusetts, New Hampshire, and Washington.<sup>13</sup>

### Cost/Benefit Analysis

The debate over the legalization of recreational marijuana has wide-ranging impacts. Areas of costs and benefits to consider include crime, health, and economics. It is important to note that there are numerous arguments on both sides of the cost/benefit debate, and the arguments listed here, while reflective of some major points, are by no means an exhaustive list of all the arguments.

### Crime

#### *Costs*

Legalization of recreational marijuana may lead to increased vehicle accidents as a result of marijuana's effects on drivers. While the extent of the impact of marijuana use on drivers is uncertain, a RAND Corporation report indicated that legalization of recreational marijuana would likely increase the number of marijuana related vehicle accidents.<sup>14</sup> This contrasts with econometric accounts of marijuana decriminalization focused on drug substitution which conclude that the decrease in drunk driving incidents "more than offset" the increases in incidents resulting from

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<sup>10</sup> Proposition 19: California's Marijuana Legalization Debate. *LA Times*, 1 Oct, 2010  
<http://www.latimes.com/news/local/marijuana/>

<sup>11</sup> "California Reduces its Penalty for Marijuana. *New York Times*. 1 Oct, 2010.  
<http://www.nytimes.com/2010/10/02/us/politics/02pot.html>

<sup>12</sup> Fourteen Legal Medical Marijuana States and DC. *Procon.org*, 2010. <http://medicalmarijuana.procon.org>

<sup>13</sup> Smith, Phillip. "Marijuana Initiative to Legalize Marijuana in Nevada Filed, Vote Will Come in 2012." *Stop the Drug War.Org*. January 8, 2010. [http://stopthedrugwar.org/chronicle/2010/jan/08/marijuana\\_initiative\\_legalize\\_ma](http://stopthedrugwar.org/chronicle/2010/jan/08/marijuana_initiative_legalize_ma)

<sup>14</sup> Pacula, Rosalie. "Examining the Impact of Marijuana Legalization on Harms Associated with Marijuana Use." *RAND Corporation: Drug Policy Research Center*. July, 2010. [http://www.rand.org/pubs/working\\_papers/WR769/](http://www.rand.org/pubs/working_papers/WR769/).

driving under the influence of marijuana.<sup>15</sup>

If recreational marijuana were legalized, increased recreational use of marijuana would not be considered an increase in crime as the conduct would be legal. There is some evidence, however, indicating that marijuana is a “gateway drug,” and that marijuana use may contribute to use of alternative illegal drugs such as cocaine.<sup>16</sup> The econometric methodology employed accounted for the criminal nature of the conduct by raising the overall cost of the action relative to criminal penalties.<sup>17</sup>

### *Benefits*

Marijuana accounts for a substantial number of arrests in Iowa. According to the Iowa Department of Public Safety, marijuana-related offenses accounted for 7,792 arrests in 2008, accounting for over 69 percent of the 11,223 total drug offenses.<sup>18</sup> Legalization of recreational marijuana will likely decrease the number of marijuana related arrests, leaving the police free to track other crimes.<sup>19</sup>

A decrease in these arrests would be a positive benefit on the level of social equality, as a disproportionate number of African-Americans tend to be arrested in marijuana cases. Despite survey data indicating that marijuana use is only 20 percent higher among African Americans, the arrest rate for African Americans is three times the rate for whites (300 percent higher).<sup>20</sup>

Econometric data supports the argument that decriminalization of marijuana leads to drug substitution, especially between alcohol and marijuana.<sup>21 22</sup> This suggests that legalization of marijuana may decrease alcohol-related crimes and injuries.<sup>23</sup> The most notable example of alcohol-related crimes and injuries is drunk driving,<sup>24</sup> which accounted for 27 percent of traffic fatalities in Iowa in 2008 (113 deaths).<sup>25</sup>

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<sup>15</sup> Chaloupka, Frank and Adit Laixuthai. “Do Youths Substitute Alcohol and Marijuana? Some Econometric Evidence.” *Eastern Economic Journal*, Vol. 23, No. 3 (Summer 1997), pp. 253-276. [JSTOR. www.jstor.org](http://www.jstor.org).

<sup>16</sup> DeSimone, Jeffrey. “Is Marijuana a Gateway Drug?” *Eastern Economic Journal*. Vol. 24, No. 2 (Spring 1998), pp. 149-164. [JSTOR. www.jstor.org](http://www.jstor.org).

<sup>17</sup> *Ibid.*

<sup>18</sup> “Drug/Narcotic Violations.” *2008 Uniform Crime Report*. Iowa Department of Public Safety. [http://www.dps.state.ia.us/commis/ucr/2008/2008\\_UCR\\_Publication.pdf](http://www.dps.state.ia.us/commis/ucr/2008/2008_UCR_Publication.pdf).

<sup>19</sup> Gettman, Jon. Marijuana in Iowa: Arrests, Usage, and Related Data. 19 Oct. 2009. [www.drugscience.org](http://www.drugscience.org).

<sup>20</sup> *Ibid.*

<sup>21</sup> Single, Eric. “The Impact of Marijuana Decriminalization: An Update.” *Journal of Public Health Policy*. Vol. 10, No. 4 (Winter 1989), pp. 456-466. [JSTOR. www.jstor.org](http://www.jstor.org).

<sup>22</sup> Chaloupka, Frank and Adit Laixuthai. “Do Youths Substitute Alcohol and Marijuana? Some Econometric Evidence.” *Eastern Economic Journal*, Vol. 23, No. 3 (Summer 1997), pp. 253-276. [JSTOR. www.jstor.org](http://www.jstor.org).

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> “Iowa Drunk Driving Statistics.” *AlcoholAlert*. 2010. [www.alcoholalert.com/drun-driving-statistics-iowa.html](http://www.alcoholalert.com/drun-driving-statistics-iowa.html).

## Health

### *Costs*

Marijuana smoking carries a risk of respiratory problems, especially for users who do not also smoke tobacco. Marijuana smoke also contains carcinogens, though there is no link between marijuana smoking and lung, upper respiratory or upper digestive tract cancers.<sup>26</sup> There has been some evidence indicating a relationship between marijuana use and prostate and cervical cancers. These relationships were only present in non-tobacco-smoking users of marijuana.<sup>27</sup>

Marijuana use may also have psychological impacts. Several studies have indicated that marijuana may have a selective, positive association with depression in users who tend to be younger and more introspective.<sup>28 29</sup> A systematic review of 32 studies indicated “a consistent association between cannabis use and psychotic symptoms, including disabling psychotic disorders.”<sup>30</sup>

### *Benefits*

Marijuana is purported to have a number of health benefits when used for medicinal purposes. These benefits, however, are not relevant to a discussion of recreational marijuana as these arguments apply only to users with the relevant health problems. Marijuana use has no proven medical benefits to the general user. For a more complete discussion of the use of medical marijuana for medical purposes, see our related report from 2009 on medical marijuana policies.<sup>31</sup>

## Economics

### *Costs*

Economic arguments against the legalization of recreational marijuana are largely based on the harms discussed previously. Evidence for marijuana’s status of a gateway drug<sup>32</sup> indicates higher costs to society in terms of the money to prosecute the resulting drug crimes. Another economic

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<sup>26</sup> “Marijuana.” National Institute on Drug Abuse. June, 2009. [www.drugabuse.gov](http://www.drugabuse.gov).

<sup>27</sup> Sidney, Stephen, Charles Quesenberry, Gary Friedman, and Irene Tekwa. “Marijuana Use and Cancer Incidence (California, United States).” Cancer Causes and Control, Vol. 8, No. 5 (Sept. 1997), pp. 722-728. JSTOR. [www.jstor.org](http://www.jstor.org).

<sup>28</sup> Zablocki, Benjamin, Angela Aidala, Stephen Hansell, and Helene Raskin White. “Marijuana Use, Introspectiveness, and Mental Health.” Journal of Health and Social Behavior, Vol. 32, No. 1 (Mar. 1991), pp. 65-79. JSTOR. [www.jstor.org](http://www.jstor.org).

<sup>29</sup> Green, Brian and Christian Ritter. “Marijuana Use and Depression.” Journal of Health and Social Behavior, Vol. 41, No. 1. (Mar., 2000), pp. 40-49. JSTOR. [www.jstor.org](http://www.jstor.org).

<sup>30</sup> Moore, Zammit, Hughes, Barnes, Jones, Burke, Jones, Lewis. “Cannabis Use and Risk of Psychotic or Affective Mental Health Outcomes: A Systematic Review.” Lancet, Vol. 370, July 2007.

<sup>31</sup> Iowa Policy Research Organization. “Medical Marijuana.” 2009. <http://www.uiowa.edu/~ipro/Papers%202009/Medical%20Marijuana%20Final.pdf>.

<sup>32</sup> DeSimone, Jeffrey. “Is Marijuana a Gateway Drug?” Eastern Economic Journal. Vol. 24, No. 2 (Spring 1998), pp. 149-164. JSTOR. [www.jstor.org](http://www.jstor.org).

argument may be made based on the monetary cost to society of dealing with potential health problems such as the previously discussed localized cancers and psychological effects.

### *Benefits*

Economic arguments in favor of legalization of recreational marijuana include the possibility of placing a tax on marijuana which would increase state revenue.<sup>33</sup> Based on analysis of current reported marijuana use rates, one study indicated Iowa would receive \$6.2 million in tax revenue.<sup>34</sup> This study assumes a tax rate comparable to alcohol and assumes that no change in demand would result from marijuana legalization.<sup>35</sup>

Revenue would also be obtained in the form of money that would otherwise be spent on the prosecution and incarceration of marijuana users. Based on the percent of marijuana cases compared to the overall expenditures of the criminal justice system, one study concluded that marijuana cases cost Iowa \$64.58 million in 2006.<sup>36</sup> It is important to note that legalization or recreational marijuana would not generate all of this money as revenue, as marijuana violations may occur for those under age or in possession of an unlawful quantity of marijuana.

This report was prepared in October 2010 by the Iowa Policy Research Organization (IPRO), a non-partisan public policy undergraduate research group at the University of Iowa. For additional research on this or other issues, please visit our website at <http://www.uiowa.edu/~ipro/> or contact us at [caroline-tolbert@uiowa.edu](mailto:caroline-tolbert@uiowa.edu).

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<sup>33</sup> Caputo, Michael and Brian Ostrom. "Potential Tax Revenue from a Regulated Marijuana Market: A Meaningful Revenue Source." *American Journal of Economics and Sociology*, Vol. 53, No. 4 (Oct. 1994), pp. 475-490. [JSTOR. www.jstor.org](http://www.jstor.org).

<sup>34</sup> Miron, Jeffrey. "Costs of Marijuana Prohibition: Economic Analysis." June, 2005 [Marijuana Policy Project. http://www.prohibitioncosts.org/mironreport.html](http://www.prohibitioncosts.org/mironreport.html)

<sup>35</sup> Ibid.

<sup>36</sup> Gettman, Jon. Marijuana in Iowa: Arrests, Usage, and Related Data. 19 Oct. 2009. [www.drugscience.org](http://www.drugscience.org).