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*“We change laws.”*

## 2012 State Legislation to Reduce or Remove Marijuana Penalties

In 2012, nine states considered or are considering bills to remove the possibility of jail time for the possession of small amounts of marijuana and replace it with a fine. Those states are Arizona, Hawaii, Illinois, Indiana, New Hampshire, New Jersey, Rhode Island, Tennessee, and Vermont. The American public supports this modest and sensible policy change. In November 2008, 65% of Massachusetts voters approved an initiative spearheaded by MPP to punish possession of up to an ounce of marijuana with a \$100 fine — like a traffic ticket — and no arrest record. An October 2010 *Newsweek* poll found that 55% of Americans would support a similar measure in their state.<sup>1</sup>

Thirteen states — from Mississippi to Maine to Minnesota to Oregon — already impose fines, but not jail time, for simple marijuana possession.<sup>2</sup> Some of these laws maintain criminal penalties on marijuana possession, but remove the possibility of jail. The most comprehensive and fiscally sound laws prevent arrest and make possession a civil — not criminal — violation. In addition to these 13 states, the state constitution in Alaska has been interpreted to protect adults’ possession of personal-use amounts of marijuana in their homes from any penalties.

In addition to the nine states considering new bills to impose a fine on marijuana possession, bills have been introduced in four states to make adults’ use of marijuana legal and to set up a regulated system for sales. Similar initiatives have qualified in two states — Colorado and Washington — for the November 2012 ballot.

Here is a summary of bills that were considered in 2012 to reduce existing penalties for simple marijuana possession from possible jail time to a fine, followed by summaries of two bills to improve upon existing laws to avoid jailing people who possess marijuana. The final section includes summaries of initiatives and pending legislation to end marijuana prohibition within a state.

### *State Legislation to Fine — Not Jail — Adults for Marijuana Possession*

#### **Arizona — Bill dies without receiving a hearing**

On January 4, 2012, Rep. John Fillmore, a Republican business owner and veteran, introduced HB 2044, which would have made possession of up to an ounce of marijuana a petty offense punishable by up to a \$400 fine. Simple possession is currently a Class 6 felony in Arizona. The legislature adjourned without HB 2044 receiving a hearing or a vote.

#### **Hawaii — Senate unanimously approves bill that dies in House**

Sen. Kalani English sponsored SB 1460, which was approved by the Hawaii Senate in a 24-0-1 vote on March 8, 2011. The bill then died in the House without getting a committee vote. It would have reduced the penalty for possession of less than an ounce of marijuana to a civil fine of up to \$100. Currently, the penalty is up to 30 days in jail, a fine of up to \$1,000, or both.

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<sup>1</sup> *Newsweek* poll. Congressional Elections/Marijuana. Princeton Survey Research Associates International. October 22, 2010. Available at <[http://www.psrai.com/filesave/1006\\_Ftop\\_with\\_methodology.pdf](http://www.psrai.com/filesave/1006_Ftop_with_methodology.pdf)>

<sup>2</sup> The details of the laws vary. In four of the states, the penalty increases for subsequent convictions. Three of the states  
<sup>2</sup> The details of the laws vary. In four of the states, the penalty increases for subsequent convictions. Three of the states may require counseling or a drug education course. In addition, in North Carolina, the first offense conviction also carries a 30-day jail sentence that is suspended unless the person has prior convictions.

Rep. Blake Oshira sponsored HB 544, which would have reclassified possession of less than an ounce of marijuana from a misdemeanor to a violation. The penalty would have been a fine of up to \$500. On January 24, 2011, HB 544 was referred to the House Judiciary Committee where it died when the legislature adjourned at the end of its two-year session.

#### **Illinois — Bill pending in committee**

On January 7, 2011, Rep. LaShawn Ford introduced HB 100, which would reduce the penalty for possession of up to 28.35 grams of marijuana to a \$500 fine for a first offense. A second offense would carry a \$750 fine, and a subsequent offense would be punishable by a \$1,000 fine. HB 100 would also change the classification from a misdemeanor to a petty offense. The current penalty for possession of up to 28.35 grams depends on the amount and ranges from up to 30 days in jail and/or a fine of up to \$1,500 to up to six months in jail and a fine of up to \$2,500. HB 100 was initially referred to the House Judiciary Committee, but it was then referred to the Rules Committee on March 17, 2011. Illinois has a two-year session, so the bill carried over to 2012.

#### **Indiana — Bill dies in committee**

On January 9, 2012, Sen. Karen Tallian introduced SB 347, which would have reduced several marijuana-related penalties, including by making possession of up to three ounces of marijuana a civil infraction, punishable by up to a \$500 fine and court costs. SB 347 was referred to the Committee on Corrections, Criminal, and Civil Matters, but it did not receive a vote before the legislature adjourned.

#### **New Hampshire — Bill passes House but is voted down in the Senate**

On March 8, 2012, the New Hampshire House of Representatives voted 162-161 in favor of a bill to reduce marijuana possession penalties — HB 1526. The Senate unanimously voted that the bill was “inexpedient to legislate” on May 2, so that it could focus on medical marijuana legislation.

The bill, sponsored by Rep. William Panek (R), initially would have imposed a \$100 civil fine for possession of up to an ounce of marijuana for both a first offense and subsequent marijuana convictions. It was later amended to apply to up to half an ounce of marijuana and to only change the classification to a civil violation for the first and second offenses, which would have been subject to fines of up to \$250 and \$500, respectively. A subsequent offense would have been a misdemeanor punishable by a fine of up to \$1,000. If the offender was under 18, his or her parents or guardians would have been notified, and the offender could have been ordered to complete a drug awareness program within a year. The court could have also ordered minors to perform community service.

#### **New Jersey — Bill pending in committee**

On January 10, 2012, Assemblyman Reed Gusciora introduced AB 1465, which would reduce the penalty for 15 grams or less of marijuana to a civil penalty. The first violation would be punishable by a \$150 fine, the second violation would be a \$200 fine, and any subsequent violation would be a \$500 fine. Any person 21 or older committing a third or subsequent violation would be ordered to attend a drug education program, as would any person under 21 regardless of whether he or she had prior offenses. Currently, possession of up to 50 grams of marijuana is categorized as a disorderly person offense and is punishable by up to six months incarceration and a fine of up to \$1,000. AB 1465 has been referred to the Assembly Judiciary Committee.

#### **Rhode Island — Twin bills pending**

On January 11, 2012, more than half of the Rhode Island House of Representatives co-sponsored Rep. John Edwards' bill to fine adults for simple possession of marijuana and to sentence minors to drug awareness classes. The bill, H 7092, was referred to the House Judiciary Committee, where it received a hearing on March 21, 2012. In the Senate, 58% of senators sponsor or co-sponsor the companion legislation, S 2253, which received a hearing in the Senate Judiciary Committee on March 27, 2012. The twin bills would reduce the penalty for adults' possession from a misdemeanor punishable by up to a year in jail and a \$200 to \$500 fine to a civil offense punishable by a \$150 fine.

#### **Tennessee — Bills die in committee**

On February 17, 2011, Rep. Mike Kernell introduced HB 1737, which would have reduced the penalty for less than an eighth of an ounce of marijuana to a fine between \$250 and \$2,500. Unlike most of the proposals, the offense would have remained a criminal offense — a Class A misdemeanor. The current penalty for first offense marijuana possession is a Class A misdemeanor, a fine of between \$250 and \$2,500, and up to just under a year in jail. HB 1737 was referred to the Judiciary Committee and then to the General Subcommittee of Judiciary. In the Senate, Sen. Beverly Marreo introduced SB 1597, which mirrored HB 1737. It was referred to the Senate Judiciary Committee on February 24, 2011. Both bills were still pending in committee when the legislature adjourned its two-year session on May 1, 2012.

#### **Vermont — Bills introduced**

In 2011, a tri-partisan group of legislators led by Rep. Jason Lorber filed H. 427, which would reduce the penalty for adults' possession of up to an ounce of marijuana to a civil fine of up to \$150. Minors would be sent to drug education and community service for a first offense, as would adults under 21 convicted of a second or subsequent offense. The current penalty for first offense possession of marijuana is a fine of up to \$500 and/or up to six months in jail. Second offense possession is currently punishable by up to two years in prison and/or up to a \$1,000 fine. The bill can be considered during the second half of the two-year session, but House Speaker Shap Smith announced in February 2012 that he would not allow the bill to get a vote in 2012.

In the Senate, Sen. Joe Benning (R) and Sen. Philip Baruth (D) filed S. 134, which would reduce marijuana penalties, including by reducing the penalty for possession of up to two ounces of marijuana to a civil fine of up to \$100. On January 4, 2012, S. 134 was referred to the Senate Judiciary Committee.

#### ***Bills to Improve Existing Laws That Fine — Rather than Jail — Marijuana Possession***

In addition to the states considering new laws to punish marijuana possession with a simple fine bills are pending in two states (New York and North Carolina) to improve existing laws. Both bills were introduced in 2011, but carry over to 2012 because the states have two-year sessions.

The **New York** Legislature is considering twin bills to remove an exception from its civil fine law for marijuana that is possessed in a public place and which is burning or open to the public view. On May 3, 2011, Republican Sen. Mark Grisanti introduced S 5187, while Asm. Hakeem Jeffries introduced A 7620. Both bills were referred to their chambers' Codes Committees.

In 2011, **North Carolina** Rep. K. Alexander introduced H 324, which would have reclassified possession of a small amount of marijuana as an infraction, punishable by a fine of up to \$100, rather than a misdemeanor. It would have applied to less than an ounce of marijuana, rather than the half ounce covered by its current law. Currently, first offense marijuana possession carries a

suspended sentence in the state. The suspended sentence would have been eliminated if the bill, H 324, were enacted. Although North Carolina technically has a two-year legislature ending in 2012, this bill appears to have died without carrying over.

### ***Bills to End Marijuana Prohibition Statewide***

Finally, bills are being considered in Massachusetts (HB 1371), New Hampshire (HB 1705), Rhode Island (H 5591 and S 783), and Washington state (HB 1550 and SB 5598) to end marijuana prohibition and replace it with a taxed and regulated system.

In addition, voters in at least two states will consider the issue of ending marijuana prohibition when they go to the polls in November. Both a Washington state and Colorado initiative have been certified for the November ballot. Signature drives on similar proposals are underway in Michigan, Missouri, Montana, and Oregon.

#### **Colorado — Initiative on November ballot**

The Colorado Secretary of State has certified Amendment 64 for the November ballot. The measure would allow adults 21 and older to possess up to one ounce of marijuana and to cultivate up to six plants in a locked location. It would also provide for the registration and state-legal operation of marijuana wholesalers, retailers, and testing facilities. An excise tax of up to 15% would be charged on marijuana sales.

#### **Massachusetts — Legislation introduced**

In Massachusetts last year, Rep. Ellen Story introduced HB 1371, which would allow the legal and regulated sale of marijuana to adults. The bill was introduced on the petition of Rep. Anne Gobi. HB 1371 was referred to the Joint Committee on Judiciary and received a hearing on March 6.

#### **New Hampshire — Committee narrowly votes against bill; House votes bill down**

On January 4, 2012, Rep. Calvin Pratt (R) introduced HB 1705, which would have allowed adults 21 and older to possess up to one ounce of marijuana. It would also have allowed for regulated retailers and wholesalers that could employ persons 21 or older who could sell marijuana to adults 21 and older. The Department of Revenue Administration would register and regulate the retailers and wholesalers, including by setting rules on security, packaging, and labeling. Marijuana would have been taxed at a rate of \$45 per ounce at the wholesaler level and at 19% of the price paid to a wholesaler at the retail level.

On February 23, the House Criminal Justice and Public Safety Committee narrowly voted down an “ought to pass” motion calling on the House to pass the bill, 8-9. One member then switched her vote, and the committee voted 10-7 on an “inexpedient to legislate” motion opposing the bill’s passage. Seven out of 13 Republicans voted in favor of the “ought to pass” motion. On March 8, 2012, the full House of Representatives agreed with the committee recommendation in a 228-89 vote, killing the bill.

#### **Rhode Island — Twin bills pending**

On February 16, House Judiciary Committee Chair Edith Ajello introduced H 7582, which received a hearing in her committee on March 21, 2012. H 7582 has six co-sponsors, including House Republican Leader Brian Newberry. In the Senate, Sen. Rhoda Perry and co-sponsors introduced S 2367, which received a hearing in the Senate Judiciary Committee on March 27. The

twin bills would allow adults 21 and older to possess up to one ounce of marijuana and to cultivate up to three plants. They would also allow for regulated retailers and wholesalers that could employ persons 21 or older who could sell marijuana to adults 21 and older. The Department of Business Regulation would register and regulate the retailers, wholesalers, and testing labs, including by setting rules on security, packaging, and labeling. Marijuana would be taxed at a rate of \$50 per ounce at the wholesaler level.

**Washington state — Twin bills considered; initiative on November ballot**

Last year, legislators introduced twin bills to replace marijuana prohibition with regulated sales. Rep. Mary Lou Dickerson (D) and 13 co-sponsors introduced HB 1550. In the Senate, Senators Prentice and Kline introduced companion bill SB 5598. Both bills died when the legislature adjourned on March 8, 2012.

In addition, the Washington Secretary of State certified that enough valid signatures had been submitted for Initiative 502. The state legislature had a chance to consider the initiative, but it did not act, so the initiative will go to voters. Initiative 502 would allow marijuana-only stores to sell marijuana to adults 21 and older. The Liquor Control Board would regulate and license the stores. The legislation would allow adults 21 and older to possess up to an ounce of marijuana. It would also set a per se limit for THC that can be in one's system while driving.