

# BEHIND THE TIMES

THE 19 STATES WHERE A JOINT CAN STILL LAND YOU IN JAIL

MARIJUANA POLICY PROJECT

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## THE 19 STATES WHERE A JOINT CAN STILL LAND YOU IN JAIL

According to Gallup polling, 68% of Americans agree cannabis use should be legal.<sup>1</sup> Meanwhile, Civiqs polling reports majority support for legalization in every single state.<sup>2</sup> Yet, dozens of states continue to prohibit cannabis, and 19 states and the federal government still penalize even simple possession with possible jail time and a criminal record.

This Marijuana Policy Project (MPP) report examines the laws that lag the furthest behind public opinion: the 19 states and federal government, which have not even “decriminalized” simple possession of cannabis. In those states, it examines penalties for simple possession, arrest rates, and racial disparities in arrests and provides a glimpse at some of the damage inflicted by draconian laws. It also reviews unsolved crime rates in the states that continue to use limited law enforcement resources to arrest and jail adults for possessing a substance that is safer than alcohol.

*“[T]he criminal law is too harsh a tool to apply to personal possession even in the effort to discourage use. It implies an overwhelming indictment of the behavior which we believe is not appropriate. The actual and potential harm of use of the drug is not great enough to justify intrusion by the criminal law into private behavior, a step which our society takes only with the greatest reluctance.*

*“... Therefore, the Commission recommends ... [that the] possession of marihuana for personal use no longer be an offense, [and that the] casual distribution of small amounts of marihuana for no remuneration, or insignificant remuneration, no longer be an offense.”*

*— Conclusion of the 1972 Shafer Commission report*

<sup>1</sup> “Support for Legal Marijuana Holds at Record High of 68%,” Gallup, November 4, 2021. <https://news.gallup.com/poll/356939/support-legal-marijuana-holds-record-high.aspx>

<sup>2</sup> [https://civiqs.com/results/cannabis\\_legal?annotations=true&uncertainty=true&zoomIn=true](https://civiqs.com/results/cannabis_legal?annotations=true&uncertainty=true&zoomIn=true)

## ■ THE LANDSCAPE 50 YEARS AFTER THE SHAFER COMMISSION CALLS FOR DECRIMINALIZATION

In the early 1970s, President Richard Nixon appointed a group known as the Shafer Commission (formally the “National Commission on Marihuana and Drug Abuse”) to study cannabis and its use and make recommendations. The Commission, chaired by Pennsylvania Governor Raymond Shafer (R), issued a report on its findings on March 22, 1972, calling for the decriminalization of cannabis possession in the United States, at both the state and federal levels. The White House ignored it.

A year earlier, Nixon had launched the “war on drugs.” His domestic policy advisor, John Ehrlichman, explained decades later that Nixon had “two enemies: the antiwar left and black people ... We knew we couldn’t make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities.”

The Shafer Commission concluded that cannabis does not cause widespread danger to society and recommended social measures other than criminalization to discourage use, comparing cannabis to alcohol.<sup>3</sup> Although the federal government ignored the report, 11 states removed jail time as a possible penalty for low-level possession of cannabis between 1973 and 1978, and professional organizations, including the American Bar Association, the American Medical Association, the American Public Health Association, and the National Education Association, endorsed decriminalization.<sup>4</sup>

Today, 31 states and Washington, D.C. have enacted laws to stop jailing their residents for possession of small amounts of cannabis. In 18 of those states,

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<sup>3</sup> National Commission on Marihuana and Drug Abuse, “Marihuana: A Signal of Misunderstanding,” March 1972. *See also* Richard J. Bonnie and Charles H. Whitebread, “The Marijuana Conviction: A History of Marijuana Prohibition in the United States,” Drug Policy Classic Reprint from the Lindesmith Center, 1999, which was authored by the associate director of the National Commission on Marihuana and Drug Abuse.

<sup>4</sup> *See* <https://www.mpp.org/assets/pdf/issues/decriminalization/State-Decrim-Chart.pdf>. Richard J. Bonnie, “The Surprising Collapse of Marijuana Prohibition: What Now?,” 50 *UC Davis Law Review* 573-593 (2016).

cannabis is legal for adults 21 and older, while the remaining 13 states have “decriminalized” simple possession of cannabis. Decriminalization laws have been so non-controversial that even many people living in the states are unaware of them. (MPP defines a state as having a “decriminalization” law if the state has enacted a policy that imposes penalties other than jail time — typically a civil citation for possessing small amounts of cannabis, at a minimum, for a first offense.)

In the states that have reformed their laws to stop jailing individuals for simple cannabis possession, the laws are working well. They save thousands of individuals from involvement in the criminal justice system and the harsh collateral consequences a criminal conviction carries while freeing up law enforcement resources to focus on more serious crimes. Also, according to data analyzed by the Stanford Open Policing Project, in the first two legalization states — Colorado and Washington — traffic searches, which are disproportionately performed on cars with Black or Latino drivers, have decreased by about half.<sup>5</sup>

*“Marijuana convictions don’t just impact individuals: they impact the society at large. Keeping marijuana illegal doesn’t decrease crime rates; it just introduces new people to the revolving door of ‘justice.’ Those things impact the entire community. We need to be prioritizing public safety. Decriminalizing marijuana allows everyone involved to do that.”*

— Lt. Diane Goldstein (Ret.)  
Executive Director, Law Enforcement Action  
Partnership (LEAP)  
Redondo Beach Police Department, CA  
Las Vegas, Nevada

Legalizing cannabis also frees up police time for crimes with victims. In a 2018 analysis, experts at Washington State University found that police solved significantly more violent and property crimes after passage of legalization laws

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<sup>5</sup> The Stanford Open Policing Project, <https://openpolicing.stanford.edu/>. See also Pierson, E., Simoiu, C., Overgoor, J., et al., “A large-scale analysis of racial disparities in police stops across the United States,” *Nat Hum Behav* 4, 736–745 (2020), <https://doi.org/10.1038/s41562-020-0858-1> (finding legalization reduced the number of searches of white, Black, and Latino drivers).

in Colorado and Washington.<sup>6</sup> Clearance rates for violent crimes also improved in Oregon after legalization.<sup>7</sup>

While resources are wasted arresting and prosecuting hundreds of thousands of cannabis consumers each year, many violent crimes go unsolved. In fact, more people were arrested for cannabis in 2019 than for all violent crimes combined. With priorities dangerously misguided, many states, for example, maintain large backlogs of untested rape kits (evidence collected from sexual assaults).<sup>8</sup> This means that these sexual assaults have been reported but are still not being investigated due to limited resources, causing serial predators and other assailants to remain at large.<sup>9</sup> By decriminalizing cannabis (at the very least), government resources could be better spent on things like prioritizing the testing of rape kits or investing in human needs, such as mental health counseling, substance abuse treatment, and activities for at-risk teens.

In a 2015 report, the American Academy of Pediatrics (AAP) recommended decriminalizing cannabis, citing the lifelong negative effects a criminal record has on adolescents. The report also suggested pediatricians get involved and “advocate for laws that prevent harsh criminal penalties” for possession or use of cannabis. In an accompanying technical report, the authors note that studies have not shown decriminalization results in an overall increase in cannabis use by adolescents, which is a chief concern of those opposed to decriminalizing cannabis. In fact, states with decriminalization laws experience similar rates of

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6 Makin, D.A., et al., “Marijuana Legalization and Crime Clearance Rates: Testing Proponent Assertions in Colorado and Washington State,” *Police Quarterly*, 2018. Accessed from <https://doi.org/10.1177/1098611118786255>.

7 Guangzhen Wu, et al., “Effects of recreational marijuana legalization on clearance rates for violent crimes: Evidence from Oregon,” *International Journal of Drug Policy*, Volume 100, 2022. See <https://doi.org/10.1016/j.drugpo.2021.103528>. (“Results offer some evidence suggesting a beneficial impact of legalization on violent crime clearances, as manifested by significant increases in the clearance rate for overall violent crimes and that for aggravated assault in OR counties relative to those in the non-legalized states following legalization.”)

8 Rape kit backlog statistics found throughout this report are based on data from End the Backlog. Available at <https://www.endthebacklog.org/backlog/where-backlog-exists-and-whats-happening-end-it>. (Accessed February 16, 2022)

9 See Rashaan Ayesh, “Untested rape kits leave thousands of serial rapists at large,” *Axios*, March 13, 2020.

cannabis use as those with tougher penalties.<sup>10</sup>

States that have fully legalized and regulated cannabis for adults go further than simply decriminalizing cannabis possession by displacing the illicit cannabis market with a tightly regulated system, which boosts public health and safety and creates a new source of jobs and tax revenue. Ending cannabis prohibition can and should seek to foster equity by ensuring the legal cannabis industry creates opportunities for those who have been harmed the most by prohibition and reinvesting revenue into those communities.

However, at a time when the cannabis policy reform movement has more momentum and victories than ever, the legal cannabis industry is booming with billions of dollars in sales, and public support for cannabis legalization and decriminalization are at an all-time high, millions of Americans are still living under harsh policies of prohibition. There are still 19 states — plus the federal government — that have not even decriminalized possession of small amounts of cannabis. Not only are the cannabis policies in these states outdated, but they are also unjust and inhumane.

In some of these states, penalties are shockingly harsh. In Alabama, for example, a first offense for possessing any amount of cannabis for personal use carries a maximum penalty of up to one year in jail. A repeat offense carries a mandatory minimum of one year and one day in jail.

Even more troubling, these laws are not enforced equally. In each of the states that have not yet decriminalized cannabis — and in every state nationwide — Black people are more likely than their white counterparts to be arrested for cannabis possession, despite similar use rates.<sup>11</sup> In some of the states that have not yet decriminalized cannabis, racial disparities in arrests are well above the national average. For example, in Kentucky, Black people are 9.4 times more likely

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10 American Academy of Pediatrics, Policy Statement, "The Impact of Marijuana Policies on Youth: Clinical, Research, and Legal Update," *Pediatrics*, volume 135, number 3, March 2015.

11 American Civil Liberties Union (ACLU), "A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform," 2020. Available at <https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform>.

*“After an exhaustive review of the history of prohibition and the scientific research on marijuana, in 1972 President Nixon’s National Commission on Marihuana and Drug Abuse called for decriminalization at the federal and state levels. We found the cost of criminalization — 200,000 arrests for marijuana possession in 1970 — was not justified by the marginal preventive effects of arresting and jailing people who possess marijuana for their own use. What was true 50 years ago is even more compelling today — the cost of criminalizing millions of marijuana consumers is too high, and it is time to end this failed policy in favor of a sensible form of regulated access.”*

*— University of Virginia School of Law Professor Richard Bonnie, associate director of the Shafer Commission and author of “The Marijuana Conviction: A History of Marijuana Prohibition in the United States”*

to be arrested for cannabis possession than white people.<sup>12</sup>

These staggering racial disparities in cannabis arrests are especially alarming considering the harsh collateral consequences a cannabis conviction carries. Collateral sanctions from a cannabis conviction can include revocation or suspension of professional licenses, barriers to employment or promotion, deportation, loss of educational financial aid, restrictions on access to public housing, driver’s license suspension, and bars on adoption, voting, receiving food stamps, and jury service.<sup>13</sup> The American Bar Association’s National Inventory of Collateral Consequences of Conviction details more than 44,000 collateral consequences of criminal records.<sup>14</sup>

Further, those who are subjected to incarceration for simple cannabis possession can experience lasting effects from their incarceration — including negative mental health outcomes, disconnection from family, loss of autonomy, and

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12 Id.

13 See “Life Sentences: The Collateral Sanctions Associated with Marijuana Offenses,” available at <https://www.mpp.org/issues/criminal-justice/collateral-sanctions-associated-with-marijuana-offenses/>. See also National Inventory of Collateral Consequences of Conviction, available at <https://niccc.nationalreentryresource-center.org/> and “After the Sentence, More Consequences: A National Report of Barriers to Work,” The Council of State Governments Justice Center (2021).

14 Available at <https://niccc.csgjusticecenter.org/about/>.

trauma from witnessing or experiencing violence.<sup>15</sup> Some individuals have even died while incarcerated for cannabis possession.<sup>16</sup>

## ■ METHODOLOGY

Cannabis possession arrest data cited in this report was gathered from the FBI's Uniform Crime Reporting (UCR) Program using their Crime Data Explorer. The data found through the Crime Data Explorer represents reported crime and is not an exhaustive report — as some agencies do not report. Thus, in some instances, the number of cannabis possession arrests in a state are largely underreported. When applicable, we note the percentage of law enforcement agencies in the state that reported cannabis possession arrests made in 2019.<sup>17</sup>

Because of significant changes in arrest and reporting rates caused by the coronavirus pandemic and related shutdowns in 2020, this report is based on data from 2019, the last full year before the pandemic.

It should also be noted that data on the number of individuals incarcerated for cannabis possession is scarce and difficult to obtain. This is particularly true of city and county jails, where people arrested for cannabis possession are most likely to be incarcerated, be it pre-booking, pre-trial, or after sentencing. This absence of accessible data significantly reduces our ability to capture the impact of cannabis criminalization. Quite simply, we have no idea how many individuals are incarcerated for simple cannabis possession. But even a day or two in jail can cause a person to lose their job and lead to a spiral of life-altering, devastating consequences.

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15 "Research Roundup: Incarceration Can Cause Lasting Damage to Mental Health," Prison Policy Initiative. Available at <https://www.prisonpolicy.org/blog/2021/05/13/mentalhealthimpacts/>.

16 Henri E. Cauvin, "DC Jail Stay Ends in Death for Quadriplegic Md. Man," *The Washington Post*, October 1, 2004. "Snohomish County probes death of inmate who had food allergy," *Associated Press*, October 14, 2012.

17 The Uniform Crime Reporting Program defines "arrest" as one arrest for each separate instance in which a person is arrested, cited, or summoned for an offense. See <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/topic-pages/persons-arrested>.



# FEDERAL LAW

Nearly half of all Americans have tried cannabis,<sup>18</sup> and 49.6 million acknowledge having used it in the past year.<sup>19</sup> All are criminals in the eyes of the federal government.

A staggering 50 years after the Shafer Commission called for Congress and the president to remove all federal penalties for simple possession of cannabis, federal authorities have failed to heed the recommendation. As a candidate, President Joe Biden called for decriminalization,<sup>20</sup> but more than a year into his administration, this modest, broadly popular interim step has not been taken.

Under federal law, possessing even a tiny amount of cannabis carries up to a year in jail, a fine of up to \$1,000, or both for a first conviction.<sup>21</sup> A second offense carries a minimum of up to 15 days in jail with a maximum of two years and a fine of up to \$2,500. Subsequent offenses have a 90-day mandatory minimum, with a maximum sentence of three years in prison and a fine of up to \$5,000.

Since late 2014, Congress has included a rider in annual appropriations bills to prevent the U.S. Department of Justice from using funds to prevent states “from implementing their own laws that authorize the use, distribution, possession, or

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18 Jeffrey Jones, “Nearly Half of U.S. Adults Have Tried Marijuana,” Gallup, August 17, 2021.

19 “What is the scope of cannabis (marijuana) use in the United States?,” National Institute on Drug Abuse. <https://nida.nih.gov/publications/research-reports/marijuana/what-scope-marijuana-use-in-united-states>. (Accessed on February 16, 2022, Source: 2020 National Survey on Drug Use and Health)

20 Kyle Jaeger, “Biden Talks Marijuana Decriminalization While Trump Promotes Criminal Justice Record at Dueling Town Halls,” *Marijuana Moment*, October 16, 2020. Biden said, “We should decriminalize marijuana. Wipe out the record so you can actually say, in honesty, ‘have you ever been arrested for anything?’ You can say ‘no’ because we’re going to pass a law saying there is no background you have to reveal relative to the use of marijuana.”

21 21 U.S.C. § 844

cultivation of medical marijuana.”<sup>22</sup> And since 2014, federal policies have generally prevented enforcement of federal cannabis laws against those complying with state cannabis laws.<sup>23</sup> But the cloud of federal illegality hangs over cannabis consumers nationwide, with thousands of arrests each year, and even more real-world heartache caused by federal policies.

In fiscal year 2019, the Drug Enforcement Administration arrested 2,597 individuals for cannabis offenses.<sup>24</sup> In 2013, the most recent year with accessible data, there were 2,169 federal convictions for simple possession of cannabis. The median quantity of cannabis in a federal possession arrest in areas that are not along the border was only 5.2 grams (0.2 ounces).<sup>25</sup>

*“My family and I immigrated to America before my second birthday. I am a legal permanent resident, and my parents received U.S. citizenship in the ‘90s. But now I am under threat of deportation to a country I never knew for using a plant that most Americans believe should be legal. I’ve been arrested twice for cannabis — once in 1999 for intent to purchase and once in 2005 for a single gram. My citizenship application has been denied, and since this arrest, my experience attempting to resolve my immigration status has been extremely demoralizing. I continue to sit in legal limbo.”*

*— Danilo Pie, a 44-year-old Cuban immigrant charged with possession of 20 grams or less in Florida*



<sup>22</sup> See Section 531 of the Consolidated Appropriations Act, 2020, Pub. L. No. 116-93, 133 Stat. 2317 (2020) and *U.S. v. Marin Alliance for Medical Marijuana*, No. C 98-00086 CRB, decided October 19, 2015. (The rider also prevents the federal prosecution of individuals complying with state medical marijuana laws.)

<sup>23</sup> See Kyle Jaeger, “Biden AG Stresses That Marijuana Use in Legal States Is Not a Justice Department Priority,” *Marijuana Moment*, May 4, 2021.

<sup>24</sup> Mark Motivans, “Federal Justice Statistics, 2019,” U.S. Department of Justice, Bureau of Justice Statistics, Appendix Table 2.

<sup>25</sup> “Weighing the Charges: Simple Possession of Drugs in the Federal Criminal Justice System,” United States Sentencing Commission, September 2016, p. 3, table 1.

Eliminating all federal penalties for cannabis possession and use would stop these arrests and remove barriers to millions of individuals' employment, housing, gun rights, and immigration status.

The federal government has torn apart tens of thousands of families over cannabis. More than 6,000 individuals are deported annually with cannabis as their most serious offense.<sup>26</sup> This policy imperils even legal residents who grew up in the United States and do not speak the language of their birth country, and those with deep roots, including military families and parents of American citizens.<sup>27</sup>

Legal residents have been declared inadmissible due simply to *admitting* to using cannabis where it is legal.<sup>28</sup> As a 2019 U.S. Citizenship and Immigration Services policy alert advised, a cannabis offense — other than a first offense for simple possession — is a non-permanent bar to establishing good moral character, which is essential for a green card.<sup>29</sup>

The federal government's policies penalizing cannabis use have also cost responsible cannabis consumers their livelihoods and slammed the door of opportunity.

In 1986, President Ronald Reagan signed Executive Order 12564, "Drug-Free

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26 "Secure Communities and ICE Deportation: A Failed Program?," TRAC Immigration, Syracuse University (finding 6,770 ICE deportations in FY 2013 where the most serious offense was cannabis possession and 6,447 in FY 2012).

27 See Matt Sintsing, "Disabled veteran's husband at risk for deportation over years old marijuana charges," *Radio.com*, December 13, 2018 (green card holder facing deportation for simple possession of cannabis convictions); Kelly Heyboer, "ICE arrests immigrant husband of disabled Army vet — even though he's a legal resident, family says," *NJ Advance Media*, September 24, 2019 (green card holder convicted of simple cannabis possession arrested by ICE and facing possible deportation).

28 See Ana Campoy and Justin Rohrlich, "Immigrants are being denied US citizenship for smoking legal pot," *Quartz*, April 20, 2019; Michelle A. Kain, "The Impact of Marijuana Decriminalization on Legal Permanent Residents: Why Descheduling Marijuana at the Federal Level Should Be a High Priority," *62 B.C. L. Rev.* 2057 (2021), <https://lawdigitalcommons.bc.edu/bclr/vol62/iss6/7>.

29 "Controlled Substance-Related Activity and Good Moral Character Determinations," U.S. Citizenship and Immigration Services, April 19, 2019, Policy Manual, U.S. Citizenship and Immigration Services, Chapter 5. (There is an exception for a single time a person possessed 30 grams or less.)

Federal Workplace,” which prohibits illegal drug use by federal employees, including when they are on duty.<sup>30</sup> For “testing designated positions,” at least 30% of employees are tested at least once a year. All federal employees may be subjected to pre-employment drug tests and may be tested if they suffer a work-related accident.<sup>31</sup>

Because cannabis can be detected in urine from 3-30 days after last use,<sup>32</sup> federal employees can lose their jobs for using cannabis in their free time, even in states where it is legal. Despite his professed support for decriminalization, President Joe Biden’s own White House reportedly dismissed staff for having admitted to consuming cannabis in the past.<sup>33</sup>

The federal criminalization of cannabis has also cost private employees their jobs. A paralyzed employee of DISH Network sued under Colorado’s “lawful off-duty activities” statute after he was fired for using medical cannabis. He lost his job

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<sup>30</sup> Available at <https://www.archives.gov/federal-register/codification/executive-order/12564.html>

(“Sec. 1.

(a) Federal employees are required to refrain from the use of illegal drugs.

(b) The use of illegal drugs by Federal employees, whether on duty or off duty, is contrary to the efficiency of the service.

(c) Persons who use illegal drugs are not suitable for Federal employment.”

“Sec. 3. Drug Testing Programs.

(a) The head of each Executive agency shall establish a program to test for the use of illegal drugs by employees in sensitive positions. The extent to which such employees are tested and the criteria for such testing shall be determined by the head of each agency, based upon the nature of the agency’s mission and its employees’ duties, the efficient use of agency resources, and the danger to the public health and safety or national security that could result from the failure of an employee adequately to discharge his or her position.

(b) The head of each Executive agency shall establish a program for voluntary employee drug testing.

(c) In addition to the testing authorized in subsections (a) and (b) of this section, the head of each Executive agency is authorized to test an employee for illegal drug use under the following circumstances:

(1) When there is a reasonable suspicion that any employee uses illegal drugs;

(2) In an examination authorized by the agency regarding an accident or unsafe practice; or

(3) As part of or as a follow-up to counselling or rehabilitation for illegal drug use through an Employee Assistance Program.”)

<sup>31</sup> See <https://fedemploymentattorneys.com/legal-blog/federal-drug-testing-laws/>.

<sup>32</sup> See “How long can you detect marijuana in the body?,” *Medical News Today*, <https://www.medicalnewstoday.com/articles/324315#marijuana-detection-windows>

<sup>33</sup> Arlette Saenz, Jake Tapper, and Betsy Klein, “White House staffers asked to resign, work remotely after revealing past marijuana use,” CNN, March 21, 2021.

because his “use of medical marijuana was unlawful under federal law.”<sup>34</sup> Other medical cannabis patients have lost their ADA and related lawsuits due to federal criminalization of cannabis use.<sup>35</sup>

The continued criminalization of cannabis under federal law also puts renters at risk. *The Rental Law Housing Journal* advises landlords, “If your lease prohibits smoking and prohibits use of illegal drugs, then the legality of marijuana at the state level is irrelevant because under federal law marijuana is illegal.”<sup>36</sup> This disproportionately burdens Black and Latino individuals, who are underrepresented in home ownership.<sup>37</sup>

In a 2011 memo, a Housing and Urban Development official explained that even state-legal medical cannabis users may not be admitted to public housing or housing choice voucher programs.<sup>38</sup> Federal law requires standards and leases that reject applicants for the illegal use of controlled substances, which includes cannabis use.

In addition, state-legal cannabis consumers face draconian federal penalties if they own a gun — up to 10 years in prison.<sup>39</sup> Under the 1986 Gun Control Act, it is a felony for an “unlawful user” of a controlled substance to possess or buy a firearm or ammunition.<sup>40</sup> Anyone purchasing a gun or ammunition must check a box affirming under the penalty of perjury that they are not an “unlawful user” of

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34 *Coats v. Dish Network, LLC*, 350 P.3d 849, at 835, (Colo. 2015).

35 See *James v. City of Costa Mesa*, 700 F.3d 394 (9th Cir. 2012). (“Congress has made clear, however, that the ADA defines ‘illegal drug use’ by reference to federal, rather than state, law, and federal law does not authorize the plaintiffs’ medical marijuana use. We therefore necessarily conclude that the plaintiffs’ medical marijuana use is not protected by the ADA.”)

36 John Triplett, “Can I Say ‘No Pot In My Apartments’ When It’s Legal In My State?,” *Rental Housing Journal*, October 7, 2018.

37 “The State of the Nation’s Housing: 2018,” Joint Center for Housing Studies of Harvard University, p. 19 (finding 72.3% of white households were homeowners, compared to 43.1% of Black families and 55.8% of Hispanics).

38 <https://www.hud.gov/sites/documents/MED-MARIJUANA.PDF>

39 18 U.S. Code § 924.

40 18 U.S. Code § 922 (g)(3).

a controlled substance. The federal form notes, “Warning: The use or possession of cannabis remains unlawful under Federal law regardless of whether it has been legalized or decriminalized for medicinal or recreational purposes in the state where you reside.”<sup>41</sup>

There is no similar prohibition on alcohol consumers owning or buying firearms, despite the fact that alcohol intoxication — unlike cannabis — is linked to violence.<sup>42</sup>

Fifty years after the Shafer Commission report, it is past time for Congress and the President to follow its advice to remove federal penalties for personal possession of cannabis. Thirty-seven states have legalized medical cannabis, 18 have adult-use legalization, and 13 have decriminalization laws. The federal government should not be threatening its citizens with incarceration for using a substance that is safer than alcohol.

Murder, rape, and burglary are generally not federal crimes, but possessing a joint is. It makes no sense to use limited federal resources targeting individuals who choose to use a plant that is safer than alcohol and tobacco.

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41 ATF Form 4473 (5300.9). Revised May 2020. <https://www.atf.gov/firearms/docs/4473-part-1-firearms-transaction-record-over-counter-atf-form-53009/download>

42 Hoaken PN, Stewart SH. “Drugs of abuse and the elicitation of human aggressive behavior.” *Journal of Addictive Behaviors*. 2003 Dec;28(9):1533-54. doi: 10.1016/j.addbeh.2003.08.033. PMID: 14656544. (Reporting “alcohol is clearly the drug with the most evidence to support a direct intoxication-violence relationship,” whereas “cannabis reduces the likelihood of violence during intoxication.”)

# ALABAMA

POPULATION: 5 MILLION

While Alabama recently reformed its cannabis laws to become the 36th state to legalize medical cannabis, it still has some of the harshest penalties in the country for simple possession. Personal-use possession of cannabis — even the smallest amount — is currently a misdemeanor carrying a maximum penalty of one year in jail and/or a fine of up to \$6,000. A repeat offense carries a mandatory minimum of one year and one day in jail.

The injustice in the state’s current cannabis policies is evident. Partial data reported to the FBI’s UCR Program shows that 50% of law enforcement agencies reported making 1,686 arrests for cannabis possession in Alabama in 2019.<sup>43</sup> According to a 2020 ACLU report, in Alabama, Black people are **4.1 times** more

## *The human toll of criminalization in Alabama*

*“Kiasha Hughes dreamed of becoming a medical assistant. Now, she works an overnight shift at a chicken plant to support her children. Nick Gibson was on track to graduate from the University of Alabama. Now, he works at a fast-food restaurant. Wesley Shelton spent 15 months in jail and ended up with a felony conviction —for having \$10 worth of marijuana. Like thousands of others, they’re casualties of Alabama’s war on marijuana — a war the state ferociously wages with draconian laws that criminalize otherwise law-abiding people for possessing a substance that’s legal for recreational or medicinal use in states where more than half of all Americans live.”*

*— Alabama’s War on Marijuana: Assessing the Fiscal and Human Toll of Criminalization, a report from Alabama Applesseed and Southern Poverty Law Center*

<sup>43</sup> In **2019**, the FBI arrest statistics for the state are based on data received from **215** law enforcement agencies that submitted 12 months of arrest data out of **430** total law enforcement agencies in the state that year.

likely to be arrested for cannabis possession than their white counterparts.<sup>44</sup> This means that thousands of Alabamians, disproportionately people of color, are being stopped by law enforcement, branded with life-altering criminal records, and face potential jail time for simple cannabis possession. Meanwhile, in 2019, the state cleared just 43% of violent crimes and 26% of property crimes.<sup>45</sup>

According to Alabama Appleseed and Southern Poverty Law Center, Alabama and its municipalities spent an estimated \$22 million to enforce the prohibition against cannabis possession in 2016, with the enforcement of cannabis possession laws creating a crippling backlog at the state agency tasked with analyzing forensic evidence in all criminal cases, including violent crimes.<sup>46</sup>

*In 2016, Wesley Shelton, age 56, fell asleep on a park bench. An officer asked to search him and found a small bag of marijuana worth \$10 and arrested him. The Montgomery County prosecutor does not seek indictments until drug lab results come in, but for the next 15 months, that never happened because of a huge backlog. Mr. Shelton, who couldn't afford bail, languished in jail and wrote dozens of letters to his attorney and the court begging to plead guilty and go home.*

*In December 2017, Shelton's pleas finally got through. He pled guilty to first-degree possession — a felony due to a prior possession conviction — having already lost more than a year of his life. "Right now, in my life, because of those 15 months, I feel as though I'm 10 years behind where I'm supposed to be."*



PHOTO CREDIT: VAL DOWNES

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44 ACLU, "A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform," 2020. Available at <https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform>.

45 Obtained from the FBI's Uniform Crime Reporting (UCR) Program. Available at <https://www.fbi.gov/services/cjis/ucr/>.

46 Alabama Appleseed and Southern Poverty Law Center, *Alabama's War on Marijuana: Assessing the Fiscal and Human Toll of Criminalization*, 2018. Available at [https://www.alabamaappleseed.org/wp-content/uploads/2018/10/COM\\_Decriminalization-of-Marijuana\\_WEB-FINAL.pdf](https://www.alabamaappleseed.org/wp-content/uploads/2018/10/COM_Decriminalization-of-Marijuana_WEB-FINAL.pdf).



In Alabama, a person caught with only a few grams of cannabis can face incarceration and thousands of dollars in fines and court costs, resulting in devastating, life-altering consequences to the individual and their family, as well as tremendous economic and public safety costs to the broader community. To highlight the real-life experiences and trauma of Alabama’s cannabis laws by those who have been drawn into the criminal justice system because of cannabis, we encourage you to check out the human stories shared in Alabama Appleseed and Southern Poverty Law Center’s report, *Alabama’s War on Marijuana: Assessing the Fiscal and Human Toll of Criminalization*.<sup>47</sup>

Alabamians recognize the harm in their state’s cannabis policies. Sixty-two percent of Alabamians believe that cannabis should be legal.<sup>48</sup> But with no ballot initiative process in Alabama, it is up to the state legislature to act. The Alabama Senate Judiciary Committee has advanced bills to decriminalize cannabis in three of the past four years — 2019, 2021, and 2022 — but decriminalization has not yet been taken up by a full chamber of the legislature.

<b>Alabama voter support for legalization</b>	<b>62%</b>
<b>Partial data on cannabis possession arrests in 2019 (UCR/FBI Crime Data Explorer)</b>	<b>1,686</b>
<b>Number of arrests for cannabis possession in 2018 (ACLU)</b>	<b>2,729</b>
<b>Racial disparities in arrests, 2018 (ACLU)</b>	<b>4.1x</b>
<b>Percent of violent crimes resulting in arrest, 2019 (UCR)</b>	<b>43%</b>
<b>Percent of property crimes resulting in arrest, 2019 (UCR)</b>	<b>26%</b>

<sup>47</sup> Id.

<sup>48</sup> Civiqs cannabis polling data.

# ARKANSAS

POPULATION: 3 MILLION

Arkansas currently has some of the harshest cannabis laws in the nation. Possessing less than four ounces of cannabis is a misdemeanor carrying up to one year in jail and a fine of up to \$2,500. Possessing an ounce of cannabis or more by those who have twice been convicted of possession is a felony punishable by up to six years in prison and a fine of up to \$6,000.

Partial data reported to the FBI's UCR Program shows that the 84% of law enforcement agencies reporting made 6,707 arrests for cannabis possession in Arkansas in 2019,<sup>49</sup> with Black Arkansans being **2.4 times** more likely to be arrested for cannabis possession than white Arkansans.<sup>50</sup> That same year, only 43% of violent crimes and just 17% of property crimes were cleared.

Arkansas residents largely support reforming the state's cannabis laws, with 62% in support of making cannabis legal.<sup>51</sup> Three of its neighbors — Louisiana, Mississippi, and Missouri — have stopped jailing their residents for simple cannabis possession.

*"I filed this bill because of the people whose lives are permanently changed because they possessed a small amount of marijuana. Whether it's a veteran suffering from PTSD or a young person who simply made that choice, we shouldn't be using taxpayer dollars to prosecute and incarcerate them. These people should also be able to lead full lives where they don't have to fear being turned down for jobs and housing because of this blemish on their record. This is the right thing to do."*

— Arkansas Sen. Clarke Tucker (D), discussing his 2021 bill to decriminalize possession of less than one ounce of cannabis in Arkansas

49 In **2019**, the FBI arrest statistics for the state are based on data received from **261** law enforcement agencies that submitted 12 months of arrest data out of **308** total law enforcement agencies in the state that year.

50 ACLU, "A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform," 2020. Available at <https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform>.

51 Civiqs cannabis polling data. (Accessed February 16, 2022)

During the 2021 legislative session, state Sen. Clarke Tucker (D) sponsored a bill to decriminalize possession of less than one ounce of cannabis, reducing the penalty to a fine of \$200.<sup>52</sup> It did not advance.

But despite some legislators understanding the urgent need for change and overwhelming public support for reform, the Arkansas Legislature has shown little interest in taking up the issue. However, Arkansas is a ballot initiative state, and legalization campaigns are underway for the November 2022 election.<sup>53</sup>

<b>Arkansas voter support for legalization</b>	<b>60%</b>
<b>Partial data on cannabis possession arrests in 2019 (UCR/FBI Crime Data Explorer)</b>	<b>6,707</b>
<b>Number of arrests for cannabis possession in 2018 (ACLU)</b>	<b>9,599</b>
<b>Racial disparities in arrests, 2018 (ACLU)</b>	<b>2.4x</b>
<b>Percent of violent crimes resulting in arrest, 2019 (UCR)</b>	<b>43%</b>
<b>Percent of property crimes resulting in arrest, 2019 (UCR)</b>	<b>17%</b>
<b>Number of untested rape kits</b>	<b>370</b>

<sup>52</sup> "Bill filed to decriminalize less than 1 ounce of marijuana in Arkansas," KATV, March 9, 2021. Available at <https://katv.com/news/local/bill-filed-in-arkansas-to-decriminalize-smaller-amounts-of-marijuana>.

<sup>53</sup> See Kyle Jaeger, "Former Arkansas Lawmaker Files Marijuana Legalization Initiative for 2022 Ballot to Compete with Two Other Measures," *Marijuana Moment*, January 27, 2022.

# FLORIDA

POPULATION: 21.5 MILLION

In Florida, the third most populous state in the nation, 21.5 million residents are living under the threat of a criminal conviction and potential jail time if they possess a modest amount of cannabis without a medical cannabis card. Currently, possession of 20 grams or less of cannabis carries a penalty of one year imprisonment and a fine of up to \$1,000. Possessing more than 20 grams of cannabis is a felony offense, punishable with a maximum penalty of five years' imprisonment and up to a \$5,000 fine.

Florida has made it extremely difficult to discover how many individuals have

*"I was released from jail after paying a \$20,000 bond and was let out onto the street at 2 a.m. with a dead phone, no car, no wallet (it was still in my car) and completely traumatized from the experience.*

*"After a year of dealing with the courts, I was placed on 'drug offender probation' for two years. During that time, I had to urinate in front of my probation officer and wasn't allowed to travel unless granted permission from my probation officer (which was hard to get). Being a music producer who flies all over the country for my job, that truly hindered my career. After one-and-a-half long years on this anxiety-ridden probation sentence, my lawyer's efforts to terminate the probation early succeeded, and I was able to travel freely again and not deal with the humiliation of feeling like a criminal for a plant."*

*— Thomas Swanson, who was arrested in Florida for 14 grams of cannabis (which was his passenger's) in his trunk in 2018*

been harmed by its harsh cannabis laws. Florida does not report data to the FBI's UCR Program, so the report listed only 74 arrests for cannabis possession in Florida in 2019.<sup>54</sup> In compiling its 2020 report on cannabis arrests, the ACLU

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<sup>54</sup> In **2019**, the FBI arrest statistics for the state are based on data received from **618** law enforcement agencies that submitted 12 months of arrest data out of **687** total law enforcement agencies in the state that year.

submitted Freedom of Information Act (FOIA) requests to the Florida Department of Law Enforcement, but the state refused to provide any data in response. As a result, the ACLU was unable to calculate data on racial disparities in Florida cannabis arrests.<sup>55</sup>

However, the Florida ACLU was able to compile data from 2017. *The Miami New Times* reported that 42,153 people were arrested for misdemeanor cannabis possession in Florida in 2017.<sup>56</sup> Nearly half of those arrested for cannabis were Black, even though Black residents make up only 17% of Florida's population.

Meanwhile, the state cleared just 54% of violent crimes and 22% of property crimes in 2019.

In the face of these harsh state-level penalties, Florida municipalities have increasingly moved to decriminalize cannabis at the local level. Since June 2015, at least 15 cities and counties have passed ordinances that give officers the discretion to replace arrests for possession of modest amounts of cannabis with citations.<sup>57</sup> These jurisdictions include Miami-Dade County, Tampa, Key West, Orlando, and Sarasota.

For example, Orlando decriminalized small amounts of cannabis by allowing police officers to give out citations instead of making arrests. If you possess less than 20 grams of cannabis or have cannabis paraphernalia, an officer can choose to give you a citation with a \$100 fine if you're a first-time offender or a \$200 fine for a second offense. Repeat offenders can get a fine of up to \$500 and a court appearance. While this is a positive sign, in some jurisdictions, payment of the citation could still result in a criminal record, with all the collateral consequences and immigration impacts it entails. In addition, some police departments have

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55 ACLU, "A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform," 2020. Available at <https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform>.

56 Meg O'Connor, "Miami-Dade Police Give Most Pot Citations to White People, While Black People Are Jailed," *Miami New Times*, September 7, 2018. Available at <https://www.miaminewtimes.com/news/pot-citations-are-given-to-whites-while-blacks-are-jailed-new-police-data-shows-10701707>.

57 See <https://www.mpp.org/states/florida/decriminalization-is-sweeping-florida-one-city-at-a-time/>.

said that they will continue to arrest everyone in possession of cannabis, so caution should be exercised. Moreover, giving police the *discretion* to arrest or cite may lead to even more staggering racial disparities in enforcement, as happened in Illinois before statewide decriminalization and eventually legalization.<sup>58</sup>

Reporting by the *Miami New Times* pointed to exactly this type of disparate treatment. Out of more than 10,000 citations issued in Miami-Dade County between July 2015 and July 2018, 72% were issued to white people while only 28% were issued to Black individuals. Meanwhile, police departments in the county sent more than 5,255 individuals to jail for simple possession of cannabis — an offense for which they could have been issued a citation.<sup>59</sup> Demographic data was not available but a random sample found 40 of 50 arrestees were Black.<sup>60</sup> The headline summed up the findings: “Miami-Dade Police Give Most Pot Citations to White People, While Black People Are Jailed.”

*The Miami New Times* reported that individuals who were jailed for cannabis missed a day or more of work, faced hundreds or thousands of dollars in bonds and expenses, and many had their cars towed. Although most of the charges were dropped, the arrestees still carry the arrest record and the life-altering collateral consequences, along with the trauma caused by the arrest and the effects of disrupted work and family lives.

To prevent cannabis possession arrests equally, regardless of one’s zip code or race, statewide reform is needed. While bills that would have decriminalized possession of small amounts of cannabis statewide have been introduced in past legislative sessions, none have passed. The state does have a ballot initiative

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58 Illinois Consortium on Drug Policy, “Patchwork Policy: An Evaluation of Arrests and Tickets for Marijuana Misdemeanors in Illinois,” The Institute for Metropolitan Affairs, Roosevelt University, May 2014. Available at <https://dig.abcclocal.go.com/wls/documents/2014/patchwork-policy.pdf>.

59 Meg O’Connor, “Miami-Dade Police Give Most Pot Citations to White People, While Black People Are Jailed,” *Miami New Times*, September 7, 2018. Available at <https://www.miaminewtimes.com/news/pot-citations-are-given-to-whites-while-blacks-are-jailed-new-police-data-shows-10701707>.

60 Meg O’Connor, “Miami Cops Needlessly Arrest Thousands of Pot Smokers,” *Miami New Times*, August 28, 2018. Available at <https://www.miaminewtimes.com/news/miami-cops-keep-arresting-pot-smokers-despite-ticket-ordinance-10671569#>.

process for constitutional amendments, but the legislature has made the process extremely costly, and passage requires at least 60% of the vote. Voters are clearly ready for reform, however, with 70% of Floridians in support of making cannabis legal.<sup>61</sup>

<b>Florida voter support for legalization</b>	<b>70%</b>
<b>Number of arrests for cannabis possession in 2017</b>	<b>42,153</b>
<b>Racial disparities in arrests 2017, Florida ACLU</b>	<b>4x</b>
<b>Percent of violent crimes resulting in arrest, 2019 (UCR)</b>	<b>54%</b>
<b>Percent of property crimes resulting in arrest, 2019 (UCR)</b>	<b>22%</b>

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<sup>61</sup> Civiqs cannabis polling data. (Accessed February 16, 2022)

# GEORGIA

POPULATION: 10.7 MILLION

While 71% of Georgians support making cannabis legal,<sup>62</sup> the state's cannabis policies are grossly out of step with public opinion. Currently, first-offense possession for an ounce or less of cannabis carries a maximum penalty of up to one year of imprisonment. Deferred prosecution is possible for a first offense but involves five years of probation. The maximum penalty for a first offense for possessing more than one ounce is a mandatory minimum of one year of imprisonment.

*"We teach students in the criminal justice department 'crime over time/crime over place.' That is, what behavior the populace believes is criminal changes over time; what societies believe is criminal changes over geographical location. It is now the time, and the place, to decriminalize the possession of marijuana in Georgia."*

— J. Tom Morgan  
Former District Attorney  
DeKalb County, GA

Only 189 of Georgia's 658 law enforcement agencies — or 29% — submitted cannabis arrest data to the FBI's UCR Program in 2019. This partial data showed at least 10,061 arrests in Georgia for cannabis possession that year.<sup>63</sup> The ACLU reported 45,029 arrests in 2018.

Although Black people and white people use cannabis at nearly identical rates, Black Georgians are **three times** more likely than white folks to be arrested for cannabis possession. In calendar year 2019, the Georgia Department of Corrections reported 50 inmate admissions for possession of cannabis, 26 inmate admissions for manufacturing cannabis, 424 admissions for possession with

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62 Id.

63 In **2019**, the FBI arrest statistics for the state are based on data received from **189** law enforcement agencies that submitted 12 months of arrest data out of **658** total law enforcement agencies in the state that year.



intent to distribute cannabis, and 138 admissions for the sale and distribution of cannabis.<sup>64</sup> This does not include those incarcerated in local jails. Meanwhile, in 2019, only 33% of violent crimes, 26% of property crimes, and 24% of rapes were cleared in Georgia.

The data shows that under current prohibition laws, thousands of Georgians are being arrested and branded with criminal convictions for simple cannabis possession, and at least hundreds are imprisoned for cannabis-related offenses. With no ballot initiative process in the state, the legislature must act to reform these unjust cannabis laws.

As is the case in Florida, several Georgia cities and counties have reduced penalties at the local level. In Atlanta, the local penalty for possessing up to an ounce of cannabis is a \$75 fine.<sup>65</sup> However, in all those localities, officers can still *choose* to arrest under state law, so the possibility of unequal enforcement is significant.<sup>66</sup>

Two bills — HB 809 and HB 308 — would change that, so statewide penalties for up to an ounce of cannabis would not apply in counties that opt to decriminalize simple possession. Another bill, SB 77, would reduce the penalty for possession of up to half an ounce of cannabis to a fine of up to \$300, but it would remain a misdemeanor, with all the collateral consequences that brings about. The legislature is scheduled to adjourn on April 4, 2022, and none of the bills have advanced out of committee.

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64 [http://www.dcor.state.ga.us/sites/all/themes/gdc/pdf/Profile\\_inmate\\_admissions\\_CY2019.pdf](http://www.dcor.state.ga.us/sites/all/themes/gdc/pdf/Profile_inmate_admissions_CY2019.pdf)

65 See <https://norml.org/laws/local-decriminalization/georgia-local-decriminalization/>.

66 J.D. Capelouto, "Marijuana possession no longer an arrestable offense in another local city," *Atlanta Journal Constitution*, August 13, 2020.

*"I was arrested and locked in a cage on my 19th birthday for \$20 worth of cannabis. I was jailed with other inmates charged with aggravated assault and armed robbery. I spent 23 days incarcerated for a victimless crime, \$1,000 in court fines and fees, \$2,200 in attorney costs, \$600 in court-ordered probationary classes, and drug screenings. It almost derailed my college career. The trauma I experienced haunts me to this day."*

— Ryan Ralston  
Covington, Georgia

Georgia voter support for legalization	<b>72%</b>
Partial data on cannabis possession arrests in 2019 (UCR/FBI Crime Data Explorer)	<b>10,061</b>
Number of arrests for cannabis possession in 2018 (ACLU)	<b>45,029</b>
Racial disparities in arrests, 2018 (ACLU)	<b>3x</b>
Percent of violent crimes resulting in arrest, 2019 (UCR)	<b>33%</b>
Percent of property crimes resulting in arrest, 2019 (UCR)	<b>26%</b>
Number of untested rape kits	<b>1,996</b>



# IDAHO

POPULATION: 1.8 MILLION

Under current Idaho law, an individual charged with possession of up to three ounces of cannabis faces a maximum penalty of one year in jail and/or a fine of up to \$1,000. This draconian law hits minority communities the hardest. According to the ACLU, Black Idahoans are **nearly four times** more likely to be arrested for possession than their white neighbors. In 2019, partial data reported to the FBI shows that the 92% of law enforcement agencies across the state reporting made 5,323 arrests for cannabis possession.<sup>67</sup> Meanwhile, in 2019, only 25% of property crimes and 56% of rapes were cleared in Idaho.

Sixty percent of Idahoans support making cannabis legal, and the state is neighbored by four states that have legalized cannabis for adults. Still, the state lacks even medical cannabis protections, and there have not been substantive pushes from the legislature to reform the state's cannabis policies. The state does have a ballot initiative process, so reform could be brought to voters to decide on. Local advocates are working to collect signatures for both a medical cannabis push and an effort<sup>68</sup> to place a decriminalization measure on the 2022 ballot.

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<sup>67</sup> In **2019**, the FBI arrest statistics for the state are based on data received from **105** law enforcement agencies that submitted 12 months of arrest data out of **113** total law enforcement agencies in the state that year.

<sup>68</sup> See <https://idahoway.org/>.

Idaho voter support for legalization	<b>59%</b>
Partial data on cannabis possession arrests in 2019 (UCR/FBI Crime Data Explorer)	<b>5,323</b>
Number of arrests for cannabis possession in 2018 (ACLU)	<b>5,827</b>
Racial disparities in arrests, 2018 (ACLU)	<b>3.9x</b>
Percent of violent crimes resulting in arrest, 2019 (UCR)	<b>68%</b>
Percent of property crimes resulting in arrest, 2019 (UCR)	<b>25%</b>

# INDIANA

POPULATION: 6.7 MILLION

*“When people believe law enforcement is doing more harm than good, they don’t reach out when they need help. Our current marijuana laws reinforce this idea: people don’t come forward as witnesses or survivors of crime because they’re afraid that they’ll be arrested for simple possession. Decriminalizing marijuana will allow us to redirect resources toward solving serious crime, improving clearance rates, and helping survivors of crime get the justice they deserve.”*

— Lt. Jay Hall (Ret.)  
Houston Police Department, Houston, TX  
Chief Probation Officer, Gary Municipal Court, Indiana

Indiana has some of the harshest cannabis laws in the country. It is now one of only 13 states with no effective medical cannabis law and one of only 19 states that still imposes jail time for simple possession of cannabis. At a time when cannabis policy reform is sweeping the Midwest — both Indiana’s neighbor to the north, Michigan, and its neighbor to the west, Illinois, have legalized cannabis for adults’ use — and 66% of Indianans support making cannabis legal,<sup>69</sup> it is past time the state reform its unjust cannabis laws.

Indianans, disproportionately Indianans of color, are enduring the effects of cannabis prohibition. Possession of any amount of cannabis, even a single joint, carries a maximum penalty of six months’ imprisonment and a fine of up to \$1,000. According to the UCR Program, 44% of law enforcement agencies reporting made 7,445 arrests for cannabis possession in 2019.<sup>70</sup> According to an ACLU report, in 2018, Black people were **3.5 times** more likely to be arrested

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69 Civiqs cannabis polling data. (Accessed February 16, 2022)

70 In **2019**, the FBI arrest statistics for the state are based on data received from **183** law enforcement agencies that submitted 12 months of arrest data out of **413** total law enforcement agencies in the state that year.

for cannabis possession than white people. Meanwhile, in 2019, only 40% of violent crimes, 17% of property crimes, 37% of murders, and 28% of rapes were cleared in Indiana.

Indiana does not have a ballot initiative process, so the legislature must act in order to bring cannabis reform to the state. During the 2022 legislative session, several cannabis reform bills were introduced, including HB 1070 and SB 324, which would have legalized cannabis possession (but not sales) for adults. Unfortunately, none of these bills received a vote before the legislature adjourned.

*“Police should be focused on solving and preventing violent crime, not on arresting people for marijuana possession. We have finite resources, and low-level marijuana offenses eat up those resources. Indiana needs to decriminalize marijuana so officers can prioritize public safety.”*

— Detective Melissa Rittenhouse (Fmr.)  
Columbus Police Department, Indiana

<b>Indiana voter support for legalization</b>	<b>66%</b>
<b>Partial data on cannabis possession arrests in 2019 (UCR/FBI Crime Data Explorer)</b>	<b>7,445</b>
<b>Number of arrests for cannabis possession in 2018 (ACLU)</b>	<b>16,570</b>
<b>Racial disparities in arrests, 2018 (ACLU)</b>	<b>3.5x</b>
<b>Percent of violent crimes resulting in arrest, 2019 (UCR)</b>	<b>40%</b>
<b>Percent of property crimes resulting in arrest, 2019 (UCR)</b>	<b>17%</b>
<b>Number of untested rape kits</b>	<b>4,980</b>

# IOWA

POPULATION: 3.2 MILLION

Unlike 31 other states, Iowa continues to arrest and jail individuals for possessing small amounts of cannabis. Neighboring Illinois has legalized cannabis for adults, while Nebraska, Minnesota, and Missouri have decriminalized simple possession. But in Iowa, first-offense possession of even a single joint is punishable by up to six months in jail and a \$1,000 fine — one of the most severe first-offense penalties in the country.

*"I'm a former police officer, and I stand behind the two-thirds of Americans who want marijuana legalized. No marijuana possession arrest I made ever made my community safer. The way to do that is to adopt marijuana policies that are practical, not punitive."*

— Officer Brian Gaughan (Ret.)  
Davenport Police Department, IA  
Arlington Heights Police Department, IL

These draconian penalties hit low-income and communities of color the hardest. According to data compiled by the ACLU, Black Iowans are nearly **eight times** more likely to be arrested for cannabis possession than white Iowans, the fifth highest racial disparity rate in the nation. According to incomplete UCR data, the 79% of agencies reporting made 4,946 arrests for cannabis possession across the state in 2019.<sup>71</sup>

In fiscal year 2019, 5,043 Iowans were convicted for possession of cannabis, 3,963 of which were a first offense.<sup>72</sup> Meanwhile, only 55% of violent crimes, 21% of property crimes, and 27% of rapes were cleared in Iowa in 2019.

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71 In **2019**, the FBI arrest statistics for the state are based on data received from **203** law enforcement agencies that submitted 12 months of arrest data out of **257** total law enforcement agencies in the state that year.

72 "Iowa Marijuana Possession Convictions and Dispositions, FY 2015 to FY 2020." Fiscal Division, Legislative Services Agency, January 5, 2021.

Iowans want reform, with 67% of residents supporting making cannabis legal.<sup>73</sup> With no citizen initiative process in the state, lawmakers must follow the will of their constituents. SB 407, sponsored by Sen. Joe Bolkcom (D), would have reduced various cannabis penalties, including reducing the penalty for adults 21 and older possessing up to half an ounce to a \$100 civil fine; however, the bill was not picked up before committee deadlines passed in 2022. Sen. Bolkcom and other legislators also proposed measures to refer a state constitutional amendment on legalization to voters. Those measures, HJR 2006 and SJR 2003, would first have to pass the Iowa Senate and House in two consecutive legislative sessions. They, too, did not advance.

<b>Iowa voter support for legalization</b>	<b>67%</b>
<b>Partial data, cannabis possession arrests in 2019 (UCR/FBI Crime Data Explorer)</b>	<b>4,946</b>
<b>Number of arrests for cannabis possession in 2018 (ACLU)</b>	<b>3,835</b>
<b>Racial disparities in arrests, 2018 (ACLU)</b>	<b>7.3x</b>
<b>Percent of violent crimes resulting in arrest, 2019 (UCR)</b>	<b>55%</b>
<b>Percent of property crimes resulting in arrest, 2019 (UCR)</b>	<b>21%</b>
<b>Number of untested rape kits</b>	<b>2,502</b>

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<sup>73</sup> Civiqs cannabis polling data. (Accessed February 16, 2022)



# KANSAS

POPULATION: 2.9 MILLION

Under current law in Kansas, a first offense for possession of any amount of cannabis carries a maximum penalty of six months' imprisonment and a fine of up to \$1,000. People of color are disproportionately impacted. An ACLU report found that in 2018 Black people were **4.8 times** more likely to be arrested for cannabis possession than white people in Kansas, even though both races consume cannabis at about the same rate. In fact, Kansas ranks 12th in the nation for the largest racial disparity in cannabis possession arrests.

*"With every state that decriminalizes marijuana, we move closer to making sure our laws reflect the will of the people, taking marijuana out of the hands of the justice system and putting an end to hundreds of thousands of marijuana arrests made each year."*

— Barry Grissom  
U.S. Attorney (Fmr.), District of Kansas  
Kansas City, MO

Thousands of Kansans are arrested and criminalized for simple cannabis possession each year. According to data reported to the UCR Program from 63% of the law enforcement agencies in Kansas, in 2019, there were at least 4,564 arrests for cannabis possession across the state,<sup>74</sup> while the state cleared just 44% of violent crimes, 13% of property crimes, and 23% of rapes the same year.

Given that polls show nearly two-thirds of Kansans support legalizing cannabis, there is surely tremendous support for eliminating criminal penalties for simple cannabis possession. The state does not have a ballot initiative process, so legislative action is needed to reform the state's cannabis policy. Unfortunately, there was no major push for decriminalization during the 2022 legislative session, which ends on April 8, 2022.

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<sup>74</sup> In **2019**, the FBI arrest statistics for the state are based on data received from **260** law enforcement agencies that submitted 12 months of arrest data out of **415** total law enforcement agencies in the state that year.

<b>Kansas voter support for legalization</b>	<b>65%</b>
<b>Partial data on cannabis possession arrests in 2019 (UCR/FBI Crime Data Explorer)</b>	<b>4,564</b>
<b>Number of arrests for cannabis possession in 2018 (ACLU)</b>	<b>2,338</b>
<b>Racial disparities in arrests, 2018 (ACLU)</b>	<b>4.8x</b>
<b>Percent of violent crimes resulting in arrest, 2019 (UCR)</b>	<b>44%</b>
<b>Percent of property crimes resulting in arrest, 2019 (UCR)</b>	<b>13%</b>

# KENTUCKY

POPULATION: 4.5 MILLION

Under current law, a first offense for possession of up to eight ounces of cannabis carries a maximum penalty of 45 days' imprisonment and up to a \$250 fine. In 2019, 82% of Kentucky-based law enforcement agencies reported making 4,248 arrests for cannabis possession across the state.<sup>75</sup> While law enforcement, lab, and court resources devoted time to thousands of cannabis possession cases, Kentucky cleared only 49% of violent crimes and 22% of property crimes.

Moreover, there is a huge disparity in who is being targeted and criminalized in Kentucky for cannabis possession. Kentucky ranks second in the nation for the largest racial disparity in cannabis arrests, with Black Kentuckians being **9.4 times** more likely to be arrested for cannabis possession than white Kentuckians.

*“Criminalizing marijuana takes a very human toll. A marijuana arrest can impact the rest of your life – your housing, your education, your job prospects, custody of your kids. I don’t want to see families torn apart or lives ruined over marijuana use, and I don’t think any of my law enforcement colleagues do either.”*

— Corrections Officer Sheri Ray  
Indiana Department of Corrections  
Jeffersonville, IN  
Former Deputy Sheriff  
Bullitt County, KY

Residents are ready for reform, with 64% of Kentuckians supporting cannabis legalization. Kentucky lacks the ballot initiative process, so legislators either need to act directly or put a legislative referral on the ballot. During the 2022 legislative session, there was no major push to decriminalize cannabis. However, Rep. Nima

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<sup>75</sup> In **2019**, the FBI arrest statistics for the state are based on data received from **403** law enforcement agencies that submitted 12 months of arrest data out of **492** total law enforcement agencies in the state that year.

Kulkarni (D) proposed two measures — HB 224 would statutorily legalize, regulate, and tax cannabis, and HB 225 would refer a constitutional amendment to legalize cannabis to voters. The legislative referral would require three-fifths support from the House and Senate and then majority support from voters. So far, neither bill has moved. The legislative session is scheduled to end on April 15.

<b>Kentucky voter support for legalization</b>	<b>64%</b>
<b>Partial data on cannabis possession arrests in 2019 (UCR/FBI Crime Data Explorer)</b>	<b>4,248</b>
<b>Number of arrests for cannabis possession in 2018 (ACLU)</b>	<b>6,333</b>
<b>Racial disparities in arrests, 2018 (ACLU)</b>	<b>9.4x</b>
<b>Percent of violent crimes resulting in arrest, 2019 (UCR)</b>	<b>49%</b>
<b>Percent of property crimes resulting in arrest, 2019 (UCR)</b>	<b>22%</b>

# OKLAHOMA

POPULATION: 3.9 MILLION

Although Oklahoma now boasts the biggest medical cannabis market in the country on a per capita basis,<sup>76</sup> possession of non-medical cannabis remains criminalized.

Oklahoma imprisons more people on a per-capita basis than just about any other state in the country, many of them non-violent drug offenders sentenced to lengthy terms behind bars. In 2019, incomplete data reported to the FBI's UCR Program shows at least 5,691 cannabis possession arrests across the state.<sup>77</sup> Meanwhile, only 39% of violent crimes, 15% of property crimes, and 18% of rapes were cleared. And, as reported by the ACLU, Black people in Oklahoma are **4.2 times** more likely to be arrested for cannabis than white people.<sup>78</sup>

As Taylor Thompson, assistant public defender in the Oklahoma County Public Defender's Office explained, lives continue to be turned upside down by cannabis arrests:

Simple possession of cannabis is now classified as a misdemeanor, carrying up to a year in county jail and/or up to a \$500 fine. Those who cannot afford to post a bond for this charge (usually set at around \$500) may end up spending around 30 days in county jail before their first court date. Those that can post a bond before their court date generally end up pleading to a fine only, or occasionally, still receive probation. In addition, court costs are assessed,

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<sup>76</sup> Paul Demko, "How One of the Reddest States Became the Nation's Hottest Weed Market," *Politico*, November 27, 2020. Available at <https://www.politico.com/news/magazine/2020/11/27/toke-oklahoma-cannabis-market-oklahoma-red-state-weed-legalization-437782>.

<sup>77</sup> In **2019**, the FBI arrest statistics for the state are based on data received from **408** law enforcement agencies that submitted 12 months of arrest data out of **439** total law enforcement agencies in the state that year.

<sup>78</sup> ACLU, "A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform," 2020. Available at <https://www.aclu.org/report/tale-two-countries-rationally-targeted-arrests-era-marijuana-reform>.

including the costs for each day spent in the jail on this charge. It is estimated by attorneys that follow arraignments and misdemeanor cases in Oklahoma County that about three to four individuals remain in custody on simple possession of cannabis charges each month.

Even a few days of incarceration can cause an individual to lose their job, which can have devastating impacts on their ability to stay housed.

In Oklahoma, any condition qualifies for medical cannabis (including mild insomnia, mild anxiety, and mild pain), and 10% of the state's population has a medical cannabis card.<sup>79</sup> Those with the financial means to get a doctor's note are free to use and purchase cannabis, while those who cannot afford a card — or bond — can be locked up for a month and saddled with a life-altering criminal conviction.

*"The human cost of marijuana prohibition in Oklahoma is huge. A marijuana conviction has lifelong impacts on someone's ability to get a job or an education, to find a home, or to be a parent to their children. Further, the financial impact is absolutely overwhelming. Court costs, supervision fees, drug assessments, and remediation classes all together can sometimes exceed \$1,500. This drives defendants back to jail on 'Failure to Pay' warrants. A person's ability to become a productive member of society can be severely limited, if not eliminated entirely, by virtue of a marijuana conviction. Often a return to criminal activity becomes the only option. It's time to decriminalize marijuana."*

— Wes E. Johnson  
Former Police Officer  
Tulsa, OK

According to a 2013 Sooner Poll, 57% of Oklahomans said they support cannabis decriminalization, with 64% of respondents indicating that people should be

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<sup>79</sup> ACLU, "A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform," 2020. Available at <https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform>.

treated instead of arrested and jailed.<sup>80</sup> Support has surely increased since then. Civiqs polling found 60% support for legalization as of February 16, 2022.

There has been some success to decriminalize cannabis possession at the local level. In 2018, the Oklahoma City Council approved reducing the penalty for simple possession of cannabis to a fine of up to \$400. Oklahoma City Police Chief Bill City recommended the ordinance, explaining it would keep the city safer by allowing officers to stay on the streets.

Rep. Scott Fetgatter (R) has proposed both a legalization statute (HB 3754) and a legislative referral (HB 1961). Meanwhile, advocates are also working to put a legalization measure on the ballot in November 2022.

<b>Oklahoma voter support for legalization</b>	<b>60%</b>
<b>Partial data on cannabis possession arrests in 2019 (UCR/FBI Crime Data Explorer)</b>	<b>5,691</b>
<b>Number of arrests for cannabis possession in 2018 (ACLU)</b>	<b>7,857</b>
<b>Racial disparities in arrests, 2018 (ACLU)</b>	<b>4.2x</b>
<b>Percent of violent crimes resulting in arrest, 2019 (UCR)</b>	<b>39%</b>
<b>Percent of property crimes resulting in arrest, 2019 (UCR)</b>	<b>15%</b>
<b>Number of untested rape kits</b>	<b>7,270</b>

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<sup>80</sup> Bill Shapard, "Poll: Oklahomans Views of Marijuana Are Changing," soonerpoll.com, September 23, 2013. Available at <https://www.soonerpoll.com/post/poll-oklahomans-views-of-marijuana-are-changing>.

# PENNSYLVANIA

POPULATION: 13 MILLION

A May 2020 poll conducted by Harper Polling found 62% of likely voters in Pennsylvania favor legal, regulated sales of cannabis for adults 21 and older. As of February 16, 2022, Civiqs polling found 70% of Pennsylvania voters support making cannabis use legal.

Despite this popular support, under current law, Pennsylvania imposes up to 30 days' imprisonment and/or a fine of up to \$500 for possession of up to 30 grams of cannabis (just over an ounce). Black Pennsylvanians are **three times** more likely to be arrested for cannabis possession than white people in the state.

But there has been some progress to decriminalize cannabis at the local level. Philadelphia, Pittsburgh, Harrisburg, Steelton, York, State College, Erie, Lancaster, Bethlehem, and Upper Darby Township have all passed local decriminalization measures. However, incomplete data shows that 34% of law enforcement agencies in the state made 11,239 arrests for cannabis possession across the state in 2019, while that same year property crimes and rapes had clearance rates of 31% and 44%, respectively, highlighting the need for statewide reform.<sup>81</sup>

*“Archaic marijuana policies are a deep crack in the foundation of police-community relationships, particularly in communities of color, where punitive punishment for drug offenses has fostered violence, inequality, and mistrust of the justice system as a whole. Our community deserves better.”*

— Officer Shannon Wintruba (Ret.), Ph.D.  
Whitaker Police Department  
Whitaker, PA

<sup>81</sup> In 2019, the FBI arrest statistics for the state are based on data received from 511 law enforcement agencies that submitted 12 months of arrest data out of 1,507 total law enforcement agencies in the state that year.



*“Put simply, keeping marijuana prohibition is wasteful. It wastes taxpayer dollars and wastes police time. Decriminalizing marijuana would allow police to focus on responding to serious crime. It’s a commonsense decision: ending an ineffective policy that derails lives and harms police-community relations.”*

— Chief Rob Reyes (Fmr.)  
 U.S. Department of Veterans’ Affairs Police Department  
 Erie, PA

Cannabis reform has become a topic of discussion in the legislature in recent years. In 2021, for the first time, a bipartisan pair of senators introduced a bill to legalize cannabis for adult use in Pennsylvania. In February 2022, for the first time ever, a legislative committee held a hearing on legalization. Senate Law and Justice Committee Chair Mike Regan (R), a former state trooper, made the case for a legalization bill he is crafting with Rep. Amen Brown (D), and fellow Republican Sen. Dan Laughlin is also sponsoring a legalization bill. Gov. Tom Wolf (D) has called for legalization for several years.

<b>Pennsylvania voter support for legalization</b>	<b>70%</b>
<b>Partial data on cannabis possession arrests in 2019 (UCR/FBI Crime Data Explorer)</b>	<b>11,239</b>
<b>Number of arrests for cannabis possession in 2018 (ACLU)</b>	<b>29,010</b>
<b>Racial disparities in arrests, 2018 (ACLU)</b>	<b>3x</b>
<b>Percent of violent crimes resulting in arrest, 2019 (UCR)</b>	<b>62%</b>
<b>Percent of property crimes resulting in arrest, 2019 (UCR)</b>	<b>31%</b>
<b>Number of untested rape kits</b>	<b>153</b>

# SOUTH CAROLINA

POPULATION: 5.1 MILLION

South Carolina still criminalizes its residents for simple cannabis possession. Under current law, a first offense for possession of up to an ounce of cannabis carries a maximum penalty of 30 days' imprisonment and a \$200 fine (though pre-trial diversion is possible).

South Carolina is also one of only 13 states that lacks a medical cannabis law. However, that could change this year. On February 9, 2022, the state Senate approved a conservative medical cannabis bill, S. 150, in a 28-15 vote. It is now pending in the House.

Thousands of South Carolinians are arrested and branded with criminal records for simple cannabis possession. In 2019, incomplete data shows that 58% of law enforcement agencies in the state made 13,907 arrests for cannabis possession,<sup>82</sup> while only 49% of violent crimes and 20% of property crimes were cleared that same year. Sadly, Black South Carolinians bear the brunt of these arrests, being **3.5 times** more likely to be arrested for cannabis possession than their white counterparts.

It is long past time for South Carolina to reform its outdated cannabis policies. The state has no ballot initiative process, so the legislature must take up cannabis policy reform.

*"When I was a police officer, I saw minor marijuana offenses ruin lives and unnecessarily crowd court schedules. Our justice system is too tied up in marijuana laws. Let's decriminalize cannabis and create a better model for ensuring justice."*

— Officer David Clark (Fmr.)  
North Charleston Police Department, SC  
Houston, TX

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<sup>82</sup> In 2019, the FBI arrest statistics for the state are based on data received from **273** law enforcement agencies that submitted 12 months of arrest data out of **468** total law enforcement agencies in the state that year.

South Carolina voter support for legalization	<b>66%</b>
Partial data on cannabis possession arrests in 2019 (UCR/FBI Crime Data Explorer)	<b>13,839</b>
Number of arrests for cannabis possession in 2018 (ACLU)	<b>34,229</b>
Racial disparities in arrests, 2018 (ACLU)	<b>3.5x</b>
Percent of violent crimes resulting in arrest, 2019 (UCR)	<b>29%</b>
Percent of property crimes resulting in arrest, 2019 (UCR)	<b>20%</b>
Number of untested rape kits	<b>1,800</b>

# SOUTH DAKOTA

POPULATION: 0.9 MILLION

In November 2020, South Dakota voters opted to put an end to cannabis criminalization — with 54% approving Amendment A, a ballot initiative to legalize cannabis. The constitutional amendment was due to take effect on July 1, 2021, but Pennington County Sheriff Kevin Thom and Highway Patrol Superintendent Rick Miller sought to overturn the voter-approved law in court. On February 8, 2021, Circuit Court Judge Christina Klinger blocked the measure, ruling it violated the state’s single subject rule and that it was an impermissible revision rather than an amendment to the constitution.<sup>83</sup> The state Supreme Court agreed with the single subject argument, overturning the measure on November 24, 2021.

South Dakota voters also legalized medical cannabis in November 2020 by approving a separate initiative, Measure 26. But the measure has not yet been fully implemented. Currently, possession of up to two ounces of cannabis is a misdemeanor, with a maximum penalty of up to one year in jail and/or a fine of up to \$2,000.

In 2019, incomplete data shows that 77% of law enforcement agencies in the state made 3,668 arrests for cannabis possession,<sup>84</sup> while only 53% of violent crimes and 20% of property crimes were cleared. As is the case in other states, enforcement disproportionately targets Black South Dakotans. In 2019, South Dakota law enforcement authorities were **five times** more likely to arrest Black individuals for cannabis possession than their white counterparts.

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83 Joe Sneve, “Judge rules recreational marijuana measure unconstitutional in South Dakota,” *Sioux Falls Argus Leader*, February 8, 2021. Available at <https://www.argusleader.com/story/news/2021/02/08/south-dakota-marijuana-court-strikes-down-recreational-pot-measure/4442883001/>.

84 In **2019**, the FBI arrest statistics for the state are based on data received from **110** law enforcement agencies that submitted 12 months of arrest data out of **143** total law enforcement agencies in the state that year.

Advocates with South Dakotans for Better Marijuana Laws are collecting signatures to place a statutory adult-use legalization initiative on the November 2022 ballot.

<b>South Dakota voter support for legalization (2020 election results)</b>	<b>54%</b>
<b>Partial data on cannabis possession arrests in 2019 (UCR/FBI Crime Data Explorer)</b>	<b>3,668</b>
<b>Number of arrests for cannabis possession in 2018 (ACLU)</b>	<b>6,587</b>
<b>Racial disparities in arrests, 2018 (ACLU)</b>	<b>5x</b>
<b>Percent of violent crimes resulting in arrest, 2019 (UCR)</b>	<b>53%</b>
<b>Percent of property crimes resulting in arrest, 2019 (UCR)</b>	<b>20%</b>

# TENNESSEE

POPULATION: 6.9 MILLION

Tennessee residents still face the threat of criminalization and potential jail time for simple cannabis possession. Under current law, possession of any amount is a misdemeanor, punishable by up to 11 months and 29 days in prison and up to a \$2,500 fine. Cultivation of 10 plants or less is a felony, punishable by one to six years in prison, with penalties increasing significantly for each additional plant grown.

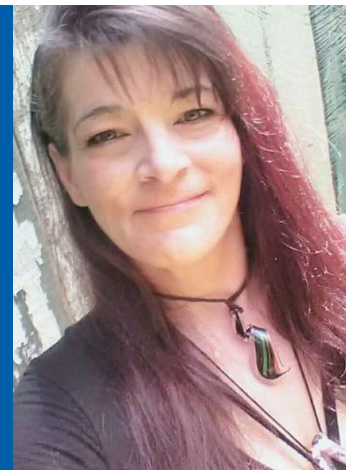
*"I became a prosecutor to protect our communities from serious crime. But it's not our job to use the power of law to criminalize something as innocuous as personal use of marijuana in order to 'protect' people from themselves. When we decriminalize marijuana, we preserve individual liberty while ensuring that we have the resources to protect our communities."*

— Allison Watson  
Assistant District Attorney (Fmr.)  
13th Judicial District of Tennessee  
Knoxville, TN

Two of the largest cities in Tennessee — Memphis and Nashville — both passed ordinances in 2016 that give officers the discretion to charge someone with a civil infraction for possessing small amounts of cannabis. However, in 2017, the state legislature and Gov. Bill Haslam blocked local decriminalization by enacting House Bill 0173, which provided "state government law preempts local government enactments with respect to the regulation of and appropriate sanctions for

*"I am a disabled mother and grandmother with progressive genetic neuropathy who was able to stop using opiates thanks to cannabis. I was stopped for a rolling stop. The officer said he smelled marijuana and threatened to call the K9. I gave them the small bud (one gram) and pipe I had. Because I refused to plea or inform on others, I was thrown in jail in an overcrowded condemned jail to sleep on the floor for 46 days with no working toilet. My charges were eventually dropped, but I still have PTSD from my time in jail. I am unable to get my driver's license due to all the fines and fees imposed on me. I live in constant fear that police are going to break down my door and arrest me because of my choice of medicine."*

— Melody Cashion from the Nashville area



conduct involving drugs and other similar substances.”

Still, the 99.8% of law enforcement agencies providing data reported 17,596 arrests for possession in 2019.<sup>85</sup> Meanwhile, property crimes were cleared at 27% and rapes at 39% that year.

The ACLU found that in 2018 Black individuals were arrested at **3.2 times** the rate of white individuals in Tennessee, even though both races consume cannabis at about the same rate.

Statewide reform is long overdue. While Tennessee voters overwhelmingly support legalization, Tennessee doesn’t have a voter initiative process. Only elected officials have the power to change state law.

*“For years it has become increasingly clear that making marijuana use a criminal justice issue has caused significant harm to our communities and squandered massive amounts of resources. It is past time for us to right these wrongs. We must place our faith in more responsible and ethical policies, policies that simultaneously keep people out of the carceral system and keep law enforcement focused on public safety. It’s past time we decriminalize marijuana.”*

— Preston Shipp  
Tennessee Assistant Attorney General (Fmr.)  
Nashville, TN

Tennessee voter support for legalization	<b>67%</b>
Number of arrests for cannabis possession in 2019 (UCR/FBI Crime Data Explorer)	<b>17,596</b>
Number of arrests for cannabis possession in 2018 (ACLU)	<b>23,285</b>
Racial disparities in arrests, 2018 (ACLU)	<b>3.2x</b>
Percent of violent crimes resulting in arrest, 2019 (UCR)	<b>62%</b>
Percent of property crimes resulting in arrest, 2019 (UCR)	<b>27%</b>

<sup>85</sup> In **2019**, the FBI arrest statistics for the state are based on data received from **462** law enforcement agencies that submitted 12 months of arrest data out of **463** total law enforcement agencies in the state that year.

# TEXAS

POPULATION: 29 MILLION

In the second most populous state in the country, possessing two ounces or fewer of cannabis carries a maximum penalty of 180 days' imprisonment and a \$2,000 fine. According to the UCR Program, the 75% of law enforcement agencies reporting made 43,289 arrests in Texas for cannabis possession in 2019,<sup>86</sup> while only 42% of violent crimes, 16% of property crimes, and 29% of rapes were cleared. Moreover, these laws are not being equally enforced in the state, with Black Texans arrested at **2.6 times** the rate of white people. Hundreds of Texans, a majority of whom are people of color, are being incarcerated for cannabis possession.

*"Criminalizing marijuana hurts individuals and our communities. A marijuana conviction can unnecessarily derail an individual's life, making it harder for them to secure housing, education, or a job. Without these paths to a secure future, how is someone supposed to turn their life around?"*

— Bryan Rose  
Former Police Officer  
Irving Police Department, TX

In March 2021, one of those individuals, Marvin Scott III, died in jail about nine hours after being incarcerated during booking for possessing less than two ounces of cannabis.<sup>87</sup> Scott suffered from schizophrenia and was confined in a restraint bed with a spit mask, pepper sprayed, and subjected to a pressure point control technique. He went into cardiac arrest.

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<sup>86</sup> In **2019**, the FBI arrest statistics for the state are based on data received from **863** law enforcement agencies that submitted 12 months of arrest data out of **1,145** total law enforcement agencies in the state that year.

<sup>87</sup> "Collin County Sheriff Releases Jailhouse Video Related to In-Custody Death of Marvin Scott III," NBC-DFW, July 9, 2021. Available at <https://www.nbcdfw.com/news/local/collin-county-sheriffs-office-releases-jailhouse-video-related-to-in-custody-death-of-marvin-scott-iii/2677431/>.



*"In 2003, I was staying in a hotel with my children. Several police officers demanded to search our room because hotel staff suspected my stepson's modeling clay he kept in a plastic bag was illicit drugs.*

*"I had no prior criminal record, and I recall the harrowing experience as the officers searched my bag and found three grams of cannabis in a container in my purse. From that point on, I was treated like a violent offender. I spent three days in jail, accepted a plea deal, had my driver's license suspended, and was saddled with a series of expenses that took a severe toll on my family.*

*"There's no escape from the stain on my record. I felt unjustly criminalized in this situation. I am not a danger to society. I work hard and pay my taxes, yet I am a criminal in Texas. I have PTSD and diabetic neuropathy and use cannabis to treat these conditions. My arrest record has followed me and will continue to do so for the rest of my life. Should I get caught in Texas again, I will be subject to severe penalties."*

*— Laurie Zapinski, a 56-year-old mother, grandmother, homeowner, and technology worker with a class B misdemeanor possession of marijuana conviction, who now works with Texas NORML to reduce cannabis penalties*



There is a tremendous amount of harm and injustice in Texas' prohibition policies.

Texans recognize this and largely support reforming the state's outdated cannabis laws — with nine out of 10 Texas voters supporting making cannabis legal for medical or adult use.<sup>88</sup>

There has been some decriminalization movement on the local level, with the Austin City Council unanimously passing a resolution in January 2020 that limits enforcement action for low-level cannabis possession offenses. A May ballot initiative will send this to voters to codify. Similar ballot measures are being undertaken in San Marcos and Denton.

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<sup>88</sup> James Barragán, Cassandra Pollock, and Mitchell Ferman, "Texans oppose permitless carry, but support expanding Medicaid and restricting transgender student athletes, UT/TT Poll finds," *The Texas Tribune*, University of Texas/Texas Tribune Poll, June 25, 2021. Available at <https://www.texastribune.org/2021/06/25/texas-permitless-carry-medicaid-transgender-students-poll/>.

Since 2017, at least 10 Texas counties and cities have adopted summons and release policies instead of custodial arrests.<sup>89</sup> They include Bexar County, Harris County (which includes Houston), Hays County, Williamson County, Nueces County, El Paso, and Cedar Park. However, even in these localities, punishments under state law — which include jail time — can still be used at court hearings.

Statewide reform to decriminalize cannabis is long overdue, with Texas consistently having the highest total number of cannabis possession arrests. There is no ballot initiative process in the state, so it is up to the legislature to act. A decriminalization bill passed the House in 2021 but died in the Senate. The legislature does not meet in 2022, and the powerful lieutenant governor — Dan Patrick — has blocked progress in the Senate.

<b>Texas voter support for legalization</b>	<b>69%</b>
<b>Partial data on cannabis possession arrests in 2019 (UCR/FBI Crime Data Explorer)</b>	<b>43,289</b>
<b>Number of arrests for cannabis possession in 2018 (ACLU)</b>	<b>70,017</b>
<b>Racial disparities in arrests, 2018 (ACLU)</b>	<b>2.6x</b>
<b>Percent of violent crimes resulting in arrest, 2019 (UCR)</b>	<b>42%</b>
<b>Percent of property crimes resulting in arrest, 2019 (UCR)</b>	<b>16%</b>
<b>Number of untested rape kits</b>	<b>6,108</b>

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<sup>89</sup> In Travis County, the penalty is a \$45 fine and a four-hour cannabis class. See <https://norml.org/laws/local-decriminalization/texas-local-decriminalization/>.

# UTAH

POPULATION: 3.3 MILLION

While four of its border states — Nevada, Arizona, Colorado, and New Mexico — have legalized cannabis for adult use, Utah still punishes simple cannabis possession with jail time. Under current Utah law, possession of as little as an ounce or less of cannabis can result in a six-month jail sentence. Unfortunately, communities of color in Utah disproportionately face these draconian penalties. The ACLU found that Black Utahans are **over three times** more likely to be arrested for cannabis possession as their white neighbors.

According to Robert Gehrke writing for *The Salt Lake Tribune*, “Over the last several years, Utah police have arrested someone for cannabis possession every hour of every day.”<sup>90</sup> In 2019, the 75% of Utah-based law enforcement agencies reporting told the UCR Program they made 6,989 arrests for cannabis possession.<sup>91</sup> Meanwhile, that same year, the clearance rate for violent crimes was 52%, with property crimes cleared at 22%.

*“We’ve gone too long with a law that is costly, discriminatory, illogical and ineffective and damaged far too many lives in the process.”*

*— Columnist Robert Gehrke of The Salt Lake Tribune calling for decriminalization in Utah*

Sixty-four percent of Utahans support making cannabis legal for adults 21 and older. Utah does have a ballot initiative process, so further cannabis policy reform could either be citizen-initiated or ushered in through the state legislature.

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<sup>90</sup> “Now is the time for Utah to decriminalize marijuana, writes Robert Gehrke,” *The Salt Lake Tribune*, July 19, 2021. Available at <https://www.sltrib.com/news/politics/2021/07/19/now-is-time-utah/>.

<sup>91</sup> In **2019**, the FBI arrest statistics for the state are based on data received from **117** law enforcement agencies that submitted 12 months of arrest data out of **146** total law enforcement agencies in the state that year.

However, the legislature has the authority to revise or replace a voter-enacted law with a simple majority vote.

For now, those arrested for cannabis possession must rely on prosecutors' discretion in handling their cases.

At least one prosecutor is taking measures to reduce the number of lives derailed for cannabis: Salt Lake County District Attorney Sim Gill

explains a pilot project underway in his office, "where first-time offenders caught with small amounts are eligible for pre-trial diversions, can enter into a plea in abeyance — meaning the case goes away if they don't re-offend in a given time — and the offender can pay a fine or do community service, and come out on the other end without a criminal record or jail time."<sup>92</sup>

*"When we decriminalize marijuana, we free up police to focus on critical public safety issues, we encourage our communities to trust law enforcement, and we untie the hands of judges and prosecutors so they can more effectively meter out justice."*

— Det. Justin Boardman (Fmr.)  
West Valley City Police Department, UT

<b>Utah voter support for legalization</b>	<b>64%</b>
<b>Partial data on cannabis possession arrests in 2019 (UCR/FBI Crime Data Explorer)</b>	<b>6,989</b>
<b>Number of arrests for cannabis possession in 2018 (ACLU)</b>	<b>10,854</b>
<b>Racial disparities in arrests, 2018 (ACLU)</b>	<b>4.9x</b>
<b>Percent of violent crimes resulting in arrest, 2019 (UCR)</b>	<b>52%</b>
<b>Percent of property crimes resulting in arrest, 2019 (UCR)</b>	<b>22%</b>

<sup>92</sup> "Now is the time for Utah to decriminalize marijuana, writes Robert Gehrke," *The Salt Lake Tribune*, July 19, 2021. Available at <https://www.sltrib.com/news/politics/2021/07/19/now-is-time-utah/>.

# WEST VIRGINIA

POPULATION: 1.8 MILLION

Under current law in West Virginia, first offense for possession of any amount of cannabis carries a mandatory minimum of 90 days' imprisonment (with a conditional discharge for up to 15 grams with probation). A subsequent offense carries the same maximum penalty — up to six months — but with no conditional discharge. These laws are some of the harshest in the nation, and their effect on West Virginians — disproportionately West Virginians of color — is evident.

*“Marijuana laws in the United States have racist origins. They were implemented for the purpose of social control rather than public health. They discriminate by race and have destroyed trust in police as an institution. Marijuana laws have rendered the police less safe and less effective in helping communities thrive. Marijuana should be decriminalized everywhere.”*

— Dr. Jim Nolan  
Lieutenant and F.B.I. Unit Chief (Fmr.)  
Wilmington Police Department, Delaware  
Federal Bureau of Investigation, Fairmont, WV

In 2019, a mere 32% of West Virginia law enforcement agencies provided data on cannabis arrests to the UCR Program. They made 1,914 arrests for cannabis possession across the state.<sup>93</sup> There are also hundreds of residents entering the jail system each year for simple cannabis possession. According to the West Virginia Division of Corrections and Rehabilitation's jail statistics, there were 272 reported charges for cannabis possession in FY 2019.<sup>94</sup> Meanwhile, during the same year, only 40% of violent crimes, 21% of property crimes, and a whopping 14% percent of rapes were cleared.

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93 In **2019**, the FBI arrest statistics for the state are based on data received from **140** law enforcement agencies that submitted 12 months of arrest data out of **436** total law enforcement agencies in the state that year.

94 Data is based off admissions and includes convicted felons and misdemeanors, Division of Corrections inmates, federal sentenced and pre-trial offenders, and pre-trial felons and misdemeanors. Available at [https://dcr.wv.gov/resources/Documents/FY2019 ANNUAL REPORT WVDCR.pdf](https://dcr.wv.gov/resources/Documents/FY2019%20ANNUAL%20REPORT%20WVDCR.pdf).

In addition, West Virginia’s cannabis policies are not being equally enforced. According to the ACLU, West Virginia ranks fourth in the nation for the highest racial disparity in arrests for cannabis possession, with Black people being **7.3 times** more likely to be arrested than white people.

West Virginia is wasting law enforcement resources and ruining the lives of thousands by continuing to criminalize and jail its residents for simple cannabis possession. West Virginians strongly support reform, with 68% in support of making cannabis legal. The state does not have a ballot initiative process, so cannabis reform must be achieved through the legislature. In 2021, Republican Gov. Jim Justice indicated that he would sign a legalization bill if the legislature sent one to his desk.

In March 2021, West Virginia Delegate Mike Pushkin (D) proposed a floor amendment to add cannabis decriminalization to a criminal justice reform bill. It was narrowly defeated, 46-53. The legislature adjourned its 2022 session on March 12 without taking up the issue again.

<b>West Virginia voter support for legalization</b>	<b>68%</b>
<b>Partial data on cannabis possession arrests in 2019 (UCR/FBI Crime Data Explorer)</b>	<b>1,914</b>
<b>Number of arrests for cannabis possession in 2018 (ACLU)</b>	<b>8,078</b>
<b>Racial disparities in arrests, 2018 (ACLU)</b>	<b>7.3x</b>
<b>Percent of violent crimes resulting in arrest, 2019 (UCR)</b>	<b>40%</b>
<b>Percent of property crimes resulting in arrest, 2019 (UCR)</b>	<b>21%</b>

# WISCONSIN

POPULATION: 5.9 MILLION

*“With trust in law enforcement rebounding from historic lows, repairing relationships with the communities we serve is a critical issue. When police officers are forced to spend their time and resources enforcing antiquated marijuana laws, public trust in policing suffers because people see us doing that instead of prioritizing real threats to person and property. We need to decriminalize marijuana and restore our commitment to the community.”*

— Officer David Doddridge (Ret.)  
Los Angeles Police Department, CA  
Viroqua, WI

While neighboring Michigan and Illinois have legalized cannabis for adults' use, and Minnesota has a medical cannabis program and a 45-year-old decriminalization law, Wisconsin remains stubbornly behind the times. Under current law, a first offense for possession of any amount of cannabis carries a maximum penalty of six months' imprisonment and a fine of up to \$1,000. A second or subsequent conviction for possession of any amount of cannabis is a felony, with a maximum penalty of up to 3.5 years' imprisonment and a fine of up to \$10,000.

The state's current laws are affecting thousands of residents each year. In 2019, 94% of law enforcement agencies provided cannabis arrest data to the UCR Program, reporting 14,619 arrests for cannabis possession across the state.<sup>95</sup> Meanwhile, authorities cleared only 35% of property crimes and 51% of rapes that year. Further, according to the ACLU, in 2018, Black individuals were **4.2 times** as likely to be arrested for cannabis possession as white people in Wisconsin, despite similar use rates.

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<sup>95</sup> In **2019**, the FBI arrest statistics for the state are based on data received from **416** law enforcement agencies that submitted 12 months of arrest data out of **444** total law enforcement agencies in the state that year.

Wisconsiners are ready for reform. A 2019 poll<sup>96</sup> found that 59% of Wisconsin voters support legalizing cannabis for adults. Meanwhile, Civiqs surveys found 65% voter support as of February 16, 2022.

More than half of Wisconsin's population saw cannabis-related measures on their ballots in 2018, and every single one of the measures passed. Medical cannabis questions received between 67–89% support in the 11 counties and two cities where they appeared. Adult-use questions garnered between 60–76% of the vote.

However, the measures were non-binding, and there is no statewide ballot initiative process in the state. Several cities have enacted local decriminalization measures, including Milwaukee and Madison.<sup>97</sup>

It is up to the legislature to act to bring sensible cannabis policies to Wisconsin. Gov. Tony Evers (D) would like to lead the state to a more sensible policy. In 2018, his first-ever proposed budget as governor included removing all penalties for cannabis possession, expungement, and a comprehensive medical cannabis program.

At least four decriminalization bills were introduced during the 2022 legislative session but did not receive a vote — SB 790, SB 164, AB 130, and AB 812.

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96 Charles Franklin, "New Marquette Law School Poll Finds Little Change in Views of Trump as Mueller Probe Ends: Opinions Shift on Confidence in Mueller; on State Issues, Majorities Support Legal Marijuana, Higher Special Education Spending, Oppose Increase in Gas Tax," Marquette University Law School Poll, April 10, 2019. Available at <https://law.marquette.edu/poll/2019/04/10/new-marquette-law-school-poll-finds-little-change-in-views-of-trump-as-mueller-probe-ends-opinions-shift-on-confidence-in-mueller-on-state-issues-majorities-support-legal-marijuana-higher-special/>.

97 See <https://norml.org/laws/local-decriminalization/wisconsin-local-decriminalization/>.



Wisconsin voter support for legalization	<b>65%</b>
Partial data on cannabis possession arrests in 2019 (UCR/FBI Crime Data Explorer)	<b>14,619</b>
Number of arrests for cannabis possession in 2018 (ACLU)	<b>18,857</b>
Racial disparities in arrests, 2018 (ACLU)	<b>4.2x</b>
Percent of violent crimes resulting in arrest, 2019 (UCR)	<b>72%</b>
Percent of property crimes resulting in arrest, 2019 (UCR)	<b>35%</b>

# WYOMING

POPULATION: 0.6 MILLION

Wyoming's neighbors in Colorado and Montana have legalized cannabis for adults. A recent poll<sup>98</sup> found that 54% of Wyomingites support legalizing personal possession of cannabis for adults. A separate question from the same poll asked whether people agree that, "those convicted of possessing small amounts of cannabis should not serve time in jail," finding that 75% of Wyoming residents support decriminalization. Still, Wyoming is lagging behind on cannabis policy. Under current law, possession of three ounces or less of cannabis carries a maximum penalty of up to 12 months' imprisonment and a fine of up to \$1,000.

According to UCR Program data provided by 78% of Wyoming law enforcement agencies, there were 2,393 arrests for cannabis possession across the state in 2019.<sup>99</sup> That same year, only 26% of property crimes and 23% of rapes were cleared. A 2020 ACLU study showed staggering racial disparities in cannabis arrests. In fact, Wyoming ranks ninth in the nation for the greatest racial disparities in possession arrests. Black people in Wyoming are **5.2 times** more likely to be arrested for cannabis possession as whites, despite similar usage rates.

House Speaker Eric Barlow (R) and House Majority Whip Jared Olsen (R) cosponsored a bill — HB 106 — that would have reduced the penalty for possession of modest amounts of cannabis to a \$100 fine. The bill would have applied to three ounces of flower, 30 grams of concentrates, 16 ounces of edibles, and 72 ounces of liquid infused products. The bill was not brought forward during

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98 Tom Angell, "Wyoming is Ready to Legalize Marijuana, New Poll Shows," *Marijuana Moment*, December 9, 2020. Available at <https://www.marijuanamoment.net/wyoming-is-ready-to-legalize-marijuana-new-poll-shows/>.

99 In **2019**, the FBI arrest statistics for the state are based on data received from **53** law enforcement agencies that submitted 12 months of arrest data out of **68** total law enforcement agencies in the state that year.

the very limited, budget-focused legislative session.<sup>100</sup> If the legislature does not act before then, advocates with Wyoming NORML and the Libertarian Party are working on medical cannabis and decriminalization initiatives for the 2024 ballot.

<b>Wyoming voter support for legalization</b>	<b>59%</b>
<b>Partial data on arrests for cannabis possession in 2019 (UCR/FBI Crime Data Explorer)</b>	<b>2,393</b>
<b>Number of arrests for cannabis possession in 2018 (ACLU)</b>	<b>3,784</b>
<b>Racial disparities in arrests, 2018 (ACLU)</b>	<b>5.2x</b>
<b>Percent of violent crimes resulting in arrest, 2019 (UCR)</b>	<b>55%</b>
<b>Percent of property crimes resulting in arrest, 2019 (UCR)</b>	<b>26%</b>

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<sup>100</sup> David Beasley, "Wyoming Marijuana Decriminalization Bill Won't Get A Vote This Session, Sponsor Says," *Marijuana Moment*, March 7, 2022.



# CONCLUSION

As of 2019 — the last year with data before the pandemic-related shut-downs — someone was arrested for a cannabis offense **every 58 seconds** in the United States. There were 545,601 cannabis arrests reported to the UCR Program in 2019, and 92% of these arrests were for cannabis possession alone — not for sale or manufacture. There are more arrests for cannabis possession each year in the U.S. than for all violent crimes combined.

Although 31 states (and D.C.) have laws to stop jailing their residents for possession of small amounts of cannabis, 19 states remain without decriminalization. In many of these states, ending prohibition is likely to be a multi-year effort. But in the meantime, states should at least stop criminalizing cannabis consumers, especially when nationally Black people are **3.6 times** more likely to be arrested for cannabis possession than white people. Although legalization and decriminalization do not completely eliminate these disparities, they do dramatically reduce the total number of cannabis arrests.

A criminal conviction for cannabis possession carries with it a host of other life-altering collateral consequences, some of them severe. Collateral consequences are penalties an individual faces in addition to any court-imposed punishment and can include limitations on access to employment, housing, education, government assistance, voting, driver's licenses, professional licensing, and more. This kind of fallout is disproportionate to the severity of the supposed crime, and as we've documented throughout this report, these outcomes fall most heavily on Black people.

Further, cannabis criminalization has tremendous economic and public safety costs. By continuing this criminalization, states waste valuable taxpayer dollars and add a tremendous burden to the courts, jails, and public safety resources. Decriminalization enables law enforcement to focus resources on more urgent

needs, rather than chasing down trivial arrests for a substance that is safer than alcohol or tobacco.

Fifty years after the Shafer Commission recommended decriminalization, it is long past time for these states to start taking a more just, commonsense, and fiscally responsible approach to cannabis policy. Short of legalization, states should stop needlessly ensnaring thousands of their residents in the criminal justice system each year. Now is the time for the remaining 19 states that still criminalize to reclassify possession of one ounce or less of cannabis as a civil infraction, replacing the criminal offense with a small civil fine and wiping away the criminal records of offenders convicted under the old, overly harsh laws.

## ■ AUTHORS AND ACKNOWLEDGEMENTS

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Main Office  
P.O. Box 21824  
Washington, D.C. 20009  
202-462-5747

Communications Department  
202-462-5747, ext. \*8301  
media@mpp.org

State Policies Department  
state@mpp.org

State Campaigns Department  
ballotinitiatives@mpp.org

Advancement Department  
202-462-5747, ext. \*8303  
membership@mpp.org