



Model Legislation to Reduce the Penalty for Marijuana Possession to a Civil Fine

[NOTE: The procedures will probably need to be tailored to an individual state.]

Be it enacted by the people of the state of _____:

SECTION 1. Title. Sections 1 through 4 of this act shall be known as “An Act Establishing a Civil Fine for Marijuana Possession.”

Section 2. Definitions.

As used in this chapter unless the context otherwise requires:

- (a) “Department” means [the state youth, health, or education department] or its successor agency.
- (b) “Drug awareness program” means a program created by the department that provides between two and five hours of instruction or group discussion about the use and abuse of marijuana, alcohol, and controlled substances.
- (c) “Marijuana accessory” means paraphernalia for the ingestion, use, inhalation, preparation for personal use, or storage of a personal-use quantity of marijuana.
- (d) “Personal-use quantity of marijuana” means no more than one ounce of marijuana, five grams of resin extracted from or concentrates derived from marijuana, and infused products that contain up to 1,000 milligrams of delta (9)-tetrahydrocannabinol.

Section 3. Personal Possession of Marijuana, Penalties.

- (a) A person 18 years of age or older who knowingly and unlawfully possesses a personal-use quantity of marijuana or a marijuana accessory commits a civil violation and, except as authorized by Section 3 (b), shall be assessed a civil penalty of \$25.
- (b) A person 18 years of age or older who is found responsible for a civil violation under Section 3 (a) may request, and shall be granted, a penalty of up to five hours of community service in lieu of a fine.
- (c) A person under the age of 18 years who knowingly and unlawfully possesses a personal-use quantity of marijuana or a marijuana accessory commits a civil violation and shall be ordered to complete up to five hours of community service, a drug awareness program, or both. The offender’s parents or legal guardians shall be notified of the violation. Within 180 days of the court order to complete community service, a drug awareness program, or both, the offender shall furnish the court with evidence of completion of the sentence.

(d) No person shall be subject to arrest for a violation of this section. An individual cited for a violation of this section shall be released on a hand summons, provided the law enforcement officer does not have lawful grounds for arrest for a different offense.

(e) A determination of a civil violation under this part shall not be considered a drug offense under state law or as defined in 23 CFR Part 1212 and shall not affect a person's driving privileges under state law.

(f) Except as provided in this section, neither the state nor any of its political subdivisions shall impose any form of penalty on a person for possessing a personal-use quantity of marijuana or a marijuana accessory, nor shall any penalties or obligations exceeding those outlined in this section be imposed by the state nor any of its political subdivisions solely for having cannabinoids or cannabinoid metabolites in the urine, blood, sweat, hair, fingernails, toenails, or other tissue or fluid of the human body.

(g) Possession of a personal-use quantity of marijuana or a marijuana accessory, or the presence of cannabinoids or cannabinoid metabolites in the urine, blood, sweat, hair, fingernails, toenails, or other tissue or fluid of the human body, or a conviction, citation, admission, or plea bargain thereof, shall not constitute grounds for denying a person student financial aid, public housing, or any form of public financial assistance including unemployment benefits, or denying a person the right to operate a motor vehicle, or disqualifying a person from serving as a foster parent or adoptive parent.

(h) Nothing contained herein shall be construed to repeal or modify any law concerning the medical use of marijuana or tetrahydrocannabinol in any other form, or the possession of more than a personal-use quantity of marijuana, or selling, manufacturing, or trafficking in marijuana.

(i) Nothing contained herein shall prohibit a political subdivision of the state from enacting ordinances or bylaws regulating or prohibiting the consumption of marijuana in public places and providing for additional penalties for the public use of marijuana, provided that any such additional penalties are no greater than those related to the public consumption of alcohol.

(j) Notwithstanding any other provision of law, unless there is a specific finding that the individual parolee or probationer's use of marijuana could create a danger to the individual or other persons, it shall not be a violation of conditions of parole or probation to receive a civil citation pursuant to this section or to test positive for marijuana, delta-9 tetrahydrocannabinol, or any other cannabinoid.

Section 4. Recordkeeping.

(a) Except as otherwise provided in this subsection:

(1) No record of a violation of this section shall be recorded in any database of criminal offenders.

(2) No record that includes personally identifiable information resulting from a violation of this section shall be made accessible to the public, one or more federal agencies, or agencies from other states or countries.

(b) Every state, county, or local law enforcement agency that collects and reports data for the Uniform Crime Reports program shall collect data on the number of violations of this section and report the data to the state [Department of Public Safety]. The [Department of Public Safety] shall compile the data collected pursuant to this paragraph and make it available free of cost to the public. A law enforcement agency shall update the data annually and shall make this data available on the agency's public website.

Section 5. Drug Awareness Program.

(a) The court may require an offender under the age of 18 to complete a drug awareness program within one year of his or her parents or legal guardian being given notice of the violation and available drug awareness programs.

(b) The drug awareness program shall be provided at no cost to the minor.

Section 6. Disposition of Revenue.

Fifty percent of the revenue generated from civil penalties imposed under the provisions of this section shall be transmitted to the department to fund the drug awareness program. The remaining fifty percent shall be deposited in the general fund.

Additional Revisions Needed

1. Criminal penalties.

The state's criminal penalties should be amended to be consistent with this statute. For example, any statutes that include criminalization of possession, transportation, purchase, or use of up to one ounce of marijuana; possession, transportation, purchase, or use of marijuana paraphernalia; or maintaining a premises where those activities occur should be amended accordingly.

2. Possession with intent to distribute.

To reduce the odds that individuals will be wrongfully convicted of possession with intent to distribute when their cannabis is intended for personal use, the following provision should be added:

There shall be a rebuttable presumption that a person who possesses no more than one ounce of marijuana possesses it for personal use.

3. Gifting

If it is a crime to give away marijuana to another person, the penalty for gifting marijuana should be replaced with the following:

[Except as authorized by (the state medical marijuana law)], a person who transfers without remuneration a personal-use quantity of marijuana to a person who is 18 years of age or older commits a civil violation and shall be assessed a civil penalty of \$25, be ordered to complete up to five hours of community service, or both.

[Except as authorized by (the state medical marijuana law)], a person who transfers without remuneration a personal-use quantity of marijuana to a person who is under 18 years of age or older, but is no more than 18 months younger than the person transferring the marijuana, commits a civil violation and shall be ordered to take a drug awareness program and complete up to 20 hours of community service.

For purposes of this section, a transfer is for remuneration if marijuana is given away contemporaneously with another transaction between the same parties, if a gift of marijuana is offered or advertised in conjunction with an offer for sale of goods or services, or if the gift of marijuana is contingent upon a separate transaction for goods or services.