

MEMORANDUM

TO: Rep. Marcia Morey, Chair, TREC WG3
FROM: Steve Mange, Senior Policy Counsel, NC DOJ
DATE: November 4, 2020
RE: Options to decriminalize marijuana possession

You asked NC DOJ policy staff to spell out some options to decriminalize marijuana possession that TREC WG3 may wish to consider while the issue of marijuana legalization is under study. This memo covers current NC law, decriminalization options for NC, and Virginia's new law. (Thanks to my colleague Greg Sabin for his excellent research assistance.)

CURRENT LAW – NCGS § 90-95(d)(4)

POSSESSION OF UP TO ½ OUNCE OF MARIJUANA

Possession of up to ½ ounce of marijuana is a class 3 misdemeanor (the lowest level misdemeanor), not subject to imprisonment but subject to a fine of up to \$200. Because there is no possibility of imprisonment for this offense, NC is sometimes listed as a state that has already “decriminalized” marijuana.

In 2019, there were 31,287 charges and 8,520 convictions for this offense.
61% of those convicted were nonwhite.

POSSESSION OF MORE THAN ½ OUNCE, UP TO 1.5 OUNCES, OF MARIJUANA

Possession of more than ½ ounce, up to 1 ½ ounces, of marijuana is a class 1 misdemeanor, subject to up to 45 days imprisonment and a \$200 fine.

In 2019, there were 3,422 charges and 1,909 convictions for this offense.
70% of those convicted were nonwhite.

POSSESSION OF MORE THAN 1 ½ OUNCE, UP TO 10 POUNDS, OF MARIJUANA

Possession of more than 1 ½ ounces, up to 10 pounds, of marijuana is a class I felony, subject to up to 8 months in prison and a \$1,000 fine.

In 2019, there were 2,457 charges and 338 convictions for this offense.
66% of those convicted were nonwhite.

OPTIONS TO DECRIMINALIZE MARIJUANA POSSESSION

OPTION A

Under current law, as noted above, possession of up to ½ ounce of marijuana is a class 3 misdemeanor, not subject to imprisonment but subject to a fine of up to \$200.

Option A includes the following:

1. Make it a civil offense with a lower fine rather than a criminal offense;
2. Expunge past convictions for this offense through a future automatic process;
3. Apply the same rules to adults and juveniles; and
4. Ensure robust data collection to measure racial equity during implementation.

Some details to address:

5. Determine amount of fine: Reduce to \$25 (like Virginia), \$100 (like Delaware), \$150 (like Connecticut and Rhode Island) or some other amount?
6. Consider alternatives to fines such as community service.
7. Decide if multiple violations may add up to a criminal offense, or not.

Comment: Option A is similar to the new Virginia law (see appendix). Because NC has already (to some degree) decriminalized possession of up to ½ ounce, this approach might garner legislative support as “another step” in the direction of decriminalization.

OPTION B

Same as Option A, except that Option B would not only cover possession of up to ½ ounce of marijuana (currently a class 3 misdemeanor) but further cover possession of more than ½ ounce and up to 1 ½ ounces of marijuana (currently a class 1 misdemeanor).

OPTION C

Same as Option A, except that Option C would take the bolder step of legalizing rather than decriminalizing up to ½ ounce of marijuana. In other words, it would be neither a criminal offense nor a civil offense to possess up to ½ ounce of marijuana.

Comment: Although this approach is cleaner, clearer, and potentially more impactful than other approaches, it may be more difficult to enact. In addition, experts caution that legalizing possession of even a small amount of marijuana raises tricky policy issues:

- Possession of small amounts becomes legal, but sale is still illegal;
- Need to address whether it is legal to grow, share, or market small amounts;
- Legalizing small amounts may increase pressure to legalize larger amounts quickly, before tough policy issues around legalization have been studied and fleshed out.

APPENDIX: VIRGINIA LAW

OVERVIEW

- Decriminalized simple marijuana possession for personal use.
- **Effective July 1, 2010, possession of less than 1 ounce of marijuana is now a civil penalty punishable by a \$25 fine in Virginia.**
- Previous law: Va. Code § 18.2-250.1(A). Misdemeanor; 30 days in jail; a fine of up to \$500. For a second or subsequent conviction, class 1 misdemeanor sentence is up to one year in jail, a maximum fine of \$2,500, or both.
- Implementation: HB 972 passed through both houses of the state legislature and signed by Gov. Ralph Northam on April 11, 2020. The law took effect July 1, 2020.

ADDITIONAL DETAIL

- These charges may not be included in a person's criminal record, and prior conviction records for simple possession of marijuana are now sealed.
- **Established a working group to study the impact of legalizing the sale and personal use of marijuana in the state.** The group is convened by the Secretaries of Agriculture and Forestry, Finance, Health and Human Resources, and Public Safety and Homeland Security. The report is due on November 30, 2020.
- If a violation occurs while an individual is operating a commercial motor vehicle, such violation shall be reported to the Department of Motor Vehicles and shall be included on such individual's driving record.
- Prohibits employers and educational institutions from requiring an applicant to disclose a violation.
- There is apparently no increase in penalties for subsequent offenses.

HELPFUL LINKS

- Winslow & McCurry, PLLC: [Decriminalization of the Simple Possession of Marijuana in Virginia](#)
- NORML: [Virginia Laws and Penalties](#)
- Virginia's Legislative Information System: [HB 972](#)
- WHSV: [Gov. Northam approves bill to decriminalize marijuana in Virginia](#)
- WUSA9: [Simple possession of marijuana decriminalized in Virginia, prior conviction records now sealed](#)
- Virginia Mercury: [Marijuana is now decriminalized in Virginia. What that means.](#)