

Issue: Marijuana Legalization

Marijuana Legalization in Virginia

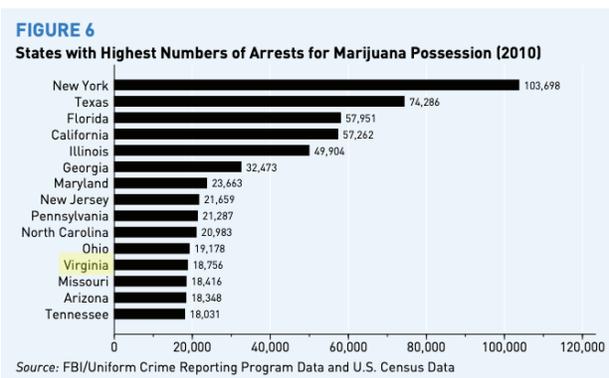
The Problem

The Failed “War on Drugs”

History illustrates the failure of the “war on drugs.” For over four decades, states have enforced draconian drug policies, perpetuating vicious cycles of poverty, addiction, and mass incarceration, while producing little to no reduction in drug usage rates. Today, 2.3 million people are incarcerated in overcrowded state and federal prisons—a 500 percent increase since 1976.¹ Roughly half of federal inmates are serving time for drug offenses, while 16 percent of state prisoners are imprisoned for drug-related crimes.² This war has cost an estimated one trillion dollars.

Increasing Criminalization of Drug Offenders

Despite the trend in 23 states across the country decriminalizing marijuana, Virginia remains out of step in increasingly criminalizing nonviolent drug offenders, particularly for marijuana possession.³ Between 2003 and 2014, annual arrests for marijuana possession in Virginia soared by 76 percent to an all-time high of 22,948.⁴ In 2010, the state was ranked 12th highest in the nation for marijuana possession arrests.⁵



Despite the mounting number of arrests, marijuana use has not decreased. Data from the National Survey on Drug Use and Health indicates that from 2003 to 2011, the percentage of Virginians who had used marijuana at least once per year rose from 9.1 to 9.7.⁶ The absence of a relationship between incarcerating drug offenders and drug usage rates demonstrates that the conventional “tough on crime” strategy is ineffective.

Efforts to Legalize Marijuana

In recent years, many states have begun to recognize that the most effective way to combat substance abuse is to frame the issue as a public health crisis, rather than one involving the criminal justice system. This realization has led state legislators to legalize marijuana for medical and recreational purposes. Currently, recreational marijuana use is legal in ten states and the District of Columbia, while medicinal marijuana use is legal in 33 states.⁷ However, Virginia has lagged behind in this area, and the state will continue to suffer under its misguided drug policies if no action is taken. In order to eliminate cruel punishments, lessen racial disparities, minimize the illegal drug market, and produce significant tax revenue, Virginia must move toward legal and regulated adult use of marijuana.

Excessively Harsh Punishments

Loss of Student Aid

Under current Virginia law, individuals convicted of marijuana possession are subject to severe punishments. One of these harsh penalties is losing eligibility for all federal student aid, a vital tool that expands college access and economic opportunity for millions of students.⁸ For students of low socioeconomic status, this can mean an end to their college careers. Without being eligible for Pell grants, federal student loans, or work-study compensation programs, affording the ballooning cost of postsecondary education may be impossible.

Deportation

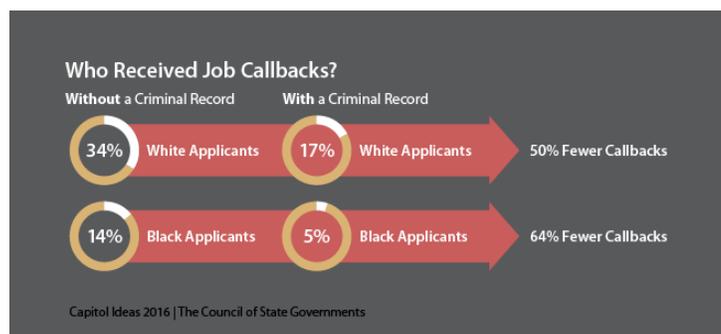
Simple marijuana possession can also amount to a deportable offense for noncitizens and legal permanent residents.⁹ Since 2007, more than 250,000 people have been deported from the U.S. for drug law violations.¹⁰ Given Virginia's sizeable immigrant community, comprising more than 12 percent of the state's population, deportations from marijuana possession have likely torn apart thousands of families.¹¹

Lifetime Welfare Ban

Furthermore, those with criminal convictions can face lifetime bans on welfare benefits and public assistance. For example, Virginia is one of 14 states that completely prohibits individuals with felony-related drug convictions from receiving Temporary Assistance for Needy Families (TANF) benefits, a program that provides cash benefits to impoverished families.¹² TANF plays a critical role in lifting individuals out of deep poverty, as well as facilitating the transition from prison to community living.¹³ Other social services for which a marijuana conviction can render someone ineligible include unemployment insurance, public housing, and home energy assistance.¹⁴ These programs help low-income Virginians afford basic living expenses, feed their families, and stay off the streets.

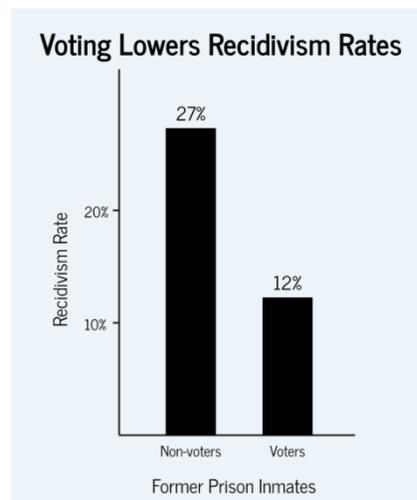
Employment

Not only does a marijuana conviction disqualify people from access to public assistance, but it also affects employability. A 2006 National Institute of Justice study found that white individuals with criminal records are 50 percent less likely to receive a job offer or a callback.¹⁵ Moreover, African American applicants with criminal records are 64 percent less likely to receive job callbacks.¹⁶ Without a meaningful source of income from a job or from welfare, ex-felons are driven into destitution and are more likely to turn to illegal activities to care for themselves and their families. This increases the chances of them returning to prison.



Disenfranchisement

Those with marijuana convictions are pushed to the fringes of society through disenfranchisement. Virginia’s constitution, like three other states, permanently deprives ex-felons of the right to vote unless the governor individually restores this right.¹⁷ Whereas the disenfranchisement of the overall population was 7.5 percent in 2016, 22 percent of the voting-age population of African Americans could not vote that year.¹⁸ Apart from silencing minorities and skewing electoral outcomes, disenfranchisement has an acute impact on recidivism rates. A 2003 study conducted by Christopher Uggen of the University of Minnesota and Jeff Manza of Northwestern University determined that in a large group of former prison inmates, 27 percent of non-voters were rearrested, relative to 12 percent of voters.¹⁹ These findings suggest that political participation dramatically reduces criminal behavior among previously incarcerated individuals. Without being civically engaged, ex-felons slip further through the cracks.



Under any circumstances, these collateral consequences for minor drug offenses—losing a job, student aid, and public benefits—would be difficult to endure. After periods of incarceration, however, they can be even more devastating. Instead of tangibly reducing drug use, these penalties only alienate marijuana users from mainstream employment, healthcare, and education, making it even more difficult for drug offenders to reenter society.

Thriving Black Market

Public Safety Risk

The illegal distribution and sale of marijuana in Virginia poses a large threat to public safety. In 2002, the National Drug Intelligence Center conducted a “Drug Threat Assessment” of Virginia, examining rates of illicit drug abuse and drug trafficking. The report explains that marijuana is first transported into the state from Mexico; then, local criminal groups market and distribute the cannabis.²⁰ These street gangs are often perpetrators of or associated with violent crimes such as “assaults, carjackings, drive-by shootings, home invasions, and homicides.”²¹ In an illegal drug market, marijuana buyers and sellers are susceptible to violence, as disputes cannot be adjudicated in court. Moreover, criminal organizations have a strong incentive to market their products to minors.

Marijuana Potency

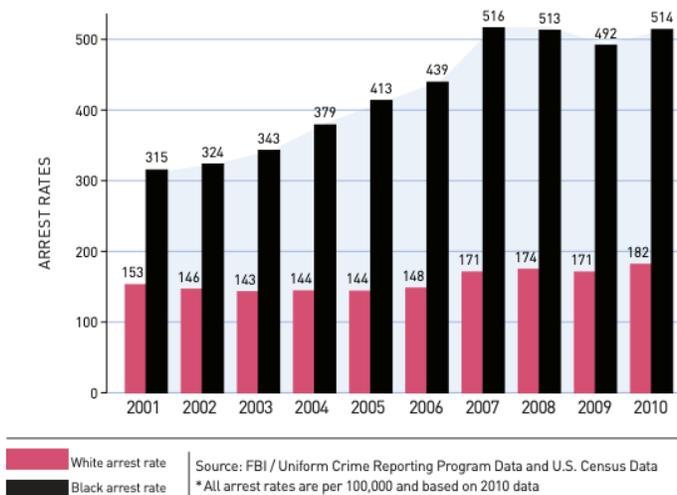
The illegal marijuana that criminal organizations cultivate is more potent than legally grown cannabis and can be laced with other psychoactive drugs.²² By transitioning to a legal market, millions of dollars in profit will flow out of the hands of street gangs, severely weakening their size and influence. Likewise, the quality of cannabis that is legally marketed would be regulated.²³ This new level of transparency would better protect consumer safety, as marijuana users would be able to monitor the content of tetrahydrocannabinol (THC) and cannabidiol (CBD), the two main psychoactive compounds in marijuana.²⁴

Enforcement and Incarceration

Racial Disparities

Marijuana laws are enforced in a racially discriminatory manner such that blacks are apprehended and arrested for drug-related crimes at considerably higher rates than whites, despite relatively similar rates of usage. In Virginia, African Americans are 2.83 times more likely to be arrested than whites for possessing marijuana.²⁵ In counties like Arlington, blacks are 7.8 times more likely to be arrested than whites for possessing marijuana.²⁶ The starkest discrepancy, however, is that marijuana use was 24 percent greater among blacks in 2013, but arrest rates were 233 percent higher for blacks than for white Virginians that same year.²⁷ Evidently, communities of color have borne the brunt of this disproportionate enforcement of marijuana laws. This means that African Americans are more vulnerable to excessively harsh punishments, disenfranchisement, and entanglement in the criminal justice system.

Statewide marijuana possession arrest rates 2001-2010



Waste of Public Resources

Marijuana possession enforcement is very costly, and Virginia continues to expend critical resources without reducing drug use. In fact, the state's police, judicial, and corrections expenditures for marijuana prohibition surpassed \$67 million in 2010.²⁸ According to the Vera Institute of Justice, Virginia has the 17th highest correctional budget in the nation, and the state spends an average of \$25,129 per inmate per year.²⁹ Because of the aggressive enforcement of drug laws, annual spending on state prisons eclipses \$1.5 billion, which costs each Virginian taxpayer roughly \$151 per year.³⁰ Apprehending, and subsequently incarcerating thousands of drug offenders is therefore expensive and an ineffective use of Virginia's limited financial resources.

Cost

Money spent enforcing marijuana possession laws in 2010: **\$67,244,864**

Democratic Attempts to Reform

Democrats in the Virginia House of Delegates have made several efforts to reform the state's outdated marijuana laws. HB 2079³¹ and SB 997³² were introduced this year to decriminalize marijuana use. Instead of punishing marijuana violations by jail time, the bill would have made simple possession a \$50 civil fine. Likewise, HB 2371³³ and HB 2373³⁴, two bills that would have legalized marijuana for people over the age of 21 and imposed a tax on retail marijuana, were considered in the 2019 legislative session. In addition to sponsoring legislation to decriminalize small amounts of marijuana possession, Democrats spearheaded efforts to wipe the slate clean for former prison inmates. HB 1861 would have enabled individuals previously convicted of nonviolent misdemeanors or felonies to request expungement of their criminal records.³⁵ These bills all died in

Republican-led subcommittees. Such action by Republicans to block improvements to Virginia’s marijuana laws is inconsistent with public opinion in the state. Virginia Commonwealth University’s L. Douglas Wilder School of Government and Public Affairs found that 78 percent of Virginians believed in 2016 that possession of marijuana should result in a minor fine, rather than a misdemeanor conviction.³⁶ Likewise, 62 percent of respondents supported legalizing recreational marijuana use.³⁷ House and Senate Republicans are clearly out of touch with their constituents on the issue of marijuana legalization.

Benefits of Taxation

Virginia can gain a substantial amount of tax revenue by regulating and licensing recreational cannabis use. In states with legal marijuana markets, tax revenue has been used to bolster economic development in low-income communities and to expand vital social services in education and healthcare. Below is a list of the respective tax structures and expenditures of various states. By adopting a similar tax policy, Virginia could yield tremendous social benefits.

State	Tax Structure	Sales Totals	Expenditures
Alaska ³⁸	\$50 per-ounce tax growers	\$39.5 million	50 percent to Recidivism Reduction Fund (drug treatment programs, community residential centers) 25 percent to marijuana education 25 percent to general fund
California ³⁹	15 percent excise tax on sales \$9.25 per-ounce tax (marijuana flowers) on growers \$2.75 per-ounce tax (marijuana leaves) on growers License fees from marijuana retailers	\$2.75 billion	Youth substance abuse programs Law enforcement training Investment in low-income areas Restoration of public lands
Colorado ⁴⁰	15 percent excise tax on sales 15 percent sales tax on retail marijuana	\$1.56 billion	Public school fund (school construction, early literacy, bullying prevention, behavioral health)
Maine ⁴¹	10 percent sales tax Per-pound excise tax on growers	\$83.4 million	General fund (enhanced law enforcement training, public health and safety awareness)

Nevada ⁴²	10 percent retail tax 15 percent wholesale tax	\$102.7 million	Rainy day fund Distributive School Account (DSA) Regional homelessness organizations
Oregon ⁴³	17 percent sales tax	\$777.6 million	40 percent to Common School Fund 20 percent to Mental Health Alcoholism and Drug Services 15 percent to State Police 20 percent to cities and counties (enforcement) 5 percent to Oregon Health Authority
Washington ⁴⁴	37 percent excise tax on sales	\$1 billion	25 percent to drug treatment and prevention 55 percent to Washington Healthcare Authority for basic health plans ~30 percent to general fund

¹ <https://www.brennancenter.org/analysis/update-changes-state-imprisonment-rates>

² <https://www.bjs.gov/content/pub/pdf/p13.pdf>

³ <http://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx>

⁴ https://www.drugpolicy.org/sites/default/files/Racial_Disparities_in_Marijuana_Arrests_in_Virginia_2003-2013.pdf

⁵ <https://www.aclu.org/files/assets/aclu-thewaronmarijuana-rel2.pdf>

⁶ See note 3

⁷ <https://disa.com/map-of-marijuana-legality-by-state>

⁸ <https://studentaid.ed.gov/sa/eligibility/criminal-convictions>

⁹ <https://www.uclalawreview.org/pdf/62-2-5.pdf>

¹⁰ <http://www.drugpolicy.org/issues/race-and-drug-war>

¹¹ https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_virginia.pdf

¹² https://scholarscompass.vcu.edu/cgi/viewcontent.cgi?article=1041&context=wilder_pubs

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- ¹³<https://www.clasp.org/sites/default/files/publications/2019/04/2019.03.15%20No%20More%20Double%20Punishments.pdf>
- ¹⁴ <https://www.povertylaw.org/students/criminal>
- ¹⁵ <https://www.journals.uchicago.edu/doi/citedby/10.1086/501089>
- ¹⁶ Ibid
- ¹⁷ <https://www.brennancenter.org/analysis/voting-rights-restoration-efforts-virginia>
- ¹⁸ <https://www.sentencingproject.org/the-facts/#map?dataset-option=SIR>
- ¹⁹ <https://experts.umn.edu/en/publications/voting-and-subsequent-crime-and-arrest-evidence-from-a-community->
- ²⁰ <https://www.justice.gov/archive/ndic/pubs07/797/marijuan.htm>
- ²¹ Ibid
- ²² <https://americanaddictioncenters.org/marijuana-rehab/what-can-marijuana-be-laced-with>
- ²³ <https://www.unodc.org/documents/ungass2016/Contributions/Civil/Transform-Drug-Policy-Foundation/How-to-Regulate-Cannabis-Guide.pdf>
- ²⁴ Ibid
- ²⁵ See note 4
- ²⁶ Ibid
- ²⁷ See note 3
- ²⁸ See note 4
- ²⁹ <https://www.vera.org/publications/price-of-prisons-what-incarceration-costs-taxpayers>
- ³⁰ http://www.justicepolicy.org/uploads/justicepolicy/documents/va_justice_system_expensive_ineffective_and_unfair_final.pdf
- ³¹ <https://lis.virginia.gov/cgi-bin/legp604.exe?191+sum+HB2079>
- ³² <http://lis.virginia.gov/cgi-bin/legp604.exe?191+sum+SB997>
- ³³ <https://lis.virginia.gov/cgi-bin/legp604.exe?191+sum+HB2371>
- ³⁴ <https://lis.virginia.gov/cgi-bin/legp604.exe?191+sum+HB2373>
- ³⁵ <http://lis.virginia.gov/cgi-bin/legp604.exe?191+sum+HB1861>
- ³⁶ <https://bloximages.newyork1.vip.townnews.com/richmond.com/content/tncms/assets/v3/editorial/c/93/c93505e7-4f44-55eb-a2ac-f580692863e5/56aa885b86e8f.pdf.pdf>
- ³⁷ Ibid
- ³⁸ <http://tax.alaska.gov/programs/programs/index.aspx?60000>
- ³⁹ <https://www.mercurynews.com/2019/05/25/where-does-californias-cannabis-tax-money-go/>
- ⁴⁰ <https://www.cde.state.co.us/communications/marijuana-fact-sheet-marijuana-tax-revenue-for-education-after-july-2018>
- ⁴¹ https://legislature.maine.gov/legis/bills/bills_128th/fiscalpdfs/FN171904.pdf
- ⁴² <https://cannabiswire.com/2018/08/08/cannabis-taxes-state-by-state-what-we-know-so-far/>
- ⁴³ <https://www.oregon.gov/olcc/marijuana/Pages/FAQs-Taxes.aspx>
- ⁴⁴ <https://www.king5.com/article/news/local/where-does-washingtons-marijuana-tax-money-go/281-581833195>