

Members

Sen. Brent Steele, Chairperson
Sen. Richard Bray
Sen. James Arnold
Sen. Lindel Hume
Rep. Ralph Foley
Rep. Greg Steuerwald
Rep. Ed DeLaney
Rep. Vernon Smith
Larry Landis
David Powell
Commissioner Bruce Lemon
Greg Server
Don Travis
Hon. Stephen R. Heimann



CRIMINAL LAW AND SENTENCING POLICY STUDY COMMITTEE

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Authority: P.L. 100-2010

MEETING MINUTES¹

Meeting Date: July 28, 2011
Meeting Time: 1:00 P.M.
Meeting Place: State House, 200 W. Washington
St., Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Sen. Brent Steele, Chairperson; Sen. Richard Bray; Sen. Lindel Hume; Rep. Ralph Foley; Rep. Greg Steuerwald; Rep. Vernon Smith; Larry Landis; David Powell; Commissioner Bruce Lemon; Greg Server; Don Travis; Hon. Stephen R. Heimann.

Members Absent: Sen. James Arnold; Rep. Ed DeLaney.

Senator Steele called the meeting to order at 1:15 p.m.

Senator Tallian gave an overview of existing marijuana laws (Exhibit 1).

Daniel Abrahamson, Director of Legal Affairs for the California based Drug Policy Alliance, stated that existing drug laws were punitive drug laws and we need new drug policies that are grounded in science, compassion, health, and human rights.

¹ These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at <http://www.in.gov/legislative> Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies.

Noah Mamber, Legislative Analyst for the Washington, DC, based Marijuana Policy Project, testified that the status quo is unworkable, ineffective, and immoral, and that evidence shows that marijuana prohibition is much more harmful than actual marijuana use, and that, in any case, there is no evidence that marijuana prohibition actually prohibits youths or adults from using marijuana.

Jon Gettman, Ph.D., visiting assistant professor of criminal justice at Schoville University, in Winchester, Va., testified that marijuana policy is his primary area of research, that the value of domestic marijuana production would be high, and that the costs of marijuana laws are also high. He also presented evidence concerning the demographics of marijuana users.

Clark Brattain, M.D., from Bloomington, Ind., testified that one of his patients had benefitted from the use of marijuana to treat myasthenia gravis, a neuromuscular disorder, but that Child Protective Services removed her child from her home due to her use of marijuana. In response to a question from Representative Foley, Dr. Brattain described the amount and quality of THC in medical marijuana.

Steve Dillon, an Indianapolis based criminal defense attorney, testified in favor of reforming Indiana's existing marijuana laws.

Marc Bilodeau, associate professor for economics at IUPUI, testified that legalizing and taxing marijuana would be a more efficient method of reducing both consumption and crime.

Neil Smith, Chairman of the Indiana Chapter of the National Organization for the Reform Marijuana Laws, testified that reforming marijuana laws would benefit the state economically.

Andrew Maternowski, criminal defense attorney, testified that reforming Indiana's marijuana laws would benefit the state.

Chad Padgett, representing Law Enforcement Against Prohibition, testified that marijuana was not dangerous compared to other drugs, and that prohibiting the use of marijuana was not effective.

Jennifer Warner testified that she used marijuana to relieve severe pain due to certain lifelong medical conditions. She stated that she was otherwise a law abiding citizen.

Deb Perish, a nurse, testified that she lost a job due to the results of a drug test while taking a legally prescribed medication that contained a synthetic form of the substance THC, which is found in marijuana.

Dick Huber, M.D., testified that, at least with respect to children, marijuana is harmful, addictive, and a gateway drug.

Bill Levin, representing organizations promoting the use of medical marijuana and the production of industrial hemp, testified in favor of permitting medical marijuana and the cultivation of hemp. Mr. Levin stated that the cultivation of marijuana would provide many economic benefits to the state.

Kimberly Hickman testified on behalf of her family in support of permitting marijuana to be used medically. She testified that her mother, brother, and sister had all benefitted from the use of marijuana in treating illness.

Matthew Frank, owner of the Clear Morning Health Store in Bloomington, testified in favor of reforming marijuana laws. Mr. Frank stated that, as an herbalist and natural health consultant, he was aware of many benefits from the herbs Cannabis Sativa and Cannabis Indica, and that these herbs yield many useful products including food, fuel oil and fiber for textiles. He further stated that the industrial demand for cannabis will soon dwarf all recreational uses. Mr. Frank told the committee that crystalline power drugs, such as methamphetamine and cocaine, were dangerous, but that marijuana was not.

In response to a question from Senator Steele, Mr. Frank testified that marijuana ingested by smoking can be more effective in treating certain conditions than synthetic marijuana taken in pill form. Mr. Dillon also testified that smoking marijuana gave the user better control over the dosage.

Senator Steele adjourned the meeting at 5:00 p.m.

Marijuana Laws

Sentencing Policy Study Committee
July 28, 2011

Categories of Drug Laws

- Possession
- Cultivation
- Sale/Gifting
- Penalties
- Industrial Hemp production
- Medical Use

- Statutes generally relate penalties to amounts
 - 1 ounce / 28.5 grams (approximate weight of 1 pack of cigarettes)
 - 1 pound = 16 ounces = 454 grams
 - 1 Kg = 1,000 grams = 2.2 pounds
- Amounts specified in typical laws break down at various points
 - < 1 ounce
 - 1 ounce
 - 2 or 2.5 ounces
 - 3 -5 ounces
 - Pounds: 1, 2, 10, 100

- Several other issues may affect possession
 - What is done in the privacy of your house vs. what is done in public
 - Medical Possession
 - Possession of live plants vs. processed marijuana
 - Paraphernalia

- Criminal sale of marijuana laws come in 2 general categories
 - Intent to distribute is a felony in most states
 - Some states presume that a certain amount of marijuana in possession automatically qualifies as presumed to be for distribution
- Penalties for Sale
 - States use a range of amounts as the basis for a separation of penalty charges varying between 5 pounds and 2,000 pounds
 - There appears to be no coherent basis for these distinctions
- Similar to the sharing of alcohol, a person can give away marijuana without being regarded as a "retailer"
- Other issues involving Sale/Distribution
 - proximity to schools, parks
 - aggravated circumstances if selling to a minor

- Infractions/ Civil
 - Civil penalties are generally punishable by fines but NO jail time
- Misdemeanor
 - Penalties vary by states
 - Generally allows for both a fine and limited incarceration (less than 1 year)
- Felony
 - Most states have categories of felony convictions, ranging from Class E to Class A (most serious)
 - With each more serious category, comes a higher period of incarceration and higher fine

- **Mandatory Minimum Sentencing**
 - Some states have statutes that require a mandatory minimum period of incarceration, with no discretion by the court
 - Some states have a mandatory suspended sentence for first time possession offenses
- **Multiple offenses**
 - Most states have an automatic "bump up" of the category of crime if the possession or sale is a second or third offense
 - Indiana has a misdemeanor for possession of < 1 ounce, but mandatory felony if it is a second offense

- **Legalization**
 - No state has totally legalized possession of unlimited amounts of marijuana
 - Alaska has legalized small amounts in the home
 - Maine has legalized a usable amount with a recommendation by a physician
- **Infraction/Civil Citation**
 - Several states have adopted a "no jail" system.
 - Adult possession of small amounts being a civil citation only
 - Violations by minors may be subject to different rule.
- **Misdemeanor**
 - Provides for some jail time and a fine
 - Some of the jail sentences are mandatory suspended
 - Many other states do not enforce jail time

State	Amount	Fine/First Offense
Alaska	< 1 ounce in home	No offense
California	< 1 ounce	\$100
Colorado	< 2 ounces	\$100
Maine	< 2.5 ounces	\$350-\$600
Massachusetts	< 1 ounce	\$100
Minnesota	< 2 ounces	\$200
Mississippi	< 1 ounce	\$100-\$250
Nebraska	< 1 ounce	\$300
New York	< 25 grams (approx. 1 ounce)	\$100
Nevada	< 1 ounce	\$600
Ohio	< 100 grams (3.5 ounces)	\$150
Oregon	< 1 ounce	\$500-\$1,000

State	Amount	Jail	Fine
Alaska	1 – 4 ounces	90 days	\$1,000
California	> 1 ounce	6 months	\$500
Colorado	2 – 8 ounces	6 – 18 months	\$500 - \$5,000
Indiana	< 1 ounce	1 year	\$5000
Massachusetts	> 1 ounce	6 months	\$500
Maine	>2.5 ounces < 1 pound	*rebuttable presumption of sale 1 year	\$2,000

State	Amount	Jail	Fine
North Carolina	< ½ an ounce	30 days <small>(intended for use in motor vehicle)</small>	\$200
	½ - 1.5 ounces	120 days	\$500
Nebraska	1 ounce – 1 pound	7 days	\$500
Mississippi	> 1 ounce < 1 ounce in a vehicle (not in trunk)	Felony 90 days	\$1,000
Nevada	Unclear on what a penalty is for > 1 ounce		
New York	1 – 2 ounces	3 months	\$500
Ohio	100 – 1,000 grams (3.5 – 35 ounces)	30 days	\$250 - \$2,500
Oregon	No misdemeanor (either infraction or felony)		

- Some of the states with very liberal laws as to small amounts of possession still carry very large penalties for larger amounts of possession
 - For example, 11 pounds can carry jail time of up to 30 years in Mississippi and close to that time in Minnesota
 - Four times that much will carry only 8 years in Ohio
 - In some states there is no felony charge for simple possession without showing an intent to distribute

State	Amount	Jail	Fine
Alaska	> 4 ounces	5 years	\$50,000
California	No felony for possession		
Colorado	> 8 ounces	1 – 3 years	\$500 - \$5,000
Indiana	> 1 ounce	6 months – 3 years	\$10,000
Massachusetts	No felony for possession		
Maine	> 2.5 ounces 1 – 20 pounds > 20 pounds	= presumption of sale 5 years 10 years	\$5,000
Massachusetts	30 – 250 grams 250 – 500 grams 500 g – 5 kg > 5 kg (approx. 11 pounds)	3 years 2 – 8 years 6 – 24 years	\$3,000

State	Amount	Jail	Fine
Minnesota	2 ounces – 10 kg 10 – 50 kg (4 – 20 pounds)	5 years 20 years	\$10,000 \$250,000
North Carolina	> 1.5 ounce	1 year	Discretionary
Nebraska	> 1 pound	5 years	\$10,000
Nevada	< 1 ounce/4 th offense	1 – 4 years	\$5,000
New York	2 – 8 ounces 2 nd offense	1 year 3 – 4 years	\$1,000 \$5,000
Ohio	1,000 – 5,000 grams 5,000 – 20,000 grams > 20,000 grams (approx. 44 pounds)	1 – 5 years 1 – 5 years 8 years	\$10,000 \$5,000 - \$10,000 \$7,500 - \$15,000
Oregon	1 ounce – 110 grams (1/4 pound)	10 years	\$100,000

A complete guide to the status of all states' drug laws can be found at www.normla.org

Indiana Drug Laws

Amount	Classification	Jail	Fine
30 grams or less	Misdemeanor	1 year*	\$5,000
More than 30 grams	Misdemeanor or felony	6 months – 2 years	\$10,000
*Use other conviction discharge or trial offense			
Amount	Classification	Jail	Fine
30 grams or less	Misdemeanor	1 year	\$5,000
30 grams to 10 pounds	Felony	6 months – 2 years	\$10,000
10 pounds or more	Felony	2 – 8 years	\$10,000
Sale within 1,000 feet of school or other specified area	Felony	2 – 8 years	\$10,000
Sale to minor	Felony	6 months – 2 years	\$10,000
Amount	Classification	Jail	Fine
Paraphernalia possession (first offense)	Civil fine	None	\$10,000
Paraphernalia possession: sale (subsequent offense)	Felony	6 months – 2 years	\$10,000
Present where knowledge of drug activity occurs	Misdemeanor	6 months	\$1,000

- *Conditional release**
 - Indiana allows conditional release, alternative or diversion sentencing for people facing their first prosecutions
- *Drugged driving**
 - In Indiana, a person is guilty of DUI if he or she operates a vehicle while a controlled substance or its metabolite is present in the person's body
- *Marijuana tax stamps**
 - Indiana law mandates that those who possess marijuana are legally required to purchase and affix state-issued stamps onto his or her contraband
 - Failure to do so may result in a fine and/or criminal sanction
- *Drivers License**
 - Possession, sale or distribution conviction causes drivers license suspension for six months to two years

- Industrial Hemp v. Marijuana**
 - Hemp can be characterized as a Cannabis plant with a very low THC content
 - Hawaii, North Dakota and Montana legislation define industrial hemp as "marijuana that contains .3% or less of THC"
 - West Virginia uses a standard of .1% or less of THC
- Hemp is characterized as the soft, durable fiber cultivated from a Cannabis plant
- Industrial uses for hemp include chemicals, fiber, textiles, paper, rope, fuels, plastic, food

- "Hemp" is not a term found in federal law
 - However, if the product causes THC to enter the body it is a controlled substance and therefore illegal
 - If it does not cause THC to enter the body it is an uncontrolled substance and may be manufactured and sold in the United States
- Various states have authorized studies of the hemp industry and economic development- either privately funded or state subsidized.
 - Kentucky, Illinois, North Dakota, Colorado, Arkansas, Minnesota, Virginia, Maine, North Carolina, New Mexico, Maryland
- Typically, states ask for:
 - Clarification or definitions of industrial hemp
 - State domestic production
 - Licensing of producers
 - Marketing

- In 1996, California became the first state to authorize medical use of marijuana.
- Since that time, 15 more states and D.C. have authorized the medical use of marijuana.

	Patient Registry	Medical Purpose as a defense against prosecution	May not provide means for a patient to legally obtain	Dispensary systems and laws regulating distribution
AL	X		X	
AZ	X			X
CA	X			X
CO	X	X		X
D.C.	X			X
DE	X	X		X
HA	X		X	
MD		X	X	

	Patient Registry	Medical Purpose as a defense against prosecution	May not provide means for a patient to legally obtain	Dispensary systems and laws regulating distribution
ME	X	X		X
MI	X	X	X	
MT	X			
NV	X	X	X	
NJ	X			X
NM	X			X
OR	X	X	X	
RI	X	X		X
VT	X		X	
WA		X	X	

- Controlled Substances Act
 - Marijuana is a schedule 1 substance
 - All schedule 1 substances are considered to be "non-medically useful" and therefore prescription is not allowed
- In 2009, the Obama Administration sent a memo to federal prosecutors encouraging them not to prosecute people who distribute marijuana for medical purposes in accord with state law
- However, on 7/1/2011, the US Department of Justice issued a statement indicating that persons cultivating, selling or distributing marijuana are in violation of the Controlled Substances Act, despite state law and "could face prosecution"

- Indiana Penalties and Law
 - Number of prosecutions each year
- Economics of Marijuana Prosecutions in Indiana
 - Costs of a misdemeanor prosecution
 - Costs of jail time
- Medical Marijuana Update
 - Uses
 - Studies

- Historical Perspective
 - Initial "criminalization"
 - Demonization of marijuana
 - Attempts to decriminalize at the federal level under Nixon
- Policy and Reason for Prosecution
 - Punish or prevent
 - Alcohol vs. Marijuana
 - Marijuana statistics remain the same after 40 years
 - Outcomes in other countries and states