

marihuana: a signal of misunderstanding

First Report
of the ^{US} National
Commission on
Marihuana and
Drug Abuse

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No major change is required in existing law to achieve all of these benefits. In general, we recommend only a decriminalization of possession of marihuana for personal use on both the state and federal levels. The major features of the recommended scheme are that: production and distribution of the drug would remain criminal activities as would possession with intent to distribute commercially; marihuana would be contraband subject to confiscation in public places; and criminal sanctions would be withdrawn from private use and possession incident to such use, but, at the state level, fines would be imposed for use in public.*

Specifically, we recommend the following statutory schemes.

RECOMMENDATIONS FOR FEDERAL LAW

Under the Comprehensive Drug Abuse Prevention and Control Act of 1970, Congress provided the following scheme with respect to marihuana, by which was meant only the natural plant and its various parts, not the synthetic tetrahydrocannabinol (THC):

- Cultivation, importation and exportation, and sale or distribution for profit of marihuana are all felonies punishable by imprisonment for up to five years for a first offense and by up to 10 years for a second offense (the available penalty is doubled for sale to a minor).
- Possession of marihuana with intent to distribute is a felony punishable by imprisonment for up to five years for the first offense and by up to 10 years for a second offense.
- Possession of marihuana for personal use is a misdemeanor punishable by up to one year in jail and a \$1,000 fine for first offense and by up to two years in jail and a \$2,000 fine for second offense (expungement of criminal record is available for first offenders).

*Commissioners Rogers, Congressman from Florida, and Carter, Congressman from Kentucky, agree with the Commission's selection of a discouragement policy and also agree that criminalization and incarceration of individuals for possessing marihuana for their own use is neither necessary nor desirable as a means of implementing that policy.

At the same time, both Commissioners feel that the contraband concept is not a sufficiently strong expression of social disapprobation and would recommend in addition a civil fine for possession of any amount of marihuana in private or in public.

Both Commissioners feel that the civil fine clearly symbolizes societal disapproval and is a simple mechanism for law enforcement authorities to carry out. If a person is found by a law enforcement officer to be in possession of marihuana, the officer would issue such person a summons to appear in court on a fixed day. Although a warrant would not issue for search of a private residence unless there were probable cause to believe a *criminal* offense was being committed, a police officer legitimately present for other reasons could issue a civil summons for violation of the "possession" proscription.

- Transfer of a small amount of marihuana for no remuneration is a misdemeanor punishable by up to one year in jail and a \$1,000 fine for first offense and by up to two years in jail and a \$2,000 fine for second offense (Congress singled out marihuana in this way to allow misdemeanor treatment of casual transfers and permitted first offender treatment, as allowed for possession for personal use).

The Commission recommends *only* the following changes in federal law:

- POSSESSION OF MARIHUANA FOR PERSONAL USE WOULD NO LONGER BE AN OFFENSE, BUT MARIHUANA POSSESSED IN PUBLIC WOULD REMAIN CONTRABAND SUBJECT TO SUMMARY SEIZURE AND FORFEITURE.
- CASUAL DISTRIBUTION OF SMALL AMOUNTS OF MARIHUANA FOR NO REMUNERATION, OR INSIGNIFICANT REMUNERATION NOT INVOLVING PROFIT WOULD NO LONGER BE AN OFFENSE.

The Commission further recommends that federal law be supplemented to provide:

- A PLEA OF MARIHUANA INTOXICATION SHALL NOT BE A DEFENSE TO ANY CRIMINAL ACT COMMITTED UNDER ITS INFLUENCE, NOR SHALL PROOF OF SUCH INTOXICATION CONSTITUTE A NEGATION OF SPECIFIC INTENT.

Commissioners Rogers and Carter believe that the legal system must be utilized directly to discourage *the person* from using marihuana rather than being utilized only indirectly as in the case of contraband.

This civil fine would not be reflected in a police record, nor would it be considered a criminal act for purposes of future job consideration, either in the private sector or for government service.

Agreeing with the other Commissioners that the casual transfers of marihuana for no profit should be treated in the same manner as possession for one's own use, Congressmen Rogers and Carter do not agree that it should extend to transfers involving remuneration. They prefer the limiting language of the Comprehensive Drug Abuse Prevention and Control Act of 1970 which does not include the term "or insignificant remuneration not involving a profit."

Apart from the addition of the civil fine to the contraband recommendation in the respects set out above, Congressmen Carter and Rogers are in complete agreement with the statutory recommendations set out in the Report.

Commissioner Ware concurs completely with the statements made by Congressmen Rogers and Carter but wishes to reemphasize that the social policy and legal scheme adopted is applicable only to marihuana and should not be construed to embrace other psychoactive drugs. The policy set forth in this Report, subject to the already noted comments of the two Congressional Commissioners, makes sense for marihuana on the basis of what is known about the drug and in the absence of any conclusive showing which would verify