ACLU
AMERICAN CIVIL LIBERTIES UNION of MASSACHUSETTS

On Marijuana Decriminalization in Massachusetts: The Voters Have Spoken

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On November 4, 2008, Massachusetts voters overwhelmingly supported the removal of criminal penalties for possession of a small amount of marijuana. Question 2 passed 65% to 35%. In politics, 65% is a landslide.

The voters made clear that they want possession of an ounce or less of marijuana to be treated not as a crime, but rather as a civil violation carrying a $100 fine. Eleven other states, including Maine and New York, already treat minor marijuana infractions this way, and they have experienced no increase in marijuana use, no increase in marijuana-related crime, and no increase in juvenile use.

Massachusetts voters agreed that our state should stop spending over $29.5 million a year on the arrest and booking of individuals caught possessing a small amount of marijuana. Voters recognized that enacting Question 2 would help our cities and towns redirect law enforcement and court resources to violent and more serious crimes.

The voters understood that criminally charging people who possess a small amount of marijuana—usually young people and people of color are targeted—causes unreasonable, unintended consequences that often last a lifetime, such as an arrest record, lost job opportunities, denial of student financial aid and access to positive opportunities.

Voters also made the point that talking to our kids is better than busting them for simple possession. Under the new law, anyone under the age of 18 caught with a small amount of marijuana has a citation delivered to his or her parents so that the family is immediately involved. In addition to paying the fine, juveniles must complete a drug awareness program and perform ten hours of community service.

The new law has been implemented across Massachusetts. Police officers have enforced it according to the system mandated by Question 2 for issuing civil citations and fines, which go to the municipality. Court and law enforcement resources have not been wasted, and persons cited for that civil offense have not been tagged with a criminal record. These are huge savings for Massachusetts—in dollars and justice.

However, some cities and towns, after the passage of Question 2 and during the time that the law has been implemented, have enacted local ordinances or bylaws that punish the public use of marijuana. Those ordinances carry penalties far greater than the $100 civil fine approved by the voters and in effect seek to recriminalize possession of a small amount of marijuana.

The American Civil Liberties Union of Massachusetts opposes the enactment of these local marijuana laws.

Such a law is fundamentally anti-democratic and contrary to the will and intent of the voters. With a 65% vote, the electorate spoke loudly and clearly in favor of decriminalizing possession of an ounce or less of marijuana. Opponents of the Question 2 ballot question have promoted local marijuana laws. They are seeking to use local ordinances and bylaws as a way to recriminalize marijuana and to stigmatize users. They want to overturn the judgment made at the polls and reject the clear direction that the voters approved.

The voters have clearly said that Massachusetts courts should not be dealing with cases involving small amounts of marijuana. But a local ordinance would re-involve the district courts and the police in cases involving only small amounts of marijuana. Most municipal by-laws or ordinances are criminal misdemeanors. They carry a fine of up to $300. Alleged violators could well be back in court, with all the personnel and processes that courts require, including, for example, prosecutors and defense lawyers, motions to dismiss and motions to suppress brought after clerk magistrate hearings.

An ordinance or by-law directed at small amounts of marijuana would put heavy, unjustifiable financial and other burdens on the court system. To prosecute a small amount of marijuana as a crime is a wasteful and expensive system. Cases involving small amounts of marijuana, again, could well require police officers' presence in district courts (often on overtime) instead of on the streets. In addition, recent court decisions have held that a certificate from the state crime laboratory is not admissible as evidence in a drug case but rather a chemist from the state lab must appear to testify concerning the analysis of the alleged substance. In contrast, today, under Question 2 people who receive a citation for marijuana possession typically pay the $100 civil fine, a simple and efficient system that recriminalization would undermine. While cases might (or might not) ultimately be converted to a civil infraction, why would localities want to return to the impractical, wasteful, unjust pre-Question 2 days?

Such an ordinance is completely unnecessary and serves no legitimate purpose. Question 2 has been in effect for over a year. The reality is this: the new law has not created significant problems. There simply has not been an outbreak of public marijuana use. The civil penalties in place under Question 2 are more than sufficient to meet communities' legitimate public health and safety goals and deter public use. There is no need or legitimate purpose served in passing a local ordinance to deal with a non-existent "problem."

There is no need for a public consumption ordinance for a substance that is already illegal. Proponents argue that cities and towns have ordinances prohibiting the public consumption of alcohol, so why not marijuana? The reason is that alcohol is legal so that absent such an ordinance, people could legally drink on the street or anywhere else. In contrast, the state law already subjects a person to a fine for possession (and therefore use) of marijuana whether in public or private, as well as confiscation of the marijuana. Special ordinances are unnecessary.

Such an ordinance is an invitation to discriminatory law enforcement. This is an unfortunate but true law enforcement fact. Local marijuana laws can become another of the "crimes" with disparate enforcement, like driving or walking while black, brown, or young.

Such an ordinance distorts law enforcement priorities. The Question 2 vote to decriminalize demonstrates that the public strongly favors a policy of having police put their energies and efforts into preventing and solving serious crimes and not into marijuana prohibition enforcement. A public consumption ordinance would direct the opposite. Its enforcement would be a misuse of scarce resources, expending police, court and other resources on solving a non-problem, a non-crime.

All these points would apply with equal force to a strictly civil ordinance. The cases would still go to district court where, as noted, the same legal issues would remain.

For many of these reasons, most municipalities have not adopted such ordinances. Between 75–80% of the towns and cities in Massachusetts have not passed any such local law. They've declined to reject the voters' overwhelming and very sound judgment that possession of a small amount of marijuana should be de-criminalized and de-emphasized as a law enforcement activity.