

An Argument Against Increasing the
Maximum Penalty for Marijuana Possession
in Virginia

A report from Virginia NORML
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Executive Summary: An Argument Against Increasing the Penalty for Marijuana Possession in Virginia

House Bill 737, introduced on January 10, 2006 by Delegate Sal R. Iaquinto, is a bill before Virginia's General Assembly to raise the maximum penalties for marijuana possession. The maximum jail term is currently 30 days; HB 737 will raise the maximum to 12 months. The current maximum fine is \$500; HB 737 increases the maximum fine to \$2,500. Under existing law a juvenile convicted of possession will also have their driving privileges suspended for six months; under HB 737 this suspension will be increased to one year.

The Virginia Department of Planning and Budget has already reported that HB 737 will result in increased expenditures for both state and local governments. "The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (FY 2004), the estimated total state support for local jails averaged \$26.03 per inmate, per day in FY 2004." (Virginia Department of Planning and Budget, Impact Statement - HB737, Jan. 25, 2006.)

HB 737 should be opposed because Virginia's jails are already overcrowded. The bill will divert tax revenue from other priorities, this bill will result in more trials and other judicial costs, and it will result in more young men spending more time in jail with serious criminal offenders.

This collection includes the following data and information.

Section 1 compares marijuana use in Virginia to overall use in the United States and use in Virginia. Compared to the rest of the country marijuana use in Virginia is relatively moderate, for example annual use

(9.69%) is lower than the national average (10.78%).

Section 2 compares marijuana use in Virginia to use in states with penalties similar to Virginia's current penalties and with states with penalties similar to the proposed penalties of HB 737. Virginia's prevalence of annual use is also lower than the average of states with similar penalties (11.21%) and states with 12 month maximums as proposed by HB 737 (10.74%).

Section 3 provides excerpts from various reviews of research data on the relationship of jail sentences and penalties to local levels of marijuana use, effectively summarized by this comment from the National Research Council: "In general, research on the relation between perceived risk of detection and punishment and self-reported drug use tends to show that perceived legal risk explains very little of the variance in drug use."

Section 4 presents excerpts from a 2001 article in the National Review by the magazine's editor Rich Lowry. A graduate of the University of Virginia, Lowry examines the state of scientific research on marijuana's effects and concludes that the risks of marijuana use do not justify criminal penalties. Lowry is also critical of politicians who advocate harsh penalties for marijuana possession but "are always so eager to deny that anyone ever goes to prison for it. . ."

According to a 1997 Bureau of Justice Statistics (BJS) survey of Federal and state prisoners approximately 19% of Federal and 13% of state drug offenders were incarcerated for a marijuana-related offense.

Virginia jail capacity and overcrowding is

reviewed in Section 5, and Appendix 3 contains data on the capacity and population of each local jail. Virginia's local jails are already overcrowded; we simply do not have the jail space available to accommodate increased jail terms for marijuana possession. According to the State Compensation Board, for example, in 2004 local jails were operating at 162% of capacity. Virginia's limited jail space should not be further limited by an increase in the penalty for marijuana possession.

The daily costs of running Virginia's local jails are presented in Section 6, and Appendix 4 contains data on the costs of each local jail. According to the State Compensation Board the average daily cost of keeping an inmate in jail is \$54.81, which amounts to \$1,645 per month and \$20,000 a year. HB 737 increases the cost to taxpayers of the maximum jail term for marijuana possession from \$1,645 to \$20,000. While the state pays on average 48% the bulk of the remaining costs fall on local jurisdictions. Furthermore the total (local state, federal, and other combined) cost per inmate day varies widely from a low of \$34.79 at the Newport News city jail to a high of \$199.90 at the Lee county facility. Our government has recently had to increase taxes in order to fulfill its current responsibilities and obligations. Virginia can't afford to spend more money on sending people to jail for marijuana possession when it has so many other pressing needs within the criminal justice system and in other areas, such as education and transportation.

Virginia has frequently devoted attention to reducing court appearances for non-traffic misdemeanor offenses, and this effort is discussed in Section 7 with regard to current penalties for marijuana possession.

Marijuana arrests already consume a significant proportion of criminal justice resources and have a disparate impact on

young males and minorities in Virginia. Section 8 reports on Virginia's 13,000 marijuana arrests in 2003, including arrest rates in Virginia's counties and cities. Section 8 also reviews data on the arrest rates of young males and minorities. Males account for 86% of these arrests. Over half of those arrested for marijuana possession in Virginia are under the age of 30, and one third are under the age of 25. Longer sentences for marijuana possession will send more young men to jail for longer period of time, and this also means that these young men will spend longer periods of time in the company of more serious offenders. While minorities are not over-represented in state level arrest data there are many locations in Virginia where minorities are a far larger proportion of marijuana possession arrests than their proportion of the local population.

The use of marijuana by adolescents remains a public health issue in Virginia and the rest of the United States, but it is not a problem that can be successfully addressed by increasing the penalties for marijuana possession. In general, marijuana use in Virginia is lower, not higher, than states with more severe penalties. Research consistently reports that severe penalties do not effectively deter marijuana use.

Virginia's local jails, where most marijuana possession sentences are served, are already overcrowded. HB 737 will increase sentences for marijuana possession, and this will increase costs without providing comparable benefits, such as reductions in marijuana use. Many of these increased costs will fall on local governments, and as noted above the local cost of adding inmates to local jails varies widely from place to place.

In conclusion, increasing the maximum penalty for marijuana possession in Virginia is unnecessary, too expensive, and counter-productive.

1. Marijuana Use in Virginia

Marijuana use has been tracked for decades by national surveys conducted by the Substance Abuse and Mental Health Services Administration (SAMHSA) of the Department of Health and Human Services.

Among the most recent changes to this survey program have been improvements in the response rate and the expansion of the survey to provide state-level estimates of drug and alcohol use. These state level prevalence estimates are based on smaller samples and different statistical models than the national prevalence estimates, and are generally based on multiple years of survey data.

In the most recent National Survey on Drug Use and Health (NSDUH) the prevalence of marijuana use in the past month (5.96%) was slightly lower than the national estimate (6.18%), and annual use in Virginia (9.69%) was also lower than nationally (10.78%).

However in the key demographic group Age 12–17 marijuana use in Virginia was slightly higher than nationally, for example monthly use in Virginia was at 8.43% of the 12 to 17 age group while nationally 8.03% of this group used marijuana in the past month.

According to the NSDUH there are about 50,000 monthly marijuana users between the ages of 12 and 17 in Virginia, and about 349,000 monthly users overall. NSDUH estimates about 93,000 annual users in the 12 to 17 age group in Virginia, and about 568,000 annual users overall.

Marijuana use in Virginia is no more and no less a problem than it is throughout the United States.

Table 1. Marijuana Use in Virginia and the United States (2003)

Source: NSDUH, SAMHSA

	<u>Monthly</u>	
	<u>Virginia</u>	<u>United States</u>
Age 12-17	8.43%	8.03%
Age 18-25	17.70%	17.17%
Age 26 +	3.73%	4.01%
Total	5.96%	6.18%
	<u>Annual</u>	
	<u>Virginia</u>	<u>United States</u>
Age 12-17	15.47%	15.38%
Age 18-25	29.57%	29.13%
Age 26 +	5.68%	6.95%
Total	9.69%	10.78%

Figure 1. Monthly Marijuana Use (2003)

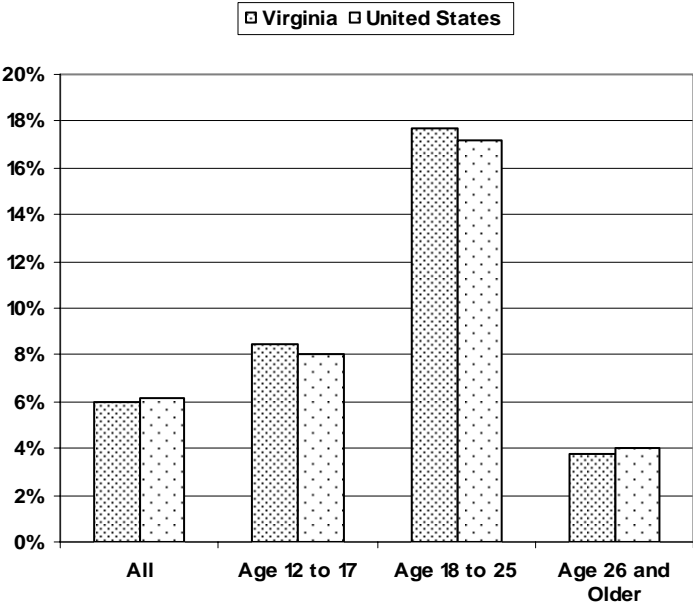
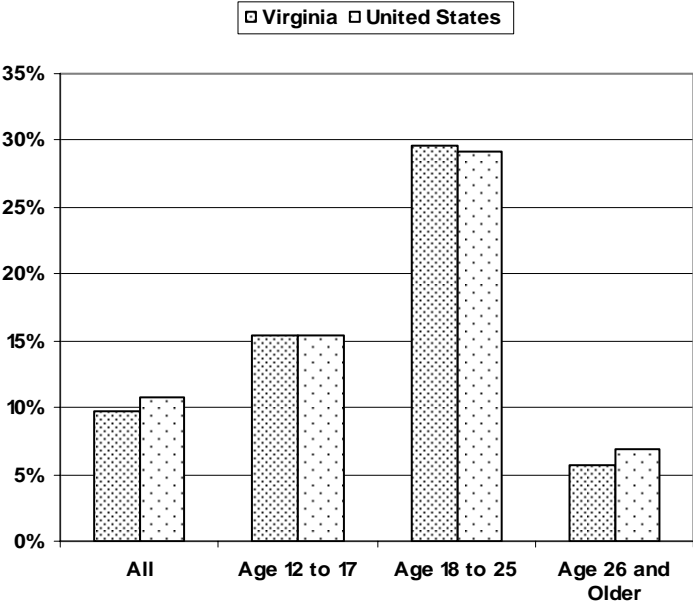


Figure 2. Annual Marijuana Use (2003)



Source: National Survey on Drug Use and Health (NSDUH), Substance Abuse and Mental Health Services Administration, 2003.

2. Penalties and Marijuana Use in Various States

While prohibition on the sale and use of marijuana is a national policy, enforcement of marijuana possession laws is primarily a state and local responsibility. Widespread availability of marijuana, though, is a consequence of a national, albeit illicit, market. The persistence of this national market ensures that marijuana is widely available throughout the United States regardless of the severity of local penalties.

Appendix 1 contains the maximum penalties, for possession of 1 ounce of marijuana for every state along with NSDUH data on the prevalence of monthly and annual marijuana use.

According to the National Organization for the Reform of Marijuana Laws (NORML) 20 states provide a maximum penalty of 12 months for possession of 1 ounce of marijuana (1). The maximum penalty for possession in Virginia is 30 days, and there are 11 other states with similar or lesser maximum penalties (2).

- Monthly marijuana use in Virginia (5.96%) is lower than the average of monthly marijuana use in the 11 states with similar or lesser maximum penalties (6.61%).
- Monthly marijuana use in Virginia (5.96%) is also lower than the average of monthly marijuana use in the 20 states with 12 month maximum penalties (6.60%).
- Annual marijuana use in Virginia (9.69%) is lower than the average of annual marijuana use in the 11 states with similar or lesser maximum penalties (11.21%).

Table 2. Average Prevalence of Marijuana Use in States with Different Marijuana Possession Penalties Compared with Prevalence in Virginia (2003)

Source: NSDUH, SAMHSA; NORML

	<u>Monthly Use</u>		
	<u>1 month</u>	<u>VA</u>	<u>12 month</u>
Age 12-17	8.75%	8.43%	8.20%
Age 18-25	17.88%	17.70%	17.10%
Age 26 +	4.34%	3.73%	3.77%
Total	6.61%	5.96%	6.60%

	<u>Annual Use</u>		
	<u>1 month</u>	<u>VA</u>	<u>12 month</u>
Age 12-17	16.35%	15.47%	15.62%
Age 18-25	30.24%	29.57%	29.81%
Age 26 +	7.17%	5.68%	6.59%
Total	11.21%	9.69%	10.74%

- Annual marijuana use in Virginia (9.69%) is lower than the average of monthly marijuana use in the 11 states with similar or lesser maximum penalties (10.74%)

(1) States with maximum penalties of 12 months: Alabama, Arkansas, Connecticut, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Maryland, Michigan, Missouri, New Hampshire, North Dakota, Oklahoma, Rhode Island, South Dakota, Utah, and Wyoming.

(2) States with maximum penalties of 1 month or less: California, Colorado, Maine, Minnesota, Mississippi, Nebraska, Nevada, Ohio, New Mexico, Pennsylvania, and South Carolina.

Figure 3. Average Monthly Marijuana Use, by maximum penalty for possession 1 oz. (2003)

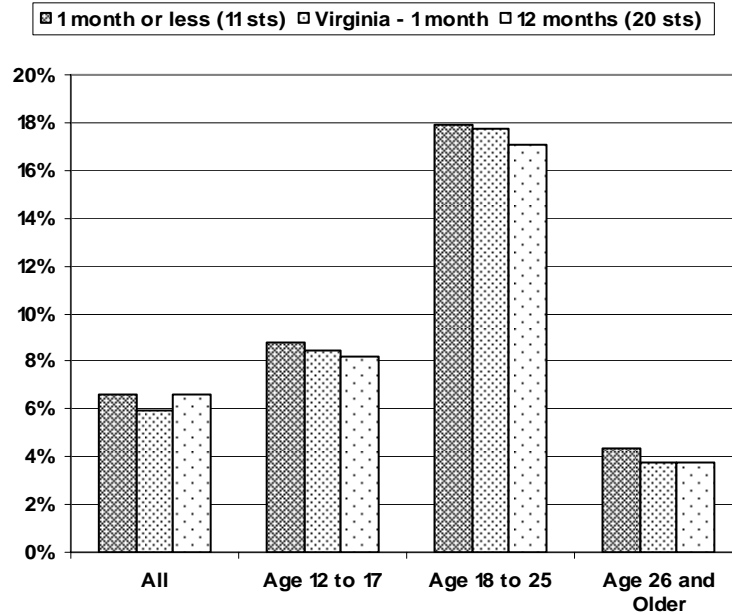
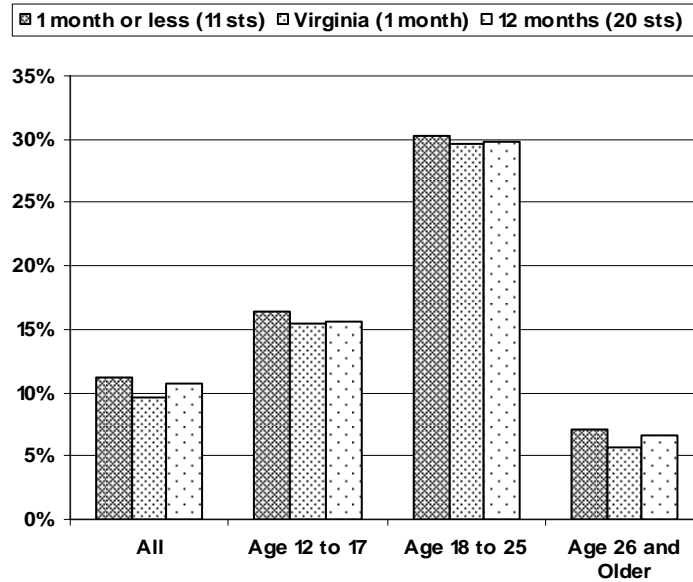


Figure 4. Average Annual Marijuana Use, by max. penalty for possession of 1 oz.(2003)



Sources: National Survey on Drug Use and Health (NSDUH), Substance Abuse and Mental Health Services Administration (SAMHSA), 2003; National Organization for the Reform of Marijuana Laws (NORML).

3. Research on Penalties and Marijuana Use

The National Research Council on Sanctions Against Illegal Drug Users:

“[E]xisting research seems to indicate that there is little apparent relationship between severity of sanctions prescribed for drug use and prevalence or frequency of use, and that perceived legal risk explains very little in the variance of individual drug use. . .”

“In general, research on the relation between perceived risk of detection and punishment and self-reported drug use tends to show that perceived legal risk explains very little of the variance in drug use (MacCoun, 1993). Similarly, studies of the relation between prevalence of drug use and variations in legal penalties for drug use tend to find no relationship. For example, Chaloupka et al. (1998) found, using the Monitoring the Future survey data from 1982 and 1989, that variations in length of prison terms prescribed by state law were unrelated to prevalence or frequency of cocaine or marijuana use by high school seniors. They also found that substantial increases in prescribed fines would have little or no effect. These findings are unsurprising because, under present enforcement conditions, the deterrent effect of criminal sanctions against drug use is attenuated significantly by the low probability of detection for any given violation and even for repeated violations. Other factors, including the perceived benefits of drug use, fear of health-related risks, and informal social controls, may have a more significant influence on decisions about using drugs than legal deterrence. As in the case of underage alcohol and tobacco use, current enforcement may have a stronger effect on where people carry or use drugs, rather than on whether they do so.”

Source: National Research Council. (2001) *Informing America's Policy on Illegal Drugs: What We Don't Know Keeps Hurting Us*. Charles F.Manski, John V.Pepper, and Carol V.Petrie, editors. Chapter 6. Sanctions Against Users of Illegal Drug . This book may be viewed on line at the National Academy Press: <http://www.nap.edu/books/0309072735/html>

The National Organization for the Reform of Marijuana Laws (NORML)
on Marijuana Decriminalization and its Impact on Use:

Findings from dozens of government-commissioned and academic studies published over the past 25 years overwhelmingly affirm that liberalizing marijuana penalties *does not* lead to an increase in marijuana consumption or affect adolescent attitudes toward drug use.

Since 1973, 12 state legislatures -- Alaska, California, Colorado, Maine, Minnesota, Mississippi, Nebraska, Nevada, New York, North Carolina, Ohio and Oregon -- have enacted versions of marijuana decriminalization. In each of these states, marijuana users no longer face jail time (nor in most cases, arrest or criminal records) for the possession or use of small amounts of marijuana. Internationally, many states and nations have enacted similar policies.

The following studies examine these decriminalization policies and their impact on marijuana use.

"In sum, there is little evidence that decriminalization of marijuana use necessarily leads to a substantial increase in marijuana use." - National Academy of Sciences, Institute of Medicine (IOM). 1999. *Marijuana and Medicine: Assessing the Science Base*. National Academy Press: Washington, D.C., 102.

"The Law Revision Commission has examined laws from other states that have reduced penalties for small amounts of marijuana and the impact of those laws in those states. ... Studies of [those] states found (1) expenses for arrest and prosecution of marijuana possession offenses were significantly reduced, (2) any increase in the use of marijuana in those states was less than increased use in those states that did not decrease their penalties and the largest proportionate increase occurred in those states with the most severe penalties, and (3) **reducing the penalties for marijuana has virtually no effect on either choice or frequency of the use of alcohol or illegal 'harder' drugs such as cocaine.**" - Connecticut Law Review Commission. 1997. *Drug Policy in Connecticut and Strategy Options: Report to the Judiciary Committee of the Connecticut General Assembly*. State Capitol: Hartford.

"There is no strong evidence that decriminalization affects either the choice or frequency of use of drugs, either legal (alcohol) or illegal (marijuana and cocaine)." - C. Thies and C. Register. 1993. *Decriminalization of Marijuana and the Demand for Alcohol, Marijuana and Cocaine*. *The Social Sciences Journal* 30: 385-399.

"In contrast with marijuana use, rates of other illicit drug use among ER [emergency room] patients were substantially higher in states that did not decriminalize marijuana use. The lack of decriminalization might have encouraged greater use of drugs that are even more dangerous than marijuana." - K. Model. 1993. The effect of marijuana decriminalization on hospital emergency room episodes: 1975-1978. *Journal of the American Statistical Association* 88: 737-747, as cited by the National Academy of Sciences, Institute of Medicine in *Marijuana and Medicine: Assessing the Science Base*.

4. Conservative Commentary from the National Review

Excerpts from WEED WHACKERS, By Rich Lowry, Editor of the National Review

"[I]t makes little sense to send people to jail for using a drug that, in terms of its harmfulness, should be categorized somewhere between alcohol and tobacco on one hand and caffeine on the other. According to common estimates, alcohol and tobacco kill hundreds of thousands of people a year. In contrast, there is as a practical matter no such thing as a lethal overdose of marijuana. . . There are about 700,000 marijuana arrests in the United States every year, roughly 80 percent for possession. Drug warriors have a strange relationship with these laws: They dispute the idea that anyone ever actually goes to prison for mere possession, but at the same time resist any suggestion that laws providing for exactly that should be struck from the books. .

"The relationship between drugs and troubled teens appears to be the opposite of that posited by drug warriors -- the trouble comes first, then the drugs (or, in other words, it's the kid, not the substance, who is the problem). The Institute of Medicine reports that "it is more likely that conduct disorders generally lead to substance abuse than the reverse." The British medical journal *Lancet*. . . explains that heavy marijuana use is associated with leaving high school and having trouble getting a job, but that this association wanes "when statistical adjustments are made for the fact that, compared with their peers, heavy cannabis users have poor high-school performance before using cannabis. . ."

"Drug warriors cite figures that say that roughly 100,000 people enter drug-treatment programs every year primarily for marijuana use. But often, the punishment for getting busted for marijuana possession is treatment. According to one government study, in 1998 54 percent of people in state-run treatment programs for marijuana were sent there by the criminal-justice system. So, there is a circularity here: The drug war mandates marijuana treatment, then its advocates point to the fact of that treatment to justify the drug war. . . .

"This, then, is the bottom-line harm of marijuana to its users: A small minority of people who smoke it may -- by choice, as much as any addictive compulsion -- eventually smoke enough of it for a long enough period of time to suffer impairments so subtle that they may not affect everyday functioning or be permanent. Arresting, let alone jailing, people for using such a drug seems outrageously disproportionate, which is why drug warriors are always so eager to deny that anyone ever goes to prison for it. . ."

"In the end, marijuana prohibition basically relies on cultural prejudice. This is no small thing. Cultural prejudices are important. Alcohol and tobacco are woven into the very fabric of America. . . Marijuana is an Eastern drug, and importantly for conservatives, many of its advocates over the years have looked and thought like Allen Ginsberg. But that isn't much of an argument for keeping it illegal, and if marijuana started out culturally alien, it certainly isn't anymore. No wonder drug warriors have to strain for medical and scientific reasons to justify its prohibition. But once all the misrepresentations and exaggerations are stripped away, the main pharmacological effect of marijuana is that it gets people high. Or as *The Lancet* puts it, "When used in a social setting, it may produce infectious laughter and talkativeness.""

[Originally published in the National Review, August 20, 2001. Copyright: 2001 National Review. Reprinted with permission. See Appendix 3 for the complete article.]

5. Jail Overcrowding in Virginia

Virginia has 75 jails, and they are full. They were filled over capacity when the General Assembly asked the State Crime Commission for a report in 2000, and they continued to be over capacity in the most recent report by the Compensation Board.

In 2000 Virginia's jails were operating at 147% of capacity. By 2004 Virginia's jails were operating at 162% of capacity. (See Appendix 3 for a listing of capacity and overcrowding at each of Virginia's jails.)

Recently the legislature has considered various policies to reduce the workload of the state's courts and criminal justice system, including policies to reduce court appearances for nontraffic misdemeanor offenses and efforts to standardize the practice of awarding jail inmates time off of their sentences for good behavior.

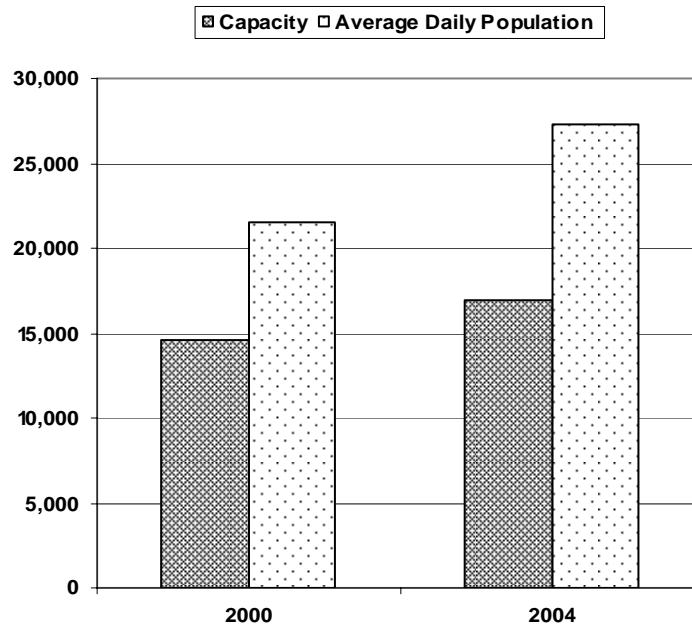
Table 3. Virginia Jail Capacity

	<u>2000</u>	<u>2004</u>
Capacity	14,643	16,898
Average Daily Population	21,583	27,341
Capacity Percentage	147%	162%

Sources: State Crime Commission. Sentencing of Misdemeanor Offenders. A report to the Governor and the General Assembly. House Document No. 19. 2003; Commonwealth of Virginia Compensation Board. Jail Cost Report FY 2004. Report to General Assembly, November 1, 2005.

An increase in the penalties for possession of marijuana will, obviously, contribute more prisoners to Virginia's 75 local jail facilities, facilities that are already overcrowded with more serious offenders.

Figure 5. Virginia's Crowded Jails



6. Virginia State and Local Jail Costs

Local jails house convicted defendants with sentences of 12 months or less; sentences of one year or longer are served instead in state prison.

Marijuana possession laws are usually enforced by local police and sentences for marijuana possession convictions are served in local jails.

Any increase in the sentences of defendants convicted on marijuana possession will result in an increase in both local and state costs.

Funding for local jails varies, but overall local jurisdictions pay about 35% of jail costs, with the state paying just over 45%. The federal government pays about 7% of local jail expenses in Virginia, and the remaining expenses either come from other sources or are debt-related.

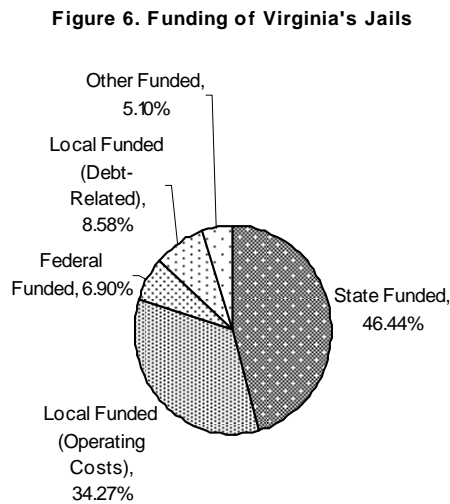
Local jail costs were approximately \$485 million in 2003. Over two-thirds of the expenses of local jails involved personal services. While the cost of individual jail cells

remains fixed, even under conditions of overcrowding, the costs of personal services, such as guards and other personnel, increase along with increases in the jail population.

The cost per inmate day varies from jail to jail, from a low of \$34.79 at the Newport News city jail to a high of \$199.90 at the Lee county facility. (See Appendix 4 for cost data for each facility.) The average cost per inmate day for all 75 of Virginia's local jails is \$54.81.

A thirty day sentence for marijuana possession, reduced by 25% for good behavior, produces average costs of \$1,233.

Allowing for time off for good behavior, an increase in the maximum penalty for marijuana possession to 12 months increases the maximum cost to the taxpayers of a conviction for marijuana possession to \$14,799; but this is the average cost. The actual cost will be considerably higher for counties and cities with higher than average jail costs.



Source: Commonwealth of Virginia Compensation Board. Jail Cost Report FY 2004. Report to General Assembly, November 1, 2005.

Table 4. Operating Expenses for Virginia's 75 Jails, FY2004

		Expenses per Inmate Day
Personal Services	\$330,531,565	\$37.36
Food Services	\$29,748,077	\$3.36
Medical Services	\$46,329,072	\$5.24
Inmate Programs	\$1,815,014	\$0.20
Transportation	\$3,504,859	\$0.40
Direct Jail Support	\$47,212,462	\$5.34
Capital Accounts - Operating	\$3,411,441	\$0.38
Other Jail Indirect Expenses	\$22,397,755	\$2.53
Total Operating Costs	\$484,950,244	\$54.81

Funding Percent of Total Expenditures by Source

State Funded	46.44%
Local Funded (Operating Costs)	34.27%
Federal Funded	6.90%
Local Funded (Debt- Related)	8.58%
Other Funded	5.10%
Total	101.29%

Source: Commonwealth of Virginia Compensation Board. Jail Cost Report FY 2004. Report to General Assembly, November 1, 2005.

7. Reducing Misdemeanor Court Appearances in Virginia

The State of Virginia has been considering efforts to reduce the criminal justice system costs associated with misdemeanor offenses for several years. In 1978 a House of Delegates report on the legislation that established the state's current penalties for marijuana possession recommended that law enforcement use their authority to issue a court summons instead of making an arrest for marijuana possession offenses. Regardless of the use of this practice, though, Virginia's current penalties for marijuana possession are consistent with a general policy of minimizing misdemeanor court appearances; the reasonableness of the overall penalty structure encourages plea agreements. A more severe penalty structure would make it more difficult to reach plea agreements and would result in more trials and trial-related costs for both the state and defendants.

The General Assembly asked the Supreme Court in 1999 for recommendations to reduce the number of offenses requiring a personal appearance in court. As expressed in the subsequent 2000 report the Supreme Court noted that "the entire philosophy of prepayable offenses is predicated on maximizing efficiency and minimizing inconvenience." (3) The characteristics of a prepayable offense are: 1) pretrial waiver of appearance, 2) a plea of guilty, and 3) a fine payment may be accepted.

The Supreme Court recognized two ways to reduce the number of nontraffic offenses requiring court proceedings and appearances by defendants, prosecutors, and the arresting officer(s). First the Court established criteria for exercising their own authority to designate prepayable offenses. Second, the Court encouraged the General Assembly to consider designating more crimes as prepayable offenses and/or the reclassification of some misdemeanor crimes to make them eligible for designation as prepayable offenses.

The Supreme Court can not designate an offense as prepayable if a) subsequent offenses have different penalties and b) offenses where additional sanctions require additional judicial attention. The Court has also declined to address the issue of making drug offenses prepayable offenses.

Marijuana possession is an unclassified misdemeanor. Anyone who violates this statute "shall be guilty of a misdemeanor, and be confined in jail not more than thirty days and a fine of not more than \$500 either or both; any person, upon a second or subsequent conviction of a violation of this section, shall be guilty of a Class 1 misdemeanor [with a penalty of "confinement in jail for not more than twelve months and a fine of not more than \$2,500, either or both..]"

In order to make marijuana possession a prepayable offense the General Assembly would have to eliminate both the potential jail term and the more severe penalty for a second or subsequent offense. This could be accomplished by making possession of marijuana a Class 3 misdemeanor, punishable by a \$500 fine.

(3) Office of the Executive Secretary, Supreme Court of Virginia. A Study of Required Personal Court Appearances for Minor Nontraffic Offenses. House Document No. 34. Commonwealth of Virginia: Richmond. 2000.

8. Marijuana Possession Arrests in Virginia

“Crime in Virginia”, the official annual statistical report on arrests in Virginia, notes that “In 2003, 26,284 narcotic drug arrests, including drug equipment violations, were reported by the contributing agencies. Marijuana ranked highest in total volume of drug arrests with 56 percent [or 14,193].” (4)

Additional information on marijuana possession arrests is provided by the Uniform Crime Reports (UCR); because of reporting procedures and updated records UCR data will differ from state arrest data. UCR county level data reports 13,030 marijuana possession arrests in Virginia in 2003, with a state-wide arrest rate of 203.52 per 100,000 population.

In 2003 counties with the highest arrest rates were Stafford (507.74), Chesterfield (330.67), Alleghany (308.57), King George (307.57), and Hanover (296.07). The cities with the highest rates were Colonial Heights (868.05), Winchester (659.09), Empora (499.40), Petersburg (456.23), and Lynchburg (398.85). Appendix 5 contains several tables with county and city data on marijuana possession arrests.

The city of Virginia Beach has the highest number of marijuana possession arrests, 1,218. Otherwise Chesterfield (908) and Prince William (906) counties have the highest number of marijuana possession arrests. The 28 jurisdictions listed in Table 5 account for 75% of marijuana possession arrests in Virginia.

Obviously areas with larger populations will have more arrests than less populated areas. However counties such as Prince William, Loudoun, and Stafford are also experiencing tremendous growth that, despite their growing tax base, creates more

Table 5. Jurisdictions Contributing 75% of Virginia’s Marijuana Possession Arrests (2003)

Virginia Beach city	1,218
Chesterfield	908
Prince William	906
Newport News city	668
Chesapeake city	666
Henrico	652
Stafford	539
Norfolk city	426
Arlington	299
Hampton city	285
Hanover	276
Lynchburg city	261
Fairfax	248
Spotsylvania	238
Portsmouth city	228
Richmond city	215
Alexandria city	203
Roanoke	200
Loudoun	172
Winchester city	160
Harrisonburg city	158
Petersburg city	153
Colonial Heights city	150
Fredericksburg city	134
Fauquier	131
York	119
James City	114
Manassas city	114
Total above regions	9,841

demand for services than many local governments can afford to provide. In other words, many of the jurisdictions that will bear the highest costs of increasing the

(4) Uniform Crime Reporting Program, Virginia State Police. Crime in Virginia. 2004.

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penalty for marijuana possession have far more pressing needs and priorities to meet with their limited revenue.

The UCR program also provides demographic data on marijuana possession arrests, though this data is also slightly different from state and UCR-county arrest data. This UCR data on age, sex, and race of marijuana possession arrests in Virginia is derived from 12,811 marijuana possession arrests in 2003.

Males account for 48.53% of the population in Virginia, however they are over-represented in marijuana possession arrests, providing 11,003 or 85.89% of the total for an arrest rate of 306.65. In this data collection the overall arrest rate for Virginia is 173.28, lower than the rate of 203 derived from the county-level data. (The age/sex/race data is derived from agency-level data.) Females, on the other hand, account for 51.47% of the population but only 14.11% of marijuana possession arrests.

When looking at arrests at the state level minority populations are not substantially over-represented in marijuana possession arrests. Minorities account for 32.83% of Virginia's population and the account for 39.56% of Virginia's marijuana possession arrests. The arrest rate for marijuana possession for whites is 156.46 per 100,000, for minorities it is 208.81. At the county and city level, though, there are disparities. In Falls Church, for example, minorities make up 12% of the population but accounted for 50% of marijuana possession arrests. In Pulaski county minorities are 7% of the population and 24% of possession arrests. In the city of Alexandria minorities are of 28% of the population and 69% of possession arrests; in Virginia Beach minorities are 27% of the population and 37% of marijuana possession arrests. In many Virginia jurisdictions an increase in the penalty for

marijuana possession will disproportionately affect minority marijuana users.

Marijuana possession penalties have the greatest impact on young people. Over half of marijuana possession arrests in Virginia are of people under the age of 30, and over one-third are under the age of 25.

The 15 to 19 age group provided 4,420 marijuana possession arrests in 2003. They accounted for 6.75% of the population and 13.83% of marijuana possession arrests; the arrest rate per 100,000 15 to 19 year olds was 410.97.

The 20 to 24 age group provided 3,839 marijuana possession arrests in 2003. This age group accounted for 5.68% of the population and 17.58% of possession arrests, with an arrest rate of 1,466.42 per 100,000 people in this age group.

Lengthy jail terms for marijuana possession will result in a lot of young men and women spending more and more time in local jails with individuals convicted of more serious offenses. If not for an arrest for marijuana possession many of these young people would never attract the attention of the criminal justice system. However increasing jail terms for these young men and women will also increase the time they are exposed to and immersed in the camaraderie of criminal society.

Appendix 1. Marijuana Use by State (2003)

Table 6. Monthly Marijuana Use by State

<u>State</u>	<u>Possession Maximum (mo.)</u>	<u>Monthly Use</u>			
		<u>All</u>	<u>Age 12 to 17</u>	<u>Age 18 to 25</u>	<u>Age 26 and Older</u>
Alabama	12	4.32%	6.37%	12.47%	2.60%
Alaska	3	9.78%	11.08%	23.99%	7.14%
Arizona	18	5.68%	7.74%	15.18%	3.67%
Arkansas	12	5.63%	7.97%	16.48%	3.39%
California	0	6.50%	7.66%	16.09%	4.57%
Colorado	0	8.49%	9.82%	21.67%	6.01%
Connecticut	12	6.94%	9.22%	23.62%	4.22%
Delaware	6	6.89%	9.41%	22.06%	3.96%
District Of Columbia	6	9.60%	7.43%	24.14%	6.93%
Florida	60	6.58%	8.52%	17.68%	4.75%
Georgia	12	4.93%	6.87%	13.01%	3.18%
Hawaii	12	6.95%	10.23%	17.00%	4.90%
Idaho	12	5.09%	7.92%	12.47%	3.10%
Illinois	12	5.60%	7.61%	17.43%	3.23%
Indiana	12	6.12%	7.37%	17.19%	3.91%
Iowa	6	4.90%	7.10%	13.14%	3.04%
Kansas	12	4.91%	7.39%	13.92%	2.79%
Kentucky	12	5.62%	8.16%	14.15%	3.82%
Louisiana	6	5.77%	6.92%	17.04%	3.33%
Maine	0	7.95%	10.56%	23.22%	5.33%
Maryland	12	5.73%	7.87%	19.43%	3.27%
Massachusetts	6	7.80%	10.53%	24.54%	4.79%
Michigan	12	7.20%	9.23%	18.49%	4.95%
Minnesota	0	6.37%	8.92%	17.49%	4.00%
Mississippi	0	4.64%	6.04%	12.99%	2.74%
Missouri	12	6.76%	7.43%	18.55%	4.59%

An Argument Against Increasing the Maximum Penalty for Marijuana Possession in Virginia

Table 6. Monthly Marijuana Use by State

<u>State</u>	<u>Possession Maximum (mo.)</u>	<u>Monthly Use</u>			
		<u>All</u>	<u>Age 12 to 17</u>	<u>Age 18 to 25</u>	<u>Age 26 and Older</u>
Montana	6	9.17%	12.07%	20.66%	6.71%
Nebraska	0	5.97%	9.13%	15.61%	3.66%
Nevada	0	7.62%	9.58%	18.29%	5.68%
New Hampshire	12	10.23%	11.79%	27.31%	7.36%
New Jersey	6	5.05%	7.33%	17.89%	2.93%
New Mexico	0.5	7.37%	10.35%	18.98%	4.74%
New York	3	7.34%	8.76%	21.44%	4.82%
North Carolina	4	5.89%	8.44%	17.22%	3.66%
North Dakota	12	5.35%	7.58%	15.35%	2.94%
Ohio	0	6.49%	8.74%	18.22%	4.17%
Oklahoma	12	5.58%	8.13%	15.51%	3.31%
Oregon	120	8.88%	9.31%	22.17%	6.57%
Pennsylvania	1	5.64%	8.18%	17.66%	3.37%
Rhode Island	12	9.56%	10.86%	29.93%	5.70%
South Carolina	1	5.65%	7.25%	16.46%	3.52%
South Dakota	12	5.24%	9.57%	14.66%	2.74%
Tennessee	72	4.59%	6.37%	13.40%	2.88%
Texas	6	4.79%	6.38%	12.86%	2.95%
Utah	12	4.00%	5.30%	9.53%	2.15%
Vermont	6	9.77%	13.32%	26.95%	6.34%
Virginia	1	5.96%	8.43%	17.70%	3.73%
Washington	3	7.41%	9.11%	21.22%	4.82%
West Virginia	6	5.12%	8.62%	14.67%	3.17%
Wisconsin	6	5.40%	7.71%	15.98%	3.18%
Wyoming	12	5.45%	7.14%	15.59%	3.27%

An Argument Against Increasing the Maximum Penalty for Marijuana Possession in Virginia

Table 7. Annual Marijuana Use by State

<u>State</u>	<u>Possession Maximum (mo.)</u>	<u>Annual Use</u>			
		<u>All</u>	<u>Age 12 to 17</u>	<u>Age 18 to 25</u>	<u>Age 26 and Older</u>
Alabama	12	8.35%	12.75%	23.79%	5.03%
Alaska	3	16.65%	18.87%	38.90%	12.46%
Arizona	18	10.48%	16.96%	27.54%	6.46%
Arkansas	12	10.22%	15.76%	28.89%	6.15%
California	0	11.33%	14.11%	28.29%	7.81%
Colorado	0	15.08%	19.55%	36.57%	10.73%
Connecticut	12	11.78%	17.58%	38.82%	7.09%
Delaware	6	11.65%	18.20%	33.24%	7.09%
District Of Columbia	6	15.09%	14.83%	37.61%	10.68%
Florida	60	11.36%	16.13%	29.83%	8.13%
Georgia	12	9.61%	14.20%	23.85%	6.36%
Hawaii	12	11.56%	18.09%	30.20%	7.70%
Idaho	12	9.26%	14.63%	24.37%	5.27%
Illinois	12	9.99%	14.46%	29.61%	5.90%
Indiana	12	10.33%	13.95%	28.44%	6.48%
Iowa	6	9.32%	13.39%	25.88%	5.63%
Kansas	12	9.08%	13.24%	25.44%	5.29%
Kentucky	12	10.30%	16.32%	26.21%	6.78%
Louisiana	6	9.82%	13.02%	27.52%	5.78%
Maine	0	12.34%	18.76%	37.34%	7.80%
Maryland	12	10.54%	14.75%	30.31%	6.84%
Massachusetts	6	15.45%	20.15%	38.19%	11.24%
Michigan	12	12.61%	17.03%	32.38%	8.55%
Minnesota	0	11.40%	17.30%	30.34%	7.13%
Mississippi	0	7.98%	11.01%	22.06%	4.68%
Missouri	12	11.91%	16.15%	31.48%	7.87%

An Argument Against Increasing the Maximum Penalty for Marijuana Possession in Virginia

Table 7. Annual Marijuana Use by State

<u>State</u>	<u>Possession Maximum (mo.)</u>	<u>Annual Use</u>			
		<u>All</u>	<u>Age 12 to 17</u>	<u>Age 18 to 25</u>	<u>Age 26 and Older</u>
Montana	6	13.83%	21.07%	35.15%	9.00%
Nebraska	0	10.39%	16.42%	27.17%	6.29%
Nevada	0	12.01%	19.67%	29.02%	8.31%
New Hampshire	12	16.30%	20.52%	44.61%	11.31%
New Jersey	6	8.64%	14.03%	29.40%	5.00%
New Mexico	0.5	12.30%	19.03%	33.80%	7.24%
New York	3	12.22%	15.98%	33.60%	8.20%
North Carolina	4	9.83%	16.97%	26.70%	6.05%
North Dakota	12	9.81%	16.18%	28.80%	4.95%
Ohio	0	10.91%	15.33%	30.34%	6.96%
Oklahoma	12	9.50%	15.34%	25.47%	5.60%
Oregon	120	13.78%	17.38%	36.44%	9.47%
Pennsylvania	1	9.88%	15.24%	29.95%	5.95%
Rhode Island	12	15.22%	18.29%	45.71%	9.29%
South Carolina	1	9.67%	13.44%	27.75%	5.96%
South Dakota	12	9.83%	17.65%	28.35%	5.02%
Tennessee	72	7.36%	12.15%	21.07%	4.44%
Texas	6	8.56%	13.91%	22.28%	5.01%
Utah	12	8.17%	11.08%	20.77%	3.93%
Vermont	6	15.93%	22.69%	44.56%	10.10%
Virginia	1	9.69%	15.47%	29.57%	5.68%
Washington	3	13.50%	17.64%	36.16%	9.05%
West Virginia	6	9.16%	16.92%	27.87%	5.24%
Wisconsin	6	10.01%	15.84%	30.00%	5.61%
Wyoming	12	10.45%	14.46%	28.79%	6.38%
United States		10.78%	15.38%	29.13%	6.95%

Appendix 2. Weed Whackers by Rich Lowry

WEED WHACKERS

By Rich Lowry, Editor of the National Review

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The Anti-marijuana Forces, And Why They're Wrong

Rarely do trial balloons burst so quickly. During the recent British campaign, Tory shadow home secretary Ann Widdecombe had no sooner proposed tougher penalties for marijuana possession than a third of her fellow Tory shadow-cabinet ministers admitted to past marijuana use. Widdecombe immediately had to back off. The controversy reflected a split in the party, with the confessors attempting to embarrass Widdecombe politically. But something deeper was at work as well: a nascent attempt to reckon honestly with a drug that has been widely used by baby boomers and their generational successors, a tentative step toward a squaring by the political class of its personal experience with the drastic government rhetoric and policies regarding marijuana.

The American debate hasn't yet reached such a juncture, even though last year's presidential campaign featured one candidate who pointedly refused to answer questions about his past drug use and another who -- according to Gore biographer Bill Turque -- spent much of his young adulthood smoking dope and skipping through fields of clover (and still managed to become one of the most notoriously uptight and ambitious politicians in the country). In recent years, the debate over marijuana policy has centered on the question of whether the drug should be available for medicinal purposes (Richard Brookhiser has written eloquently in NR on the topic). Drug warriors call medical marijuana the camel's nose under the tent for legalization, and so -- for many of its advocates -- it is. Both sides in the medical-marijuana controversy have ulterior motives, which suggests it may be time to stop debating the nose and move on to the full camel.

Already, there has been some action. About a dozen states have passed medical-marijuana laws in recent years, and California voters, last November, approved Proposition 36, mandating treatment instead of criminal penalties for all first- and second-time nonviolent drug offenders. Proponents of the initiative plan to export it to Ohio, Michigan, and Florida next year. Most such liberalization measures fare well at the polls -- California's passed with 61 percent of the vote -- as long as they aren't perceived as going too far. Loosen, but don't legalize, seems to be the general public attitude, even as almost every politician still fears departing from Bill Bennett orthodoxy on the issue. But listen carefully to the drug warriors, and you can hear some of them quietly reading marijuana out of the drug war. James Q. Wilson, for instance, perhaps the nation's most convincing advocate for drug prohibition, is careful to set marijuana aside from his arguments about the potentially ruinous effects of legalizing drugs.

There is good reason for this, since it makes little sense to send people to jail for using a drug that, in terms of its harmfulness, should be categorized somewhere between alcohol and tobacco on one hand and caffeine on the other. According to common estimates, alcohol and tobacco kill hundreds of thousands of people a year. In contrast, there is as a practical matter no such thing as a lethal overdose of marijuana. Yet federal law makes possessing a single joint punishable by up to a year in prison, and many states have similar penalties. There are about 700,000 marijuana arrests in the United States every year, roughly 80 percent for possession. Drug warriors have a strange relationship with these laws: They dispute the idea that anyone ever actually goes to prison for mere possession, but at the same time resist any suggestion that laws providing for exactly that should be struck from the books. So, in the end, one of the drug warriors' strongest arguments is that the laws they favor aren't enforced -- we're all liberalizers now.

Gateway To Nowhere

An Argument Against Increasing the Maximum Penalty for Marijuana Possession in Virginia

There has, of course, been a barrage of government-sponsored anti-marijuana propaganda over the last two decades, but the essential facts are clear: Marijuana is widely used, and for the vast majority of its users is nearly harmless and represents a temporary experiment or enthusiasm. A 1999 report by the Institute of Medicine -- a highly credible outfit that is part of the National Academy of Sciences -- found that "in 1996, 68.6 million people -- 32% of the U.S. population over 12 years old -- had tried marijuana or hashish at least once in their lifetime, but only 5% were current users." The academic literature talks of "maturing out" of marijuana use the same way college kids grow out of backpacks and Nietzsche. Most marijuana users are between the ages of 18 and 25, and use plummets after age 34, by which time children and mortgages have blunted the appeal of rolling paper and bong. Authors Robert J. MacCoun and Peter Reuter -- drug-war skeptics, but cautious ones -- point out in their new book *Drug War Heresies* that "among 26 to 34 year olds who had used the drug daily sometime in their life in 1994, only 22 percent reported that they had used it in the past year."

Marijuana prohibitionists have for a long time had trouble maintaining that marijuana itself is dangerous, so they instead have relied on a bank shot--marijuana's danger is that it leads to the use of drugs that are actually dangerous. This is a way to shovel all the effects of heroin and cocaine onto marijuana, a kind of drug-war McCarthyism. It is called the "gateway theory," and has been so thoroughly discredited that it is still dusted off only by the most tendentious of drug warriors. The theory's difficulty begins with a simple fact: Most people who use marijuana, even those who use it with moderate frequency, don't go on to use any other illegal drug. According the Institute of Medicine report, "Of 34 to 35 year old men who had used marijuana 10-99 times by the age 24-25, 75% never used any other illicit drug." As Lynn Zimmer and John Morgan point out in their exhaustive book *Marijuana Myths/Marijuana Facts*, the rates of use of hard drugs have more to do with their fashionability than their connection to marijuana. In 1986, near the peak of the cocaine epidemic, 33 percent of high-school seniors who had used marijuana also had tried cocaine, but by 1994 only 14 percent of marijuana users had gone on to use cocaine.

Then, there is the basic faulty reasoning behind the gateway theory. Since marijuana is the most widely available and least dangerous illegal drug, it makes sense that people inclined to use other harder-to-find drugs will start with it first -- but this tells us little or nothing about marijuana itself or about most of its users. It confuses temporality with causality. Because a cocaine addict used marijuana first doesn't mean he is on cocaine because he smoked marijuana (again, as a factual matter this hypothetical is extremely rare -- about one in 100 marijuana users becomes a regular user of cocaine). Drug warriors recently have tried to argue that research showing that marijuana acts on the brain in a way vaguely similar to cocaine and heroin -- plugging into the same receptors -- proves that it somehow "primes" the brain for harder drugs. But alcohol has roughly the same action, and no one argues that Budweiser creates heroin addicts. "There is no evidence," says the Institute of Medicine study, "that marijuana serves as a stepping stone on the basis of its particular physiological effect."

The relationship between drugs and troubled teens appears to be the opposite of that posited by drug warriors -- the trouble comes first, then the drugs (or, in other words, it's the kid, not the substance, who is the problem). The Institute of Medicine reports that "it is more likely that conduct disorders generally lead to substance abuse than the reverse." The British medical journal *Lancet* -- in a long, careful consideration of the marijuana literature -- explains that heavy marijuana use is associated with leaving high school and having trouble getting a job, but that this association wanes "when statistical adjustments are made for the fact that, compared with their peers, heavy cannabis users have poor high-school performance before using cannabis." (And, remember, this is heavy use: "adolescents who casually experiment with cannabis," according to MacCoun and Reuter, "appear to function quite well with respect to schooling and mental health.") In the same way problem kids are attracted to illegal drugs, they are drawn to alcohol and tobacco. One study found that teenage boys who smoke cigarettes daily are about ten times likelier to be diagnosed with a psychiatric disorder than non-smoking teenage boys. By the drug warrior's logic, this means that tobacco causes mental illness.

Another arrow in the drug warriors' quiver is the number of people being treated for marijuana: If

the drug is so innocuous, why do they seek, or need, treatment. Drug warriors cite figures that say that roughly 100,000 people enter drug-treatment programs every year primarily for marijuana use. But often, the punishment for getting busted for marijuana possession is treatment. According to one government study, in 1998 54 percent of people in state-run treatment programs for marijuana were sent there by the criminal-justice system. So, there is a circularity here: The drug war mandates marijuana treatment, then its advocates point to the fact of that treatment to justify the drug war. Also, people who test positive in employment urine tests often have to get treatment to keep their jobs, and panicked parents will often deliver their marijuana-smoking sons and daughters to treatment programs. This is not to deny that there is such a thing as marijuana dependence. According to *The Lancet*, "About one in ten of those who ever use cannabis become dependent on it at some time during their 4 or 5 years of heaviest use."

But it is important to realize that dependence on marijuana -- apparently a relatively mild psychological phenomenon -- is entirely different from dependence on cocaine and heroin. Marijuana isn't particularly addictive. One key indicator of the addictiveness of other drugs is that lab rats will self-administer them. Rats simply won't self-administer THC, the active ingredient in marijuana. Two researchers in 1991 studied the addictiveness of caffeine, nicotine, alcohol, heroin, cocaine, and marijuana. Both ranked caffeine and marijuana as the least addictive. One gave the two drugs identical scores and another ranked marijuana as slightly less addicting than caffeine. A 1991 U.S. Department of Health and Human Services report to Congress states: "Given the large population of marijuana users and the infrequent reports of medical problems from stopping use, tolerance and dependence are not major issues at present." Indeed, no one is quite sure what marijuana treatment exactly is. As MacCoun and Reuter write, "Severity of addiction is modest enough that there is scarcely any research on treatment of marijuana dependence."

None of this is to say that marijuana is totally harmless. There is at least a little truth to the stereotype of the Cheech & Chong "stoner." Long-term heavy marijuana use doesn't, in the words of *The Lancet*, "produce the severe or

grossly debilitating impairment of memory, attention, and cognitive function that is found with chronic heavy alcohol use," but it can impair cognitive functioning nonetheless: "These impairments are subtle, so it remains unclear how important they are for everyday functioning, and whether they are reversed after an extended period of abstinence." This, then, is the bottom-line harm of marijuana to its users: A small minority of people who smoke it may -- by choice, as much as any addictive compulsion -- eventually smoke enough of it for a long enough period of time to suffer impairments so subtle that they may not affect everyday functioning or be permanent. Arresting, let alone jailing, people for using such a drug seems outrageously disproportionate, which is why drug warriors are always so eager to deny that anyone ever goes to prison for it.

Fighting The Brezhnev Doctrine

In this contention, the drug warriors are largely right. The fact is that the current regime is really only a half-step away from decriminalization. And despite all the heated rhetoric of the drug war, on marijuana there is a quasi-consensus: Legalizers think that marijuana laws shouldn't be on the books; prohibitionists think, in effect, that they shouldn't be enforced. A reasonable compromise would be a version of the Dutch model of decriminalization, removing criminal penalties for personal use of marijuana, but keeping the prohibition on street-trafficking and mass cultivation. Under such a scenario, laws for tobacco -- an unhealthy drug that is quite addictive -- and for marijuana would be heading toward a sort of middle ground, a regulatory regime that controls and discourages use but doesn't enlist law enforcement in that cause. MacCoun and Reuter have concluded from the experience of decriminalizing the possession of small amounts of marijuana in the Netherlands, twelve American states in the 1970s, and parts of Australia that "the available evidence suggests that simply removing the prohibition against possession does not increase cannabis use."

Drug warriors, of course, will have none of it. They support a drug-war Brezhnev doctrine under which no drug-war excess can ever be turned back -- once a harsh law is on the books for marijuana possession, there it must remain lest the wrong "signal" be sent. "Drug use," as Bill Bennett has said, "is dangerous and immoral." But

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for the overwhelming majority of its users marijuana is not the least bit dangerous. (Marijuana's chief potential danger to others -- its users driving while high -- should, needless to say, continue to be treated as harshly as drunk driving.) As for the immorality of marijuana's use, it generally is immoral to break the law. But this is just another drug-war circularity: The marijuana laws create the occasion for this particular immorality. If it is on the basis of its effect -- namely, intoxication -- that Bennett considers marijuana immoral, then he has to explain why it's different from drunkenness, and why this particular sense of well-being should be banned in an America that is now the great mood-altering nation, with millions of people on Prozac and other drugs meant primarily to make them feel good.

In the end, marijuana prohibition basically relies on cultural prejudice. This is no small thing. Cultural prejudices are important. Alcohol and tobacco are woven into the very fabric of America. Marijuana doesn't have the equivalent of, say, the "brewer-patriot" Samuel Adams (its enthusiasts try to enlist George Washington, but he grew hemp instead of smoking it). Marijuana is an Eastern drug, and importantly for conservatives, many of its advocates over the years have looked and thought like Allen Ginsberg. But that isn't much of an argument for keeping it illegal, and if marijuana started out culturally alien, it certainly isn't anymore. No wonder drug warriors have to strain for medical and scientific reasons to justify its prohibition. But once all the misrepresentations and exaggerations are stripped away, the main pharmacological effect of marijuana is that it gets people high. Or as *The Lancet* puts it, "When used in a social setting, it may produce infectious laughter and talkativeness."

Appendix 3. Virginia Jail Occupancy by Jail (2000,2004)

Jail	2000			2004		
	Capacity	Inmates	Capacity Pct	Capacity	Inmates	Capacity Pct
Accomack	46	115	249%	46	101	220%
Albemarle/Charlottesville Regional	209	367	175%	329	477	345%
Alleghany				56	58	104%
Amherst	50	64	128%	50	89	177%
Appomattox	12	25	207%	12	25	209%
Arlington	474	499	105%	474	638	135%
Augusta	90	170	188%	90	197	219%
Botetourt	38	55	152%	38	61	160%
Brunswick	24	44	185%	24	38	158%
Buchanan	34	30	88%	24	64	187%
Charlotte	17	20	118%	29	62	213%
Chesterfield	250	334	134%	250	309	124%
Culpeper	37	60	161%	37	92	249%
Dickenson	32	32	101%	32	51	160%
Dinwiddie	32	53	165%	32	55	171%
Fairfax	589	952	162%	1,260	1,260	99%
Fauquier	56	76	136%	56	72	128%
Franklin	49	84	171%	49	67	138%
Clarke Frederick Winshester Regional	266	277	104%	266	443	167%
Gloucester	42	78	185%	42	89	212%
Henrico	877	860	98%	787	1,037	136%
Henry	67	111	165%	67	177	265%
Lancaster	26	31	119%	26	25	96%
Lee	32	41	128%	32	75	236%
Loudoun	109	135	123%	109	169	155%
Mecklenburg	68	105	154%	68	126	185%
Middle Peninsula	121	162	134%	121	185	153%
Montgomery	60	124	206%	60	140	234%
Northampton	37	49	131%	37	54	146%
Piedmont Regional	103	315	306%	181	435	240%
Central Virginia Regional	146	255	175%	242	394	163%
Page	26	41	156%	33	63	190%
Patrick	8	24	304%	8	25	318%
Pittsylvania	36	138	384%	36	141	392%
Prince William/Manassas Regional	467	536	115%	467	680	146%
Rappahannock	7	11	158%	7	16	234%
Roanoke County/Salem	108	197	182%	108	239	221%
Rockbridge County Regional	56	62	111%	56	94	168%

Appendix 3. Virginia Jail Occupancy by Jail (2000,2004)

<u>Jail</u>	<u>2000</u>			<u>2004</u>		
	<u>Capacity</u>	<u>Inmates</u>	<u>Capacity Pct</u>	<u>Capacity</u>	<u>Inmates</u>	<u>Capacity Pct</u>
Rockingham	208	208	100%	208	278	134%
Russell	36	57	159%	36	82	227%
Scott	32	28	87%	32	35	110%
Shenandoah	55	64	116%	55	77	141%
Smyth	40	49	124%	40	70	176%
Southampton	122	107	87%	122	116	95%
Sussex	28	40	145%	28	49	174%
Tazewell	48	95	198%	89	208	234%
Warren	67	40	60%	79	93	118%
Washington	54	82	154%	54	85	157%
Northern Neck Regional	140	262	187%	234	405	173%
Wise	43	77	179%	43	92	215%
Danville City Jail Farm	120	142	118%	120	163	136%
Newport News City Farm	137	236	173%	137	198	144%
Pamunkey	290	255	88%	290	441	152%
Riverside Regional	688	738	107%	736	1,104	150%
Virginia Peninsula Regional	290	355	123%	290	388	134%
Hampton Roads Regional	798	855	107%	798	1,035	130%
New River Valley Regional	371	293	79%	371	499	134%
Blue Ridge Regional	451	621	138%	760	881	116%
Peumansend Creek Regional				336	300	89%
Southside Regional	100	108	108%	100	153	153%
Alexandria City	340	409	120%	340	463	136%
Bristol City	67	85	127%	67	99	148%
Chesapeake City	543	604	111%	543	809	149%
Danville City	200	219	110%	213	263	123%
Western Tidewater	528	462	87%	552	653	118%
Rappahanock Regional	154	373	242%	592	889	150%
Hampton City	468	354	76%	468	419	89%
Martinsville City	79	108	136%	79	142	179%
Newport News City Jail	248	525	212%	248	622	251%
Norfolk City	833	1,286	156%	833	1,606	193%
Petersburg City	195	237	121%	195	287	147%
Portsmouth City	288	383	133%	288	478	166%
Richmond City	882	1,654	188%	882	1,529	173%
Roanoke City	409	585	143%	409	689	168%
Virginia Beach City	590	1,055	179%	590	1,314	223%
Total for Virginia Jails	14,643	21,583	147%	16,898	27,341	162%

Appendix 4. Virginia Jail Costs by Jail

<u>Jail</u>	<u>Cost per Inmate Day</u> <u>2000</u>	<u>Cost per Inmate Day</u> <u>2004</u>	<u>State Funding Pct</u>	<u>Local Funding Pct</u>
Accomack	\$30.57	\$42.98	60.92%	37.25%
Albemarle/Charlottesville Regional	\$40.54	\$57.14	42.33%	40.03%
Alleghany	\$96.02	\$102.85	19.92%	40.62%
Amherst	n/a	\$79.08	48.01%	36.89%
Appomattox	\$46.95	\$49.16	56.70%	39.45%
Arlington	\$69.26	\$79.60	65.26%	32.78%
Augusta	\$92.12	\$90.51	35.94%	57.10%
Botetourt	\$40.68	\$54.76	54.07%	9.43%
Brunswick	\$46.41	\$49.56	57.18%	38.11%
Buchanan	\$56.47	\$63.50	56.78%	38.66%
Charlotte	\$62.72	\$59.18	55.84%	25.94%
Chesterfield	\$39.32	\$61.80	60.42%	37.40%
Culpeper	\$83.53	\$47.49	57.95%	39.72%
Dickenson	\$36.76	\$35.16	40.38%	1.19%
Dinwiddie	\$78.69	\$41.89	87.24%	1.75%
Fairfax	\$70.04	\$63.74	36.40%	56.81%
Fauquier	\$55.24	\$74.35	34.32%	60.01%
Franklin	\$57.71	\$53.97	46.74%	42.40%
Clarke Frederick Winchester Regional	\$77.35	\$65.79	56.04%	41.38%
Gloucester	\$36.82	\$36.14	67.88%	41.95%
Henrico	\$40.02	\$38.66	52.74%	29.97%
Henry	\$79.77	\$49.76	58.61%	38.14%
Lancaster	\$42.38	\$51.50	58.17%	40.13%
Lee	\$107.75	\$119.90	19.65%	76.75%
Loudoun	\$63.22	\$79.77	40.92%	52.92%
Mecklenburg	\$42.45	\$54.27	61.87%	35.14%
Middle Peninsula	\$59.86	\$57.21	50.03%	43.52%
Montgomery	\$50.03	\$43.95	70.11%	24.73%
Northampton	\$46.12	\$53.47	40.38%	42.35%
Piedmont Regional	\$61.48	\$59.56	42.11%	49.87%
Central Virginia Regional	\$42.00	\$32.43	48.39%	46.44%
Page	\$67.02	\$92.29	58.59%	39.13%
Patrick	\$41.42	\$33.88	60.54%	37.12%
Pittsylvania	\$81.44	\$96.33	24.99%	71.57%
Prince William/ Manassas Regional	\$53.19	\$42.01	64.31%	26.93%
Rappahannock	\$52.72	\$51.16	63.80%	32.50%
Roanoke County/Salem	\$63.98	\$76.99	40.32%	42.02%
Rockbridge County Regional	\$37.38	\$44.78	68.02%	29.93%

Appendix 4. Virginia Jail Costs by Jail

<u>Jail</u>	<u>Cost per Inmate Day</u> <u>2000</u>	<u>Cost per Inmate Day</u> <u>2004</u>	<u>State Funding Pct</u>	<u>Local Funding Pct</u>
Rockingham	\$49.29	\$38.16	51.85%	34.23%
Russell	\$57.02	\$65.00	62.26%	34.89%
Scott	\$40.96	\$38.27	32.04%	65.61%
Shenandoah	\$39.25	\$37.00	58.32%	32.83%
Smyth	\$63.88	\$70.72	46.90%	51.15%
Southampton	\$40.74	\$39.64	26.42%	4.63%
Sussex	\$54.66	\$48.18	69.96%	19.23%
Tazewell	\$54.90	\$44.34	31.98%	32.99%
Warren	\$65.81	\$67.26	58.79%	40.39%
Washington	\$45.83	\$41.69	69.51%	28.09%
Northern Neck Regional		\$69.81	46.22%	36.45%
Wise	\$29.25	\$33.97	34.85%	0.00%
Danville City Jail Farm	\$39.71	\$47.93	63.41%	34.04%
Newport News City Farm	\$44.97	\$48.96	55.55%	32.11%
Pamunkey	\$78.06	\$85.48	35.07%	68.42%
Riverside Regional	\$91.91	\$78.60	71.48%	25.26%
Virginia Peninsula Regional	\$62.07	\$49.70	42.10%	42.41%
Hampton Roads Regional	\$34.17	\$41.86	63.08%	34.15%
New River Valley Regional	\$52.00	\$43.14	48.94%	56.61%
Blue Ridge Regional	\$49.89	\$51.34	54.67%	29.06%
Peumansend Creek Regional	\$60.46	\$49.36	47.53%	33.22%
Southside Regional	\$72.13	\$56.30	65.29%	16.00%
Alexandria City	\$52.50	\$47.15	52.48%	18.00%
Bristol City	\$51.67	\$43.10	47.12%	51.13%
Chesapeake City	\$52.95	\$43.65	74.22%	16.54%
Danville City	\$51.14	\$47.98	73.14%	20.17%
Western Tidewater	\$54.47	\$39.44	68.10%	29.20%
Rappahanock Regional	\$57.11	\$55.17	69.17%	21.29%
Hampton City	\$61.97	\$50.02	52.86%	36.18%
Martinsville City	\$71.43	\$69.00	57.28%	38.87%
Newport News City Jail	\$43.11	\$34.79	53.05%	44.50%
Norfolk City	\$41.14	\$45.09	50.29%	38.86%
Petersburg City	\$44.48	\$52.52	50.93%	46.75%
Portsmouth City	\$75.13	\$47.35	56.41%	32.80%
Richmond City	\$41.59	\$44.75	68.88%	26.66%
Roanoke City	\$39.84	\$34.96	54.64%	6.37%
Virginia Beach City	\$49.95	\$47.64	55.17%	32.00%

Appendix 5. Marijuana Possession Arrests in Virginia

An Argument Against Increasing the Maximum Penalty for Marijuana Possession in Virginia

Table 8. Top 40 Counties by Marijuana Possession Arrest Rate—2003

Source: Uniform Crime Reporting Program, FBI

<u>County Name</u>	<u>Population</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>Arrest Rate</u>	<u>State Rank</u>
Stafford	106,157	448	514	539	507.74	4
Chesterfield	274,591	1,113	982	908	330.67	11
Alleghany	17,176	41	44	53	308.57	13
King George	17,882	19	39	55	307.57	14
Hanover	93,221	308	250	276	296.07	16
Northampton	13,093	28	22	38	290.23	17
Prince William	315,860	1,118	934	906	286.84	18
Gloucester	36,210	55	92	100	276.17	21
Culpeper	37,362	91	121	102	273.00	22
Prince George	34,569	143	83	92	266.13	23
Wythe	28,144	88	61	69	245.17	27
Henrico	271,683	715	651	652	239.99	28
Brunswick	18,482	37	39	44	238.07	29
Middlesex	10,307	8	21	24	232.85	31
Shenandoah	36,777	91	97	85	231.12	32
Roanoke	87,030	246	218	200	229.81	33
Spotsylvania	103,875	211	264	238	229.12	34
James City	52,072	113	114	114	218.93	40
Fauquier	59,999	192	183	131	218.34	41
Sussex	12,376	23	23	26	210.08	42
York	60,480	123	140	119	196.76	44
Nelson	14,914	14	37	28	187.74	48
Botetourt	31,670	62	63	58	183.14	49
Amherst	32,383	47	56	59	182.19	50
Rockbridge	21,041	82	39	38	180.60	51
Appomattox	13,870	19	3	24	173.04	53
Rockingham	69,525	144	122	109	156.78	54
Arlington	192,343	321	376	299	155.45	55
King and Queen	6,641	11	7	10	150.58	57
Smyth	33,829	97	66	49	144.85	58
Amelia	11,863	17	18	17	143.30	59
King William	13,998	26	23	20	142.88	60
Warren	33,329	71	113	46	138.02	61
Carroll	29,479	50	52	40	135.69	62
Greene	16,476	56	36	22	133.53	63
Surry	7,197	11	6	9	125.05	64
Albemarle	82,930	114	117	103	124.20	65
Patrick	19,703	21	30	24	121.81	66
Halifax	37,443	35	27	45	120.18	69
Page	23,607	16	19	28	118.61	70

An Argument Against Increasing the Maximum Penalty for Marijuana Possession in Virginia

Table 9. City Marijuana Possession Arrest Rates—2003

Source: Uniform Crime Reporting Program, FBI

<u>City</u>	<u>Population</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>Arrest Rate</u>	<u>State Rank</u>
Colonial Heights city	17,280	150	151	150	868.06	1
Fredericksburg city	20,331	206	185	134	659.09	2
Winchester city	24,536	200	202	160	652.10	3
Emporia city	5,807	87	40	29	499.40	5
Petersburg city	33,536	94	75	153	456.23	6
Lynchburg city	65,438	286	254	261	398.85	7
Staunton city	23,936	41	79	94	392.71	8
Harrisonburg city	41,429	124	149	158	381.38	9
Newport News city	182,565	675	675	668	365.90	10
Chesapeake city	209,294	14	822	666	318.21	12
Manassas city	37,762	97	130	114	301.89	15
Franklin city	8,274	34	37	23	277.98	19
Virginia Beach city	439,454	1,420	1,319	1,218	277.16	20
Martinsville city	15,457	32	46	41	265.25	24
Radford city	15,869	57	62	42	264.67	25
Fairfax city	22,336	16	62	59	264.15	26
Manassas Park city	11,048	29	23	26	235.34	30
Williamsburg city	11,842	50	24	27	228.00	35
Portsmouth city	101,060	272	233	228	225.61	36
Salem city	25,152	63	80	56	222.65	37
Bedford city	6,304	21	21	14	222.08	38
Poquoson city	11,835	25	48	26	219.69	39
Galax city	6,674	11	15	14	209.77	43
Waynesboro city	20,390	72	71	40	196.17	45
Hampton city	147,777	329	269	285	192.86	46
Danville city	48,202	91	62	91	188.79	47
Norfolk city	242,077	430	444	426	175.98	52
Alexandria city	132,468	152	206	203	153.24	56
Suffolk city	70,856	72	94	86	121.37	67
Bristol city	17,336	51	24	21	121.14	68
Covington city	6,442	11	18	7	108.66	75
Richmond city	199,968	433	360	215	107.52	77
Roanoke city	95,067	122	48	99	104.14	81
Lexington city	6,998	20	10	5	71.45	98
Buena Vista city	6,380	11	4	4	62.70	101
Hopewell city	22,812	29	6	14	61.37	103
Norton city	4,023	19	8	1	24.86	127
Falls Church city	10,795	0	0	2	18.53	132
Charlottesville city	44,391	5	5	7	15.77	133

An Argument Against Increasing the Maximum Penalty for Marijuana Possession in Virginia

Table 10. Top 40 Counties by Juvenile Marijuana Possession Arrest Rate (2003)

Source: Uniform Crime Reporting Program, FBI

<u>County</u>	<u>Population</u>	<u>Adult Arrests</u>	<u>Adult Rate</u>	<u>Juvenile Arrests</u>	<u>Juvenile Rate</u>	<u>TL Arrests</u>	<u>Rate</u>
Stafford	106,157	440	414.48	99	93.26	539	507.74
Alleghany	17,176	48	279.46	5	29.11	53	308.57
King George	17,882	49	274.02	6	33.55	55	307.57
Culpeper	37,362	98	262.30	4	10.71	102	273.00
Northampton	13,093	33	252.04	4	30.55	38	290.23
Chesterfield	274,591	671	244.36	237	86.31	908	330.67
Prince George	34,569	84	242.99	8	23.14	92	266.13
Gloucester	36,210	86	237.50	14	38.66	100	276.17
Prince William	315,860	750	237.45	155	49.07	906	286.84
Brunswick	18,482	42	227.25	2	10.82	44	238.07
Middlesex	10,307	22	213.45	2	19.40	24	232.85
Roanoke	87,030	185	212.57	15	17.24	200	229.81
Wythe	28,144	59	209.64	10	35.53	69	245.17
Hanover	93,221	194	208.11	82	87.96	276	296.07
Spotsylvania	103,875	215	206.98	23	22.14	238	229.12
Shenandoah	36,777	73	198.49	12	32.63	85	231.12
Sussex	12,376	24	193.92	2	16.16	26	210.08
Nelson	14,914	28	187.74	0	0.00	28	187.74
Fauquier	59,999	112	186.67	19	31.67	131	218.34
Henrico	271,683	503	185.14	149	54.84	652	239.99
Rockbridge	21,041	36	171.09	2	9.51	38	180.60
York	60,480	99	163.69	20	33.07	119	196.76
Amherst	32,383	52	160.58	7	21.62	59	182.19
Appomattox	13,870	21	151.41	3	21.63	24	173.04
Botetourt	31,670	46	145.25	12	37.89	58	183.14
Rockingham	69,525	99	142.39	10	14.38	109	156.78
Arlington	192,343	267	138.81	31	16.12	299	155.45
Amelia	11,863	16	134.87	1	8.43	17	143.30
Smyth	33,829	45	133.02	4	11.82	49	144.85
James City	52,072	69	132.51	45	86.42	114	218.93
Warren	33,329	43	129.02	3	9.00	46	138.02
Patrick	19,703	24	121.81	0	0.00	24	121.81
King and Queen	6,641	8	120.46	2	30.12	10	150.58
Carroll	29,479	35	118.73	5	16.96	40	135.69
Surry	7,197	8	111.16	1	13.89	9	125.05
Page	23,607	26	110.14	2	8.47	28	118.61
Albemarle	82,930	90	108.53	13	15.68	103	124.20
Southampton	17,670	19	107.53	0	0.00	20	113.19
Halifax	37,443	39	104.16	6	16.02	45	120.18
Clarke	13,459	14	104.02	0	0.00	14	104.02

Note: Both Adult and Juvenile arrest rates in this table are per 100,000 of the total population and not per 100,000 adults or per 100,000 Juveniles, respectively. See Table 12 for arrest rates based on demographic population categories.

An Argument Against Increasing the Maximum Penalty for Marijuana Possession in Virginia

Table 11. City Juvenile Marijuana Possession Arrest Rates—2003

Source: Uniform Crime Reporting Program, FBI

<u>City</u>	<u>Population</u>	<u>Adult Arrests</u>	<u>Adult Rate</u>	<u>Juvenile Arrests</u>	<u>Juvenile Rate</u>	<u>TL Arrests</u>	<u>Rate</u>
Colonial Heights city	17,280	126	729.17	24	138.89	150	868.06
Fredericksburg city	20,331	116	570.56	18	88.53	134	659.09
Winchester city	24,536	139	566.51	21	85.59	160	652.10
Emporia city	5,807	24	413.29	5	86.10	29	499.40
Petersburg city	33,536	135	402.55	18	53.67	153	456.23
Harrisonburg city	41,429	152	366.89	6	14.48	158	381.38
Lynchburg city	65,438	231	353.01	30	45.84	261	398.85
Staunton city	23,936	79	330.05	15	62.67	94	392.71
Newport News city	182,565	565	309.48	102	55.87	668	365.90
Manassas city	37,762	109	288.65	5	13.24	114	301.89
Chesapeake city	209,294	559	267.09	107	51.12	666	318.21
Martinsville city	15,457	38	245.84	3	19.41	41	265.25
Radford city	15,869	38	239.46	4	25.21	42	264.67
Fairfax city	22,336	53	237.29	6	26.86	59	264.15
Virginia Beach city	439,454	976	222.09	242	55.07	1218	277.16
Franklin city	8,274	18	217.55	5	60.43	23	277.98
Williamsburg city	11,842	25	211.11	2	16.89	27	228.00
Bedford city	6,304	13	206.22	1	15.86	14	222.08
Portsmouth city	101,060	207	204.83	21	20.78	228	225.61
Salem city	25,152	49	194.82	7	27.83	56	222.65
Danville city	48,202	89	184.64	2	4.15	91	188.79
Manassas Park city	11,048	19	171.98	7	63.36	26	235.34
Hampton city	147,777	253	171.20	32	21.65	285	192.86
Norfolk city	242,077	401	165.65	25	10.33	426	175.98
Poquoson city	11,835	19	160.54	7	59.15	26	219.69
Waynesboro city	20,390	30	147.13	10	49.04	40	196.17
Galax city	6,674	9	134.85	5	74.92	14	209.77
Alexandria city	132,468	175	132.11	28	21.14	203	153.24
Bristol city	17,336	21	121.14	0	0.00	21	121.14
Suffolk city	70,856	83	117.14	3	4.23	86	121.37
Roanoke city	95,067	91	95.72	8	8.42	99	104.14
Richmond city	199,968	174	87.01	41	20.50	215	107.52
Covington city	6,442	5	77.62	2	31.05	7	108.66
Lexington city	6,998	5	71.45	0	0.00	5	71.45
Buena Vista city	6,380	4	62.70	0	0.00	4	62.70
Hopewell city	22,812	14	61.37	0	0.00	14	61.37
Norton city	4,023	1	24.86	0	0.00	1	24.86
Charlottesville city	44,391	7	15.77	0	0.00	7	15.77
Falls Church city	10,795	1	9.26	1	9.26	2	18.53

Note: Both Adult and Juvenile arrest rates in this table are per 100,000 of the total population and not per 100,000 adults or per 100,000 Juveniles, respectively. See Table 12 for arrest rates based on demographic population categories.

An Argument Against Increasing the Maximum Penalty for Marijuana Possession in Virginia

Table 12. Virginia Marijuana Possession Arrests by Selected Demographic Groups (2003)

Source: Uniform Crime Reporting Program, FBI; US Census Bureau

	<u>Arrests</u>	<u>Pop Pct</u>	<u>Arrest Pct</u>	<u>Arrest Rate</u>
Males	11,003	48.53%	85.89%	306.65
Females	1,808	51.47%	14.11%	47.51
Whites	7,443	66.94%	60.44%	156.46
Minorities	5,068	32.83%	39.56%	208.81
All	12,811			173.28
Age 0 to 9	0	13.13%	0.12%	4.22
Age 10 to 14	275	6.93%	6.01%	410.97
Age 15 to 19	4,420	6.75%	13.83%	970.27
Age 20 to 24	3,839	5.68%	17.58%	1,466.42
Age 25 to 29	1,631	5.60%	13.90%	1,175.03
Age 30 to 34	883	5.65%	12.52%	1,049.13
Age 35 to 39	703	7.46%	12.63%	801.53
Age 40 to 44	585	7.46%	10.59%	672.43
Age 45 to 49	314	7.21%	6.33%	416.02
Age 50 to 54	101	6.28%	3.14%	236.87
Age 55 to 59	39	5.77%	1.71%	140.30
Age 60 to 64	13	5.39%	0.84%	74.05
Age 65+	8	16.68%	0.79%	22.54
All	12,811			173.28