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Observations and Policy Recommendations Regarding Marijuana Enforcement and Use

Submitted to the
Baltimore Jewish Council

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1. Introduction:

A. Thinking about harmfulness and risk of injury and death.

The use of marijuana is not harmless, but much less harmful than most other drugs – legal and illegal – and many legal activities. Marijuana can be ingested in many ways. Historically it has been smoked like a cigarette or in a pipe. Now extracts from the plant can “vaped,” or included in candies, beverages or foods. How marijuana is used can affect the risks. More frequent use increases risk, and very heavy use by young teenagers is associated with an increased risk of psychosis.

Marijuana is not a harmless drug. But we need to be realistic in thinking about what risk is and what changes in risk are significant. The risks to an adult who uses marijuana are much less than the risks of many other behaviors that our society tolerates, if not embraces. The risk of brain injury to the minor who uses marijuana experimentally or casually is less than the risk of concussion playing football, soccer, etc. An estimated 300,000 American adolescents suffer concussion annually engaged in organized athletics, researchers reported in March 2017.

http://newsroom.aaos.org/images/9064/media_gallery/ConcussionAbstractAAOS2017.pdf Marijuana use cannot cause a lethal overdose (such as aspirin or heroin), it does not cause seizures (such as cocaine) and does not lead to chronic diseases such as cirrhosis of the liver, lung cancer or heart disease.

Risk is intrinsic to life. As a 70-year old, I face a much greater risk of falling and seriously injuring myself by living in my two-story home of 22 years (with the laundry in the basement) instead of moving to a one floor unit in a retirement home. Preparing for retirement, by placing my life savings in a diversified investment portfolio, I still risk my future economic security. Risk is an essential protein of the DNA of our capitalist, freedom-loving society. As capitalists we reward greater risks with greater returns – we embrace risk – thus some of savings are in equities. Those of us who are entrepreneurs risk our fortunes (and those who invest with us) whenever we start a business. When we sign up our athletic children for a team we sign waivers acknowledging – often vaguely – the risks they run of serious injury. Most athletic accidents are minor but many others are devastating, but we still routinely take risks for ourselves and those we are responsible for because risk is the heart of our success as a nation

Recognizing the risks in our lives we try to manage risk through education, preparation and regulation. Very importantly for our discussion today, for most activities, we reject criminal prohibition of risky activity as absurd. We tolerate driving in cars, downhill skiing, surfing, scuba diving, sky diving, white water rafting, canoeing and kayaking, sailing, mountaineering, hiking, bicycling, football, as well as swimming. These activities regularly result in thousands of deaths and serious bodily injuries annually. These accidents also regularly result in significant public expense of search and rescue, emergency medical services, hospitalization, etc. Thus, we license, regulate, insure, inspect, and oversee in myriad ways the many aspects of those activities. But to minimize the risks for those who engage in the activity, we don't break down their doors, have the police hold guns to their heads and send them to prison.

B. Thinking about liberty: What does it encompass? On what grounds is liberty to be restricted by the government?

As Americans, the default position of the individual and the family is liberty. We are a free people. We can worship as we please, read and think what we want, play what we want, travel where we want.

This morning, thinking about public policy, we are thinking about the role of government in restricting how we live our lives. Two fundamental and complex questions we confront are, “What circumstances justify the restriction of our individual liberty?” And, “What is the burden of proof that supports the restriction?”

If you get joy and pleasure from an activity, intrinsic to the idea of liberty is that you get to do that – what our national charter described as “life, liberty and the pursuit of happiness.” But pursuing other feelings – sadness, empathy with others or excitement – is also intrinsic to liberty. One might attend an opera, read poetry, history or a novel, or consider works of art and be saddened or angered. That might not sound like “pursuit of happiness,” but to do is protected liberty of the same character. Isn’t your control of your perceptions and feelings a fundamental component of your conception of your liberty, of your right to be free?

Well, what is the purpose of using marijuana? It is to change one’s mood and perception, commonly called, “getting high.” There are many types of highs and different objectives to do so. A person might want to “get high” to listen to music or to dance, or to be at a party and talk with people, or to hike in the woods, or watch a movie, or read poetry, or to increase the pleasure of eating and physical intimacy. Other reasons to get high might be to feel less anxiety, to relax, to sleep, to daydream. I am arguing, therefore, that “getting high” is a fundamental liberty.

What are the proper criteria for the government to restrict liberty? One could study music, opera or poetry as an intellectual pursuit but the reason most of us choose to engage these art forms is to experience the feelings. The First Amendment of our Constitution is not merely about protecting the authors or composers, it is protects us the listeners and our ability to have feelings from whatever source. The speech or opera can only be outlawed if the government can prove a “clear and present danger” in such expression. *Schenck v. United States*, 249 U.S. 47 (1919). Getting high does not create a “clear and present danger.”

In another example, if the federal government has some objective that will have the effect of restricting religious liberty it must have a “compelling state interest” and if challenged, must demonstrate this compelling interest. In a case in which the U.S. government seized the sacrament imported by the American branch of a Brazilian church because the sacrament was a controlled substance, the Supreme Court ruled unanimously that the government had no compelling interest in doing so and had to return the sacrament and permit its importation and use. *Gonzales v. O Centro Espirita Beneficente União do Vegetal*, 546 U.S. 418 (2006).

The use of marijuana by an adult to change their perceptions and feelings needs to be understood as fundamental liberty – like listening to music or reading a book, and

a law that threatens to imprison a person who does so is an enormous invasion of liberty.

C. The moral justification for imprisonment (forfeiture of liberty).

Now, a somewhat different argument focuses on the morality of imprisonment, that is the complete extinguishing of liberty when a court convicts a person of a crime. In fact, the Thirteenth Amendment of the U.S. Constitution *authorizes slavery as a punishment for a crime*.

When the state takes liberty away it must have a moral right to do so –not merely rely on its own authority expressed as “the law.” The moral authority to extinguish liberty must be founded on the need to address some grave transgression –that the person, at a minimum, engaged in a wrongful act. The point is the use, possession and cultivation of marijuana are not wrongful acts. Getting high with marijuana is not wrongful, just as drinking wine to get drunk is not wrongful. It would be immoral to take the liberty of a person away for drinking wine to get drunk because it is not wrongful.

Similarly, it would be immoral to take liberty away for esthetic objections to some conduct. An objection to “getting high” from marijuana, in contrast to “getting tipsy or drunk” from using alcohol, is simply an esthetic objection to a kind of intoxication. Society embraces many ways of getting high, such as those of the triumph of winning, in the thrill of skiing downhill, in riding a wave on a surfboard or the highs of running, biking or simply working out. There is no moral basis for punishing ways of getting high that differ from the ways lawmakers prefer to get high, even if a majority of the population shares their esthetic preference.

D. The scientific basis for imprisoning marijuana users, growers and sellers.

When marijuana use (and by extension cultivation, processing and distribution) was first being punished by the various states and the federal government early in the 20th century, there was no valid medical or scientific evidence of psychological, physical or social harm presented to the lawmakers. The anecdotal evidence presented was often completely fabricated or selected to appeal to overt racial prejudice. Marijuana was reported to be used by disfavored people – Mexicans and Blacks – and that was a sufficient basis to consider it bad and dangerous, and to criminalize it. As marijuana use, cultivation and sales were subjected to additional penalties in the 1950s, and included in the Controlled Substances Act in 1970, again, there was no valid evidence of harmfulness.

E. Marijuana laws should not be presumed valid.

The existing marijuana prohibition should not be entitled to a presumption of validity. The burden of proof should be upon those who wish to ban the use of marijuana in order to prove it is moral to authorize the police and the courts to threaten and send to prison people who use marijuana. (See Douglas N. Husak, Legalize This: The case for decriminalizing drugs, Verso, 2002). Those who support punishing marijuana users cannot meet that burden of proof because whatever the actual risks are to those who use marijuana, those risks do not warrant criminalizing and imprisoning the users – even for a single day. Whatever the risks that irresponsible users take in endangering the public by their misconduct, such as driving while impaired, those risks to public safety are properly addressed by focusing on *that* misconduct, both by

threatening punishment and by using education and social, regulatory and cultural changes.

F. Three key realities of Maryland's marijuana laws.

- **Hundreds of thousands of Marylanders have been arrested and jailed** at least briefly for possessing marijuana. These arrests interfere with the ability to get an education, a job, housing, getting married and having a family.
- **Marijuana enforcement is expensive.** The ACLU's 2013 study, *The War on Marijuana in Black and White*, <https://www.aclu.org/report/report-war-marijuana-black-and-white> found that **Maryland had the second highest per capita expenditure on marijuana enforcement of all the 50 states** after New York, at about \$18 per person. The total cost to Maryland in 2010 was estimated at \$106,702,789.
- Usage rates of marijuana by race are roughly equal. But in Maryland in 2010, the arrest rate per 100,000 for marijuana possession was 790 for African-Americans and 276 for whites. **An African-American person was 2.86 times more likely to be arrested for marijuana possession than a white person.** Our marijuana laws are enforced in a racially discriminatory manner. It is unrealistic to think this will be fixed without ending marijuana prohibition.

2. Current law regarding marijuana:

A. Decriminalization of marijuana – nationally and in Maryland.

In March 1972, the National Commission on Marihuana and Drug Abuse (Shafer Commission) issued its first report, recommending that adult possession of marijuana be “decriminalized.” In that approach to marijuana policy, simple possession of a personal use amount would not be a criminal offense, but instead a civil violation subject to a fine. This approach would maintain official or public disapproval of marijuana use but not subject those who did so to penalties that were more harmful than the actual use of marijuana. Cultivation, importation and distribution would remain felony offenses subject to substantial imprisonment. This approach was adopted by eleven states in the next 5 years, but never adopted by Congress. The decriminalization approach stalled at the state level, until 2001 in Nevada, and slowly picked up: 2008 Massachusetts; 2011 Connecticut; 2012 Rhode Island; 2013 Vermont.

In 2014, Maryland “decriminalized” possession of marijuana in an amount less than 10 grams (about 1/3 of an ounce). A citation can be issued. Conviction yields a civil fine of \$100 for a first offense, \$250 for a second offense and \$500 for a third or subsequent offense. (Md. Criminal Law Article, section 5-601(c)(2)).

B. Current Maryland criminal law re marijuana possession.

For possession of 10 grams or more of marijuana, an arrest is authorized, and upon conviction, imprisonment for up to 6 months, and a \$1000 fine may be imposed. (Md. Criminal Law Article, section 5-601(c)(2)(i)).

For possession with the intent to distribute, or cultivation and distribution up to 50 pounds (Md. Criminal Law 5-602), imprisonment up to 5 years and a fine up to \$15,000 may be imposed. (Md. Criminal Law 5-607).

Possession, cultivation or distribution of **50 pounds** or more is subject to a minimum of 5 years imprisonment, and a fine up to \$100,000 (Md. Crim. Law section 5-612(a)(1)).

A person who is the organizer, supervisor, manager or financier of a “conspiracy” that grows, distributes or imports **50 pounds** or more of marijuana must be sentenced to a minimum of 20 years imprisonment, up to 40 years, and a fine up to \$1,000,000, as a “drug kingpin.” Parole is not allowed for such sentences (Md. Crim. Law 5-613).

C. Medical marijuana in Maryland.

In 2013, the Maryland General Assembly created a program to provide marijuana to medical patients (Md. Health General Article section 13-1301 et seq.). I was appointed by Governor O’Malley to a four-year term on the newly created Maryland Medical Marijuana Commission (now Maryland Medical Cannabis Commission (www.mmcc.maryland.gov)). I was chair of the Policy Committee and drafted the regulations. The 2013 law was fatally flawed, and it could not be implemented. The law has been amended every year since.

<https://mmcc.maryland.gov/Documents/09.21.2018%20Health-General%20Article,%202013-3301-13-3316.pdf> MMCC completed writing regulations in 2015. (Some provisions have subsequently been amended.)

http://www.dsd.state.md.us/COMAR/subtitle_chapters/10_Chapters.aspx#Subtitle62 In 2015, we began the process of licensing growers, processors and dispensaries.

Selection of licensed growers and dispensaries in 2016 and 2017 was delayed by the commission’s overwhelmed logistics and by litigation. Once awarded a license, a licensee has one year to build their facility, hire and train staff, and open for business.

Medical cannabis distribution in Maryland finally began at the end of 2017. By August 27, 2019, **75,802 patients had been certified** by an approved health care provider, and another 26,000 patients had been registered with the MMCC but not yet certified by a health care provider. As of that date, 1,536 health care providers were authorized by the Commission including 855 physicians. A patient may legally possess up to 120 grams (about 4 ounces) of medical cannabis. **In the year ending July 31, 2019, 26,455 pounds of medical cannabis flower was sold at dispensaries (3046 pounds sold in July 2019. Sales have increased almost every month).**

A medical patient who has been certified by a physician may possess without any criminal or civil penalty a “30-day supply” (determined by the MMCC to be up to 120 grams – a little less than 4 ounces), and should not be subject to arrest. (Md. Health General Article section 13-3313(a)(1)). (The identity of patients can be confirmed by law enforcement accessing the MMCC database if a police officer finds a person in possession of marijuana who claims to be a patient.) However, a person who has been arrested, even though not certified under the state’s medical cannabis program, if not using in public, may establish a medical necessity in court and have the charge dismissed, if possessing not more than one ounce.

D. Legalization of adult recreational use of marijuana in eleven states, D.C. and Canada.

In 2012, voters in Washington and Colorado approved adult recreational legalization initiatives. They were joined by Alaska, Oregon and Washington, DC in 2014, California, Nevada, Massachusetts and Maine in 2016, and Vermont and

Michigan in 2018. Illinois on June 25, 2019 became the eleventh adult recreational legalization state (effective Jan 1, 2020).

Canada's parliament legalized adult recreational use of cannabis in June 2018, effective October 17, 2018. (Adults over the age of 18.) Legal distribution is expected to begin in October 2019. <https://www.justice.gc.ca/eng/cj-jp/cannabis/>

E. Federal law.

Federal law began to recognize medical cannabis patients in 1976 and distribute federally-grown marijuana to them (10 ounces per month). New patients were no longer admitted after 1992, and only three patients are still in the program. Other than that, federal law does not recognize medical use.

First offense cultivation or distribution—

- Of less than 50 kg or 50 plants (regardless of weight) of marijuana can be punished by up to 5 years imprisonment and \$250,000 fine. (21 U.S.C. 841(b)(1)(D).
- Between 50 and 100 kg/100 plants, by up to 20 years imprisonment and \$1,000,000 fine. (21 U.S.C. 841(b)(1)(C).
- Between 100kg/100 plants and 1000 kg/1000 plants, a minimum of 5 years imprisonment, up to 40 years imprisonment and \$5,000,000 fine. (21 U.S.C. 841(b)(1)(B)(vii).
- More than 1000 kg/1000 plants, a minimum of 10 years imprisonment up to life imprisonment and a fine of \$10,000,000. (21 U.S.C. 841(b)(1)(A)(vii).

There is no parole in the federal system – prisoners serve 85% of the sentence imposed due to credit for “good time.” **If there is a prior drug conviction of any kind, the minimum and maximum sentences are doubled.**

In addition, in 1994, Congress authorized the **death penalty** for growing or distributing more than 60,000 kg/60,000 plants if done as part of a “continuing criminal enterprise.” (18 U.S.C. 3591(b)(1)).

Simple possession, first offense can be punished by up to one-year imprisonment and a minimum fine of \$1000 fine. A second offense has a mandatory minimum of 15 days up to 2 years imprisonment, and minimum fine of \$2500. A third offense has a minimum sentence of 90 days up to 3 years imprisonment, and a minimum fine of \$5000. In addition, the defendant can be fined the cost of investigation and prosecution. (21 U.S.C. 844(a)).

3. Are people in Maryland going to jail for using marijuana?

A. Penalties under decriminalization.

In 2014, Maryland “decriminalized” possession of marijuana in amounts less than 10 grams (about 1/3 of an ounce). There is no arrest. A citation may be issued. A civil fine of \$100 for a first offense, \$250 for a second offense and \$500 for a third or subsequent offense can be imposed. **However, for possession of 10 grams or more, an arrest is authorized and upon conviction, imprisonment for up to 6 months, and a \$1000 fine may be imposed.** (Md. Criminal Law section 5-601).

B. Marijuana possession arrests in Maryland.

In 2010, when there were 23,663 marijuana arrests, Maryland had the 4th highest rate of marijuana possession arrests in the country, 409 per 100,000, when the national average rate was 256 per 100,000. ACLU, *The War on Marijuana in Black and White*, 2013, p.15. https://www.aclu.org/sites/default/files/field_document/1114413-mj-report-rfs-rel1.pdf Two Maryland jurisdictions were among the five counties with the highest arrest rates in the nation in 2010: Worcester County, 2132/100,000 and Baltimore City 1136/100,000. **In 2010, when Blacks were 30.0% of the Maryland population, they were 57.9% of the arrestees for marijuana possession.**

Despite decriminalization of possession of less than 10 grams of marijuana in 2014, according to the latest data, 17,921 persons were arrested in Maryland in 2017 for marijuana possession, an increase over the 15,779 arrested in 2016, and 14,329 in 2015. (The average number of arrests for marijuana possession per year over the five years 2013-2017 was just under 19,000.)

Marijuana possession arrests are a very significant fraction of all arrests for possession of drugs. In 2017, they were 64.3% of all drug possession arrests; over the past 5 years, during a lethal opioid drug epidemic, marijuana possession arrests averaged 62.4% of all drug possession arrests. (Maryland State Police, 2017 Uniform Crime Report) <https://mdsp.maryland.gov/Document%20Downloads/2017%20Uniform%20Crime%20Report.pdf>)

C. Arrests for marijuana sales and manufacturing.

Marijuana sales and manufacturing arrests are a smaller fraction of arrests for sales and manufacturing of all illegal drugs. The average number of arrests for marijuana sales or manufacture over the five years 2013-2017 has been 2,408, out of an average of 8,244 total arrests for sales and manufacturing of all drugs. Marijuana sales and manufacturing arrests were 29.2% of arrests for all drug sales and manufacturing during the period.

In 2017, there were 2,223 arrests for sales and manufacturing of marijuana (29.7% of the total of 7,462 arrests for all illegal drug sales and manufacturing), an increase over the 2016 number of 2,088 arrests for marijuana sales and manufacturing (28.5% of total arrests for sales and manufacturing of all illegal drugs).

D. Consequences of marijuana arrests.

There were a total of 20,144 marijuana arrests in Maryland in 2017.

It is important to recognize—

- (1) The enormous opportunity cost of making marijuana arrests in lieu of conducting investigations and making arrests for illegal sales of fentanyl, OxyContin, heroin, cocaine, methamphetamine, PCP, and other illegal drugs far more harmful than marijuana. This is especially so considering the epidemic of opioid overdose deaths Maryland is enduring.
- (2) That an arrest, even without a sentence of imprisonment comes at high cost to the arrestee, their family, and the community.
 - a. An arrest often is a violent act, with a firearm pointed at the arrestee, physical force applied, use of handcuffs, and jailing for some number of hours, at least.

- b. In many jurisdictions arranging for bail is expensive, often 10 percent of the amount of bail pays for a bond, which is not refunded, and is often a hardship to a family.
- c. Funds to hire an attorney must be raised. Many accused persons have no assets or funds and for representation must rely on the state Office of the Public Defender, at public expense.
- d. If bail cannot be made, an arrestee can languish in custody for days, weeks or months. After a few days in detention, an employed person will often lose their job.
- e. Lack of employment usually means that rent cannot be paid, and often while jailed, a tenant will be evicted and their property put on the sidewalk where it is taken away.
- f. Quickly a person can move from being housed and employed to being unemployed and housing unstable, and lose health insurance coverage as well.
- g. Even if charges are ultimately dismissed, the consequences are disastrous.

E. Comparison of marijuana arrests to arrests for other crimes, Maryland 2017.

| FBI Uniform Crime Report <u>Index Violent Crimes*</u> | <u>No. of reported crimes</u> | <u>No. of arrests</u> |
|--|-------------------------------|-----------------------|
| Murder | 569 | 339 (cleared 342)** |
| Rape | 1,773 | 432 |
| Robbery | 11,295 | 3,321 (cleared 3666) |
| Aggravated Assault | 17,049 | 9,078 (cleared 6643) |
| | | |
| Total arrests for Index Violent Crimes | | 11,083 |
| Total marijuana arrests marijuana possession and sales | | 20,144 |

*Uniform Crime Report Index Crimes are those important crimes used by the FBI to determine a jurisdiction's crime rate. The Index Crimes are the four categories of violent crimes, and three property crimes: burglary, larceny-theft, and motor vehicle theft. Arson is an Index Crime that is excluded from compiling the crime rate for a jurisdiction because of concern about variation in laws and procedures to determine when a fire is arson. The overwhelming majority of crimes do not fit in those 7 categories.

** A crime is cleared when the perpetrator is identified. Many crimes have more than one perpetrator and more than one person is arrested for that crime. In some instances, a crime is cleared but no arrest is made because the perpetrator is dead or in custody in another jurisdiction.

This data demonstrates that the overwhelming majority of violent crimes are never solved. Yet police arrested nearly twice as many people for marijuana offenses as all those arrested for the most serious violent crimes. Marijuana arrests are not as hard to investigate as violent crimes, but the effort to carry out those marijuana arrests could be used to investigate the thousands of unsolved (i.e. uncleared) violent crimes.

F. Maryland jail and corrections data.

Admissions to state prisons of newly sentenced offenders has been declining steadily for 20 years, from a high in 1998 of 16,907 new admissions.

| | |
|------|-------|
| 2013 | 10946 |
| 2014 | 10788 |
| 2015 | 9981 |
| 2016 | 9561 |
| 2017 | 8879 |
| 2018 | 8020 |

The data does not breakdown the charges that resulted in these admissions.

As of July 1, 2018, 8.9% of those held in Maryland's state prisons (18,635 persons) were serving drug abuse charges (1654 persons).

<http://dpscs.maryland.gov/publicinfo/publications/pdfs/research/InmateCharacteristics20180701.pdf>

The data does not break down the drug involved in the sentence. More than two-thirds of those incarcerated were serving sentences for violent crimes: homicide (26%), robbery (18%), assault (14%), sexual assault (9.5%).

It is likely that only a very small fraction of Maryland prisoners are being held for a conviction of possession of marijuana. In addition, the number of persons in Maryland prisons convicted of selling or manufacturing (growing) marijuana is unknown. Unfortunately reports from Maryland's courts do not reveal the number of convictions for drug offenses or the sentences imposed for drug convictions.

G. Probation and parole revocation.

A revocation of probation or parole can lead to imprisonment. Commonly, a person on probation or parole is subject to urinalysis drug testing. Most drugs and alcohol are quickly metabolized, and use cannot be detected after a few days. However, evidence of marijuana use is retained in the body much longer – as much as 10-20% of the THC that is ingested remains detectable five days afterwards.

<https://www.cdc.gov/mmwr/preview/mmwrhtml/00000138.htm> Almost always, a positive drug test is a violation of probation and parole, and very often results in a hearing and revocation of probation or parole. Maryland data does not reveal the number of persons admitted to prison for a positive drug test, or more importantly for this study, a positive marijuana test that resulted in a revocation of probation or parole.

4. Size of the marijuana market.

Nationwide marijuana distribution in 2016 was estimated by the RAND Corporation in a report last month as generating approximately **\$52 billion** in illegal revenues. https://www.rand.org/pubs/research_reports/RR3140.html Typically, this illegal revenue is laundered and used for other criminal purposes, and not reported for income tax purposes. The enterprises that carry out this distribution do not comply with laws regarding employee protection, the environment, good manufacturing practices, etc. These organizations commonly rely upon violence and corruption to control their employees and to maintain their position in the market.

5. Teen marijuana use is NOT going up as it is being legalized.

The latest national survey of drug use, the National Survey on Drug Use and Health shows that **teenage (age 12-17) marijuana use has been going down**, and in the most recent year reported, 2016, current use (use in the past month) for this population declined to 6.5 percent, about 1.6 million adolescents.

<https://www.samhsa.gov/data/sites/default/files/NSDUH-FFR1-2016/NSDUH-FFR1-2016.htm#illicit2> It had been as high as 8.2% in 2002 and 7.9% in 2011, just before Washington and Colorado voted in 2012 to legalize marijuana for adults.

In the states where marijuana for adults has been legalized, teenage use is also declining. <https://www.washingtonpost.com/news/wonk/wp/2016/12/21/one-of-the-greatest-fears-about-legalizing-marijuana-has-so-far-failed-to-happen/>

Adult marijuana use, however, is going up. According to NSDUH, in 2016, 7.2% of adults age 26 to 64 were current users, about 15.2 million adults. Of adults aged 18 to 25, 20.8 percent were current users, about 7.2 million adults. This percentage is about the same as 2014 and 2015, but higher than the percentages between 2002 and 2013. The NSDUH estimate of the total number of “current users” in 2016 is 24 million.

6. What are the risks from using marijuana?

Use of marijuana by adults and children is not harmless nor risk free. There are different risks of course. There does not appear to be the risk of death and disease such as those that result from heavy or long-term alcohol and tobacco use. Marijuana does not cause death in the short-term such as overdose, nor the long-term such as cancer or heart disease. (There is some evidence that those with heart disease are at greater risk of heart attack after smoking marijuana).

In 2019, there are reports that vaping black market THC extracts presents a risk of severe, even fatal lung damage. The cause is completely unclear at this time. There is suspicion this illness is due either to defects in the vape pens or adulterants added to the extracts such as Vitamin E acetate. But extensive smoking of whole cannabis does not cause lung cancer, according to a large 2006 study.

<https://www.scientificamerican.com/article/large-study-finds-no-link/>

There seem to be some psychological risks. Marijuana use can be addictive. A 2016 study reported that 13.2 percent of adult regular (current) users (and very disturbingly, 23.4 percent of users under age 21) meet the DSM-IV criteria for a Cannabis use disorder.

<https://www.tandfonline.com/doi/abs/10.3109/00952990.2016.1164711> Some studies suggest that some young teenagers who heavily use very strong marijuana are at greater risk of psychosis. Other studies suggest that young teenagers who play tackle football are at greater risk of permanent brain damage. Quantifying these risks is challenging.

The key risks were summarized in this important 2005 meta-analysis, “Long-term effects of exposure to cannabis” by Leslie Iversen, Oxford University:

<http://cannabiscoalition.ca/info/IversenCannabisEffects.pdf>

- Decline in cognition to long-term heavy users of cannabis – which are reversed upon cessation of use. There is no evidence of long-term degeneration of higher brain function.
- Acute schizophrenia-like psychosis may occur in response to high dose use of cannabis, and a study in Australia showed that heavy use before age 15 is linked to a four-fold increase in schizophrenia-like illness by age 26 (but this was found in 3 subjects out of 26 15-year old users, a statistically weak study). A study comparing the dramatic increase in cannabis use in Australia over 30 years found no evidence of a significant increase in schizophrenia over the same period.
- There seems to be a dose-dependent association between marijuana use and reduced educational achievement, an association with use of other drugs, and inconsistent evidence regarding other psychological problems or disorders or problematic behaviors.

“When asked to rate the subjective effects of cannabis on cognition, memory, career, social life, physical and mental health and various quality-of-life measures, a large majority of heavy-use cannabis smokers reported negative effects of their drug use.”

- Data on human beings does not show adverse effects from use while pregnant, but in a study of rats administered high doses of THC showed suppression of a key protein for brain development. The author concluded:

“A review of the literature suggests that the majority of cannabis users, who use the drug occasionally rather than on a daily basis, will not suffer any lasting physical or mental harm. Conversely, as with other ‘recreational’ drugs, there will be some who suffer adverse consequences from their use of cannabis. Some individuals who have psychotic thought tendencies might risk precipitating psychotic illness. Those who consume large doses of the drug on a regular basis are likely to have lower educational achievement and lower income, and may suffer physical damage to the airways. They also run a significant risk of becoming dependent upon continuing use of the drug. There is little evidence, however, that these adverse effects persist after drug use stops or that any direct cause and effect relationships are involved.”

In 1999, the Institute of Medicine of the National Academy of Sciences reported in a study commissioned by the White House Office of National Drug Control Policy, "Except for the harms associated with smoking, the adverse effects of marijuana use are within the range of effects tolerated for other medications."

7. Motor vehicle crashes by marijuana impaired drivers.

This is one of the most important questions regarding legalization of adult use of marijuana. The vision of the stoned driver cruising through red lights menacing the public is horrifying, and one of the most powerful objections to adult use legalization. There are such drivers, but fear of stoner drivers has been fed on exaggerations.

Paul Armentano, Deputy Director of NORML, is the most knowledgeable partisan on this issue. Much of his response to concerns raised by Vermont’s Governor, Phil Scott, about legal marijuana and highway safety in May 2017 follows:

<https://vtdigger.org/2017/05/21/paul-armentano-drugged-driving-concerns-not-influence-marijuana-decision/>

A. Responding to concerns about marijuana impaired drivers.

Gov. Phil Scott is among those who have expressed concerns [about depenalizing adult use of marijuana]: "...I believe that what we should be doing is trying to find ways to protect those on our highways...that provide safety to Vermonters."

One can sympathize with the governor's position. But a careful review of the available evidence finds that such fears are largely unfounded.

First, it should be stressed that driving under the influence of marijuana is already a criminal offense in Vermont. Nothing in the language of Vermont's proposed law changes this reality.

[Note: Maryland Transportation Code (section 21-902(d)) provides for imprisonment of up to one year and a fine of \$1000 for driving under the influence of a controlled dangerous substance, such as marijuana.]

Second, scientific studies consistently find that marijuana-positive drivers possess a comparatively low accident risk, particularly when compared with alcohol-positive drivers. In fact, the largest ever controlled trial assessing marijuana use and motor vehicle accidents, published in 2015 by the U.S. National Highway Traffic Safety Administration (NHTSA), reports that marijuana positive drivers possess virtually no statistically significant crash risk compared to drug-free drivers after controlling for age and gender.

<https://trid.trb.org/view.aspx?id=1343066>

By contrast, drivers with levels of alcohol in their blood at legal limits possess nearly a four-fold risk of accident, even after adjusting for age and gender.

This finding is consistent with prior meta-analyses of crash risk data. For example, a 2013 review of 66 separate crash culpability studies, published in the journal *Accident Analysis and Prevention*, reported that THC-positive drivers possessed a crash risk on par with drivers testing positive for penicillin (Odds Ratio (OR): 1.10 for cannabis versus Odds Ratio: 1.12 for penicillin).

<https://www.sciencedirect.com/science/article/abs/pii/S0001457512002412?via%3Dihub> This risk is far below that associated with driving with two or more passengers (OR=2.2)

<https://www.sciencedirect.com/science/article/abs/pii/S000145750700036X> and is comparable to the difference between driving during the day versus driving at night. <https://www.themarshallproject.org/2017/01/16/when-are-you-too-stoned-to-drive?ref=hp-1-112#.RqH3A0BVm>

B. Data from states regulating marijuana use.

Further, data from states that have liberalized marijuana's legal status show no uptick in motor vehicle crashes. Writing in December 2016, in the *American Journal of Public Health* [published in Feb. 2017 issue], investigators at Columbia University reported, "On average, medical marijuana law [(MML)] states had lower traffic fatality rates than non-MML states. Medical marijuana laws are

associated with reductions in traffic fatalities, particularly pronounced among those aged 25 to 44 years. ... It is possible that this is related to lower alcohol-impaired driving behavior in MML-states.”

<https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2016.303577?journalCode=ajph&>

A review of federal FARS data (Fatal Analysis Reporting Systems) further finds that trends in motor vehicle accidents in Colorado and Washington post-legalization are no different than crash trends in non-legalization states over this same period of time.

C. Use prior to driving should be discouraged.

Nevertheless, the governor is correct that use of marijuana prior to driving ought to be discouraged and that better efforts ought to be made to identify drivers who may be under its influence. These include greater funding for the training of drug recognition evaluators (DREs) and the use of modified roadside field sobriety tests.

These efforts should not include the imposition of per se thresholds for THC or its metabolites, as such limits are not scientifically correlated with driver impairment. As acknowledged by NHTSA, “It is inadvisable to try and predict effects based on blood THC concentrations alone, and currently impossible to predict specific effects based on THC-COOH (marijuana’s primary metabolite) concentrations.”

Efforts should also be made to better educate the public with regard to the existing traffic safety laws, as well as to the evidence surrounding marijuana’s potential influence on driving. In particular, this messaging should stress that combining marijuana and alcohol greatly impacts driving behavior and is associated with far greater risk of accident than the use of either substance alone.”

8. Policy Recommendations.

Legal Adult Use

1. Adults should be able to possess cannabis, use it, and buy it.
2. Adults should be able to grow cannabis for their own use or barter.
3. Adults should be able to use cannabis socially. A wide variety of facilities should be licensed to allow social marijuana use, not just facilities like bars. Such facilities should run the gamut from yoga studios to campgrounds, coffee houses, concert venues and public gatherings.
4. The age of adulthood is 18. Prohibition on legal use by persons 18 to 21 will continue to be widely disregarded, remain unenforceable and continue the negative effects of current prohibition. It will undermine respect for the law for those just beginning to develop “adult” ideas about law and respect for the government.

Prevention

5. Substantial investment in evidence-based education and prevention programs is needed to minimize use by elementary and secondary students. Investment is needed to train parents to effectively adopt norms for families that

discourage misuse and abuse of cannabis, consistent with the variety of family value systems.

6. Programs to educate and motivate users not to drive under the influence of cannabis need to be developed and widely disseminated.

Control of Industry

7. The newly emerging cannabis industry needs to be structured to help establish racial justice in the industry and to help correct the historic racial injustice of marijuana prohibition.
8. The power of large enterprises in the marketplace needs to be constrained. Market access for small businesses needs to be encouraged.

Taxation

9. Taxation should be based on the amount of THC sold in a cannabis product at retail, not based on a percent of price or on a weight of product basis. This approach provides the strongest public health control and directly ties revenue to the amount of intoxication.

Second Chance and Rehabilitation

10. Desistance from cannabis use should no longer be a condition of probation and parole. Testing for marijuana use among this population should be stopped.
11. Expungement of criminal records for marijuana possession, cultivation and sales should be easy to obtain and inexpensive, if not automatic.
12. Former drug offenders should be enabled to participate in the legal cannabis industry. This will help shrink the illicit market for cannabis after legalization. Current Maryland medical cannabis law bars persons with drug felony convictions from employment in the medical cannabis industry for 7 years after completion of sentence. This is simply spiteful.
13. Release as soon as possible all prisoners serving marijuana sentences, and discharge from supervision all persons on probation and parole for marijuana possession, sales and cultivation convictions that did not involve violence or pollution.

End Discrimination

14. Provide civil protection to marijuana consumers. Anti-marijuana prejudice has been spread by religious groups, economic interests and government agencies for 100 years. Marijuana users have been discriminated against and, pursuant to law, they have been harassed, imprisoned and sometimes killed. This prejudice is wrong. Employers have a right to prohibit drug and alcohol use while working or and to prohibit coming to work impaired. But it should be illegal to discriminate in housing, education, parental rights and responsibilities, firearm ownership, serving on a jury or in other ways because a person uses marijuana.

Restitution to victims

15. Hundreds of millions of dollars have been extracted from marijuana users in fines and property forfeitures. Billions have been lost due to lost wages due to imprisonment, attorneys fees, and wages lost due to denial of employment after an arrest. That can never be compensated. At a minimum, when records can demonstrate that the government extracted money from marijuana users, that should be returned.

Many other arguments on this issue are well-summarized and documented at Marijuana Pro Con. <https://marijuana.procon.org/> # # #