

# The Socioeconomic Impact of Marijuana Legislation in Alabama

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### **Acknowledgments**

The Socioeconomic Impact of Marijuana Legislation in Alabama team would like to thank the following individuals and agencies for providing invaluable information regarding this research paper:

1. Alabama State Senator, the Honorable Cam Ward
2. Ms. Carla Crowder, Executive Director of the Alabama Appleseed Center for Law and Justice
3. Agent Clay A. Morris, Assistant Special Agent in Charge, Birmingham District Office, U.S. Department of Justice, Drug Enforcement Administration
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## **Introduction**

Across the nation, there is a growing awareness of marijuana as more than half the states have laws legalizing marijuana for medical and recreational uses. However, marijuana remains illegal under Alabama law. While marijuana has been allowed for limited medical use under specific state laws, it is otherwise banned by criminal statutes. Penalties for violating those statutes are among the harshest in the nation. There are three fundamental stances in regards to marijuana; legalize for medical use, legalize for recreational and medical use, and the complete ban of marijuana. The purpose of this paper is to present research from those states that have legalized marijuana for medical and recreational use, to research those medical uses for marijuana that have been proven effective, and to determine the socioeconomic outcomes for states who have legalized marijuana for recreational and/or medical uses, as well as for the State of Alabama. Based on those findings, the team will present recommendations regarding Alabama's existing marijuana laws.

## **A Brief History of Marijuana in the United States**

Marijuana and hemp both have a complicated history in the United States dating back to the 1600's. Marijuana started to gain traction in the United States in the early 1900's after immigrant refugees brought it with them as they entered this country. In the 1930s, it became popular among many different communities. With the country calling for an end of prohibition during the Great Depression, the tide against marijuana began to change (McNearney, 2018).

A great deal of research that linked marijuana usage to violence, high crime and other deviant behaviors was used to pressure the federal government into taking action. The Federal Bureau of Narcotics urged states to accept responsibility of controlling the marijuana problem by adopting the Uniform State Narcotic Act of 1932. By 1937, the Marijuana Tax Act effectively banned the sale of marijuana plants by imposing heavy excise taxes on its sale, possession, and transportation. By 1970, the Controlled Substances Act, as part of the "War on Drugs" spearheaded by President Richard Nixon, repealed the Marijuana Tax Act, but classified cannabis as a Schedule 1 drug; in the same category as heroin, LSD, Cocaine and Ecstasy (McNearney, 2018).

Through the Compassionate Use Act of 1996, California officially became the first state to legalize medical marijuana for use by patients with chronic illnesses. In 2009, the U.S. Attorney General distributed a memorandum to all United States Attorneys suggesting that they not prosecute any cases under the Controlled Substances Act (CSA) against individuals using marijuana in states with medical marijuana laws. Nine years later, in January 2018, the Alabama Attorney General rescinded the "Cole Memo", which provided guidance to all U.S. Attorneys regarding marijuana enforcement under the CSA (McNearney, 2018).

## **A Closer Look at Medical Marijuana**

### **What is Medical Marijuana?**

The term medical marijuana refers to using the whole, unprocessed marijuana plant or its basic extracts to treat symptoms of illness and other conditions. To date, the U.S. Food and Drug Administration (FDA) has not recognized or approved the marijuana plant as medicine. However, scientific study of the chemicals in marijuana, referred to collectively as cannabinoids, has led to two FDA-approved medications that contain cannabinoid chemicals in pill form. Continued research may lead to more medications. Because the marijuana plant contains chemicals that may help treat a range of illnesses and symptoms, many people argue that it should be legal for medical purposes. In fact, a growing number of states have legalized marijuana for medical use (“Marijuana as Medicine: What is Medical Marijuana?,” 2019).

### **The Benefits of Medical Marijuana**

Proponents of medical marijuana use it for its apparent ability to help mask and remedy many of those symptoms associated with a collection of different ailments and diseases. In many instances it is considered to be a safe, natural, and cheaper alternative to many of the manufactured treatment options currently available. Marijuana has been shown to reduce pain, inflammation, is used as an appetite stimulant, appears to control epileptic seizures, and treat certain mental illness and addictions (“Marijuana as Medicine: What is Medical Marijuana?,” 2019).

Currently, marijuana has been shown to be an effective treatment for the following conditions:

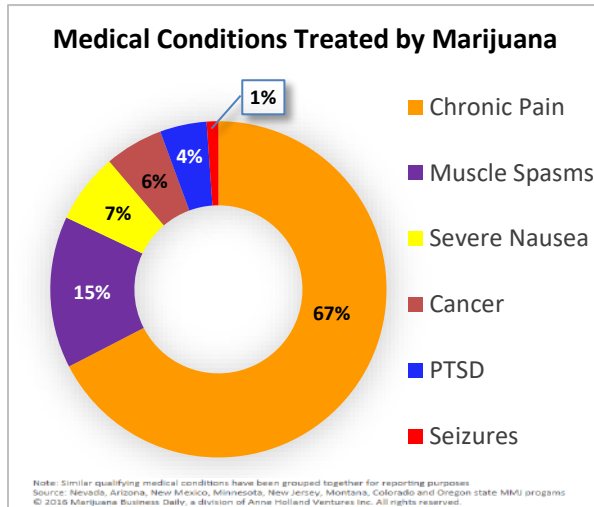
- Glaucoma - reduces the internal pressure of the eye,
- HIV/AIDS related weight loss - stimulates the appetite of people with AIDS,
- Multiple sclerosis (MS) - treats muscular tightness and tremors in people with MS,
- Nerve pain – consuming marijuana three times daily can help reduce nerve pain caused by HIV and other conditions, such as diabetic neuropathy, and
- Pain - decreases pain for people experiencing long-term (chronic) pain

(“Medical Marijuana FAQ,” 2018).



However, there is much research that still needs to be done in this regard, with many new possible medically beneficial compounds in marijuana yet to be discovered.

### Medicinal Uses for Marijuana



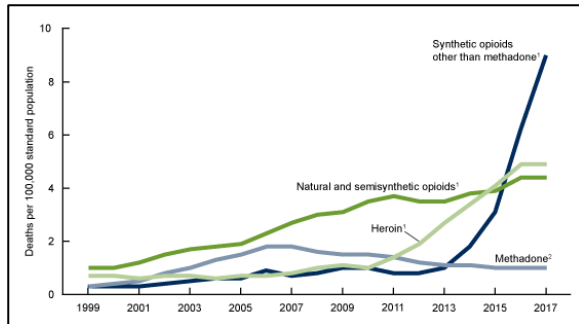
Medical marijuana is used to treat a number of different conditions, including: Alzheimer’s, appetite loss, cancer, Crohn’s, eating disorders, epilepsy, glaucoma, mental health conditions such as schizophrenia and post-traumatic stress disorder (PTSD), Multiple Sclerosis (MS), muscle pain, nausea, chronic pain, and Wasting Syndrome (cachexia).

However, with a few exceptions, marijuana has not yet been scientifically proven to relieve symptoms for many of these conditions. According to Marcel Bonn-Miller, PhD, a substance abuse specialist at the University Of Pennsylvania Perelman School Of Medicine, “The greatest amount of evidence for the therapeutic effects of cannabis relate to its ability to reduce chronic pain, nausea and vomiting due to chemotherapy, and spasticity (tight or stiff muscles) from MS (“Medical Marijuana FAQ,” 2018).

### Cannabinoids

Cannabinoids are chemical compounds that naturally occur in the resin of the Cannabis Sativa plant, commonly called marijuana. These chemicals have a drug-like effect on the human central nervous system and immune system, leading to altered moods, pain relief, and other temporary changes. Cannabinoids include Tetrahydrocannabinol (THC), the well-known substance that causes the psychoactive “high” effect associated with marijuana use, and many other cannabinoids have shown promising medical effects in research studies (CBD Oil Review, n.d.)

## Marijuana as an Alternative to Addictive Drugs (Opioids)



Evidence suggests that one of the beneficial qualities of cannabis is its ability to help people curtail their use of addictive pharmaceuticals, like opiates, helping both with pain and the resulting, underlying addiction to pain medications. According to the Center for Disease Control (CDC),

the rate of overdose deaths from 1999 to 2017 involving synthetic opioids, other than Methadone, has increased significantly (see the above chart) (Drug Overdose Deaths in the United States, 1999-2017, 2018).

A recent National Institute on Drug Abuse (NIDA) study found that states that have legalized medical cannabis before 2014 have realized twenty-three percent less opioid-induced hospital visits than those where marijuana remained illegal. For those fighting with pain or addiction to any kind of prescription drugs, cannabis can be a safer, less addictive alternative. Many believe the opioid epidemic is the greatest healthcare crisis of the 21st century. In 2015 alone, its economic cost in the United States was estimated to be more than \$500 billion. This is largely driven by healthcare costs, criminal justice expenses and lost productivity. A major contributor to this crisis has been the doctor's prescription pad ("Marijuana as Medicine: What is Medical Marijuana?," 2019).

In January 2017, the National Academies of Science and Medicine reviewed more than 10,000 studies in humans to evaluate the safety and efficacy of cannabis for dozens of different diseases and symptoms. They concluded that cannabis, a non-opioid pain-relieving drug, is safe and effective for the treatment of chronic pain ("The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research," 2017).

### Side Effects of Marijuana

Although marijuana is reported to have many beneficial medical uses, its use can produce unwanted and sometimes harmful side effects. Some of the side effects of using marijuana are dry mouth, nausea, vomiting, dry or red eyes, heart and blood pressure problems, lung problems,

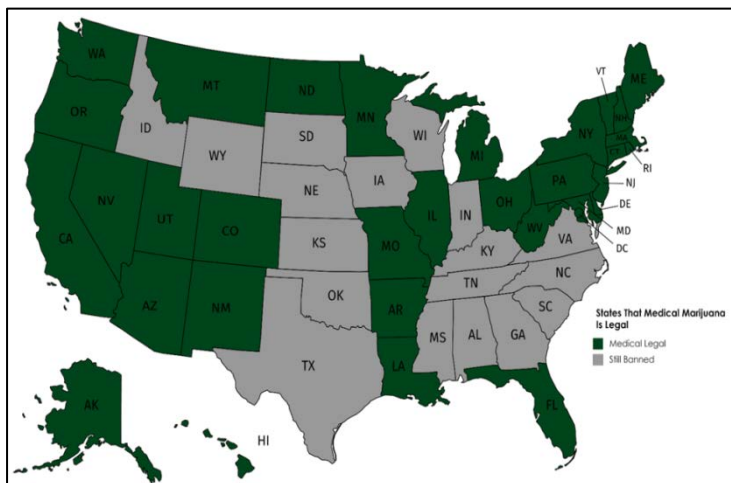
impaired mental functioning, headache, dizziness, numbness, panic reactions, hallucinations, flashbacks, depression, and sexual performance problems. However, not all who consume the drug will exhibit these side effects (“Medical Marijuana FAQ,” 2018).

### Medical Marijuana and Quality of Life

Medical cannabis users can be among the least fortunate people in society. Not only have they acquired a life-altering condition, but many of the alternative prescription treatment options that are available either don’t work for them, have devastating side effects, or they simply can’t afford them. In many instances, cannabis can be a safe, effective, and less expensive alternative for these individuals. The Victoria Cannabis Buyers Club has interviewed many people who have chosen to use cannabis extracts to help their conditions where pharmaceutical drugs have failed. One such individual is Ms. Gina Herman Bravely. Ms. Bravely’s prescribed dose of OxyContin rose over time from 40 to 240 milligrams to treat her chronic pain. She had bouts with erratic behavior. “I would just be sitting there by myself and one of my boys would come in from school and I would have been talking to nobody, but carrying on a conversation by myself, I guess.” Ms. Bravely and three other members of the club have testified that medical cannabis does not make them feel high, but returns them to a pain-free state. Current science estimates that approximately nine percent of cannabis users develop dependence, which is less than that of alcohol or tobacco (Smith, 2014).

### Medical Marijuana States

Currently, there are 33 states and the District of Columbia that have made some form of



medical marijuana legal. These include Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire, New

Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Utah, Vermont, Washington, Washington, DC, and West Virginia (“33 Legal Medical Marijuana States and DC; Marijuana State Laws – Summary Chart,” 2019).

## **Current Marijuana Possession and Penalties in Alabama**

### **Current Alabama Laws**

Title 13A, Chapter 12, Article 5, Section 13A-12-212 of the Criminal Code of Alabama makes it illegal to possess or receive a controlled and/or regulated substance. Section 13A-12-213 to 214, of the Alabama Criminal Code specifically addresses the illegalities of the possession of marijuana. It is punishable by a Class A misdemeanor when possessed for personal use or by a Class C felony when possessed for reasons other than personal use. Section 13A – 12-211 of the Alabama Criminal Code makes it illegal to sell, furnish, give away, or distribute any controlled substance, including marijuana. Violating this section is punishable by a Class B felony. Section 13A-12-231 of the Alabama Criminal Code makes it illegal to traffic, sell, manufacture, deliver, or bring marijuana into the State of Alabama. Thus, any part of a marijuana plant greater than 2.2 pounds is illegal under this section. These crimes carry a mandatory prison sentence which increases with the weight of the marijuana in question. The use of the terms “marijuana” and “cannabis” in the State Criminal Codes listed above includes the marijuana extract cannabidiol (CBD) (“Guidance on Alabama Law Regarding the Possession, Use, Sale or Distribution of CBD,” 2018).

Presently, the only legal form of marijuana in Alabama is CBD, a compound found in cannabis that has medicinal uses. In 2014, the Alabama Legislature passed “Carly’s Law” which legalized a new treatment method for children with serious neurological and epileptic disorders and funded research at the University of Alabama at Birmingham (UAB) to study the treatment’s success. CBD comes in oil form and has none of the intoxicating effects of marijuana attributed to THC that might make legalization susceptible to abuse. Carly’s Law was passed to provide an affirmative defense to the limited category of individuals with a debilitating epileptic condition, and who have a CBD prescription from the UAB Department of Neurology. The law also extends the affirmative defense to possession of CBD by a parent or caretaker. The Legislature included an end date, or “sunset date,” of July 1, 2019; after which the law and its protections were to no longer exist (“Guidance on Alabama Law Regarding the Possession, Use, Sale or Distribution of CBD,” 2018).

On July 1, 2016, the Alabama Legislature passed “Leni’s Law” to provide an affirmative defense for another class of individuals. Leni’s Law made it legal for CBD oil to be used by those with a chronic or debilitating disease or medical condition that produces seizures. The law also extends the affirmative defense to possession of CBD by a parent or guardian of a minor with such a condition. However, for the affirmative defense to apply, the CBD oil must have been tested by an independent third-party laboratory. Leni’s Law did not legalize the possession or use of CBD (“Guidance on Alabama Law Regarding the Possession, Use, Sale or Distribution of CBD,” 2018).

On October 28, 2018, the Alabama Department of Public Health adopted a rule allowing for the medical use of FDA-approved drugs, such as Epidiolex, that contain CBD. Today, Epidiolex is legal for doctors to prescribe for the treatment of two forms of epilepsy. These laws provide only an affirmative defense to the otherwise illegal possession of CBD. However, Epidiolex will be regulated in the same way as any other prescription drug. Currently, the selling, delivering, or distributing of CBD, other than the FDA-approved prescription drug Epidiolex, is illegal under Alabama law (“Guidance on Alabama Law Regarding the Possession, Use, Sale or Distribution of CBD,” 2018).

The affirmative defenses for both Carly’s and Leni’s laws can only be raised by individuals prosecuted for unlawful possession of marijuana. In other words, these laws offer no “safe harbor,” even to the narrow class of individuals covered, for selling or distributing marijuana or trafficking in marijuana. Carly’s law only protects the UAB Department of Neurology and the UAB School of Medicine from being prosecuted for marijuana related crimes arising from the prescribing of CBD to those with a debilitating epileptic condition. In addition, it is illegal for CBD to be sold by any convenience store, gas station, or private individual. For an individual to successfully assert the affirmative defense to apply under these two laws, the THC level of the CBD must be no more than three percent relative to CBD according to the rules adopted by the Alabama Department of Forensic Sciences. Currently, all CBD, whether above or below three percent THC, is illegal under Alabama law, except for the prescription drug Epidiolex (“Guidance on Alabama Law Regarding the Possession, Use, Sale or Distribution of CBD,” 2018).

## Penalties and Fines for Marijuana Possession in Alabama

At the time of this report, the current penalties for marijuana charges in Alabama are:

- 1<sup>st</sup> offense: No more than one year in jail, \$600 to \$2,100 fine, and 90-day suspended license.
- 2<sup>nd</sup> offense (within five years): \$1,100 to \$5,000 fine, imprisonment (which may include hard labor) for no less than five days and not more than one year, 30 days community service, and one-year suspended license.
- 3<sup>rd</sup> offense: \$2,100 to \$10,000 fine, imprisonment for a mandatory minimum of 60 days, but not more than one year, and three-year suspended license.
- 4<sup>th</sup> or subsequent offense: (Class C felony) \$4,100 to \$10,000 fine, Imprisonment for no less than one year and one day, but no more than 10 years (sentence may be suspended if the offender enrolls and completes a state certified chemical dependency program), and five-year suspended license. (“State by State Guide to Cannabis DUI Laws,” 2017).

In Alabama you do not have to be caught with drugs on your person to be charged with possession. To merely have drugs “in your control” is enough to be arrested. This means in your car, your home, or even next to you in public could warrant a possession charge. Alabama is known as the one state where you do not want to get caught with marijuana. The penalties for marijuana possession are slightly less severe than for other drugs, but you can still face criminal charges if caught with marijuana. Generally, marijuana possession is classified as a Class A misdemeanor offense for any amount for personal use only. It carries up to one year in the city or county jail and a maximum fine of \$6,000; offenses such as possession of drug paraphernalia and marijuana in the second degree fall under this category (“Alabama Laws and Penalties,” 2019).

For those with more than one marijuana offense, a misdemeanor charge could be elevated to a Class C felony offense. This offense is classified as “possession of marijuana in the first degree.” Accordingly, a felony charge could mean the potential for jail or prison time. However, if caught with a significant amount of marijuana, several ounces for example, the charge could be upgraded to intent to sell. This would be a felony offense which carries an incarceration range

of one year and one day to ten years and a maximum fine of \$15,000 (“State Drug Possession Laws and Penalties,” n.d.).

Under the state’s Habitual Felony Offender Act, a Class C felony marijuana possession conviction can serve as the second strike toward a larger sentence that offenders can receive if they are convicted of a third felony. A minimum of a Class D felony can be assessed for any subsequent possession offense (up to 5 years in prison and a maximum fine of \$7,500) (“Alabama’s War on Marijuana,” 2018).

In an effort to curtail arrest made for marijuana possession, save jail space and allow law enforcement to focus on more serious crimes, Alabama’s most populous county, Jefferson County, has ended arrests for misdemeanors including the possession of small amounts of marijuana. Now, possession of less than two (2) ounces (approx. 57 grams) of marijuana is punishable by a fine instead of jail time. An offense of this nature is classified as a violation, a step below a misdemeanor, and carries a fine of up to \$250 (“Alabama County Ending Misdemeanor Marijuana Arrest,” 2019).

### **The Social Impact of Current Alabama Marijuana Laws**

Currently, the marijuana laws in the State of Alabama are some of the harshest in the nation. In Alabama, persons caught with as little as a few grams of marijuana not only face incarceration and thousands of dollars in fines and courts costs, but their driver’s license may also be suspended making it difficult to find or keep a job, or even getting to court to face their charges (“Alabama’s War on Marijuana,” 2018).

Alabama’s laws can also leave room for discretion in the hands of law enforcement officers. An example of this discretion occurred in Etowah County, Alabama where law enforcement officials charged a man with drug trafficking after adding the total weight of his marijuana-infused butter to the few grams of marijuana he possessed when arrested. By adding the total weight of the butter, authorities were able to reach the 2.2 pound threshold needed for a trafficking charge.

Alabama is also a very conservative state regarding marijuana. Smoking or possessing marijuana in any quantity for recreational purposes can land individuals in jail. A first time



offender is susceptible to a misdemeanor charge which is punishable by one year in jail and a fine of \$6,000. In some cases, this jail term can be suspended with probation. However, repeat offenders can be charged with a Class C felony that is punishable by one to ten years of incarceration and up to a \$10,000 fine. The sale of recreational marijuana, even in trace amounts, is considered a Class B felony. The selling and/or trafficking of marijuana in Alabama can carry even more severe penalties. In 2016, there were 2,351 arrests for marijuana possession in the state of Alabama (according to the last year data was available) and many more have been arrested for having the intent to buy marijuana or for possessing marijuana paraphernalia. Each arrest represents a negative interaction with law enforcement and can trigger the beginning of a lifetime of consequences for an individual. With each arrest, an individual's life is put on hold, if not derailed, indefinitely (Nunley, 2015).

The overwhelming majority of people arrested in Alabama for marijuana offenses between 2012 and 2016, eighty-nine percent, were arrested for possession. In 2016, possession arrests accounted for ninety-two percent of all marijuana offenses. At the same time, between 2013 and 2016, the number of marijuana arrests had declined; although law enforcement continued to arrest far more people for marijuana possession than for robbery. The prison population serving time for marijuana possession fluctuates from day to day. However, it has dropped over the years. Currently, more inmates are released annually for marijuana charges than are brought into the prison system. For example, in fiscal year 2015 there were 265 offenders placed into the state prison system on marijuana possession charges, while 445 prisoners were released that same year (Faulk, 2017).

New sentencing guidelines in 2013 were enacted to keep non-violent offenders out of prisons and in 2015 a law was enacted that lowers first-degree possession of marijuana for personal use from a Class C felony to a newly created Class D category of felonies. Under this Class D felony charge, the sentence can be for no more than five years and not less than one year and one day. Any prison sentence meted out is to be served on probation or in a community correction facility for no more than two years. Imposed drug treatment is also an option for sentencing (Faulk, 2017).

On February 21, 2017, AL.com launched a project called “Marijuana in Alabama” to assess trends and public sentiment towards marijuana in the state. The project found the following:

- As of October 2016, more than 80 percent of the 220 state prisoners convicted of first-degree marijuana possession were black, according to the Alabama Sentencing Commission.
- Some Alabama counties are still imprisoning new mothers who test positive for marijuana, in some cases separating the baby from the mother, and
- Some colleges arrest students for possession while on campus, while others do not (Garrison, 2017).

Alabama’s punitive war on marijuana also impacts those convicted of marijuana charges under the State’s civil asset forfeiture law, allowing law enforcement to seize property suspected of being connected to criminal activity. If arrested on a felony charge, offenders are taken to jail, charged with a felony marijuana offense, a plea is entered, and the court imposes approximately \$2,000 in fines and fees. Paying off the associated fees and fines can be difficult because the State automatically suspends the offender’s driver’s license, making it extremely difficult for those offenders to work. Alabama is one of a dozen states that suspend licenses for drug offenses. As a part of Alabama’s felon disenfranchisement, offenders also lose their right to vote (“Alabama’s War on Marijuana,” 2018).

### **Sobriety Testing**

In the State of Alabama, drivers can be charged for driving under the influence (DUI) of marijuana; however, proving a driver has been smoking or ingesting marijuana is a challenge (Eversole, 2014). According to the NIDA, marijuana significantly impairs judgment, motor coordination, and reaction time, and studies have found a direct relationship between blood THC concentration and impaired driving ability. In addition, marijuana is the drug most frequently found in the blood of drivers who have been involved in vehicle accidents. People frequently combine alcohol and marijuana and it is often unclear what part marijuana plays in accidents because of its ability to be detected in body fluids for days. The risk associated with

marijuana in combination with alcohol appears to be greater than that for either drug by itself (“Does marijuana use affect driving?” 2019).

Other meta-analyses of multiple studies by NIDA found that the risk of being involved in an accident significantly increased after using marijuana. However, a large case–controlled study conducted by The National Highway Safety Administration found no significant increased accident risk attributable to marijuana after controlling for drivers’ age, gender, race and presence of alcohol (“Does marijuana use affect driving?” 2019).

Even though the law allows for a driver to be charged for driving while under the influence of marijuana, it is difficult for police to test for the legal limit. In cases involving alcohol, police can administer a breathalyzer test to the driver; however, there is no parallel test for marijuana. Testing levels of THC in marijuana users is much more complicated and research has shown that THC can remain in the blood stream long after a person has been under the effects of THC. This can produce inaccurate results when determining whether a person was actually “under the influence” of marijuana. Another complication is that law enforcement officers are required to take the driver suspected of driving under the influence of marijuana to a hospital in order to conduct a blood test (Eversole, 2014).

By comparison, the effects of alcohol vary based on a person’s size and weight, metabolic rate, related food intake and the type and amount of beverage consumed. In addition, alcohol consumption produces fairly straightforward results; the more you drink, the worse you drive. Factors like body size and drinking experience can shift the correlation slightly, but the relationship is still pretty linear; enough to be able to confidently develop a blood alcohol content scale. This is not true for marijuana. Currently, law enforcement does not have a fast, reliable test to determine whether someone is too “high” to drive (Eversole, 2014).

The 2014 National Survey on Drug Use and Health reported that 10 million Americans said they had driven while under the influence of illicit drugs during the previous year. Second to alcohol, marijuana is the drug most frequently found in drivers involved in accidents. Alcohol and marijuana both affect mental function, which means they can both impair driving ability. Marijuana and its active ingredient, THC, alter brain function affecting processes such as

attention, perception, and coordination which are necessary for a complex behavior such as driving a car. Regular marijuana users tend to become accustomed to the drug, particularly in terms of cognitive disruption or psycho-motor skills. Since they are accustomed to the drug's effects, they may function better relative to occasional users. In addition, smoking marijuana produces a rapid spike of THC concentrations in the blood, followed by a decline as the drug redistributes to tissues, including the brain. Because of this, current blood, breath, saliva and urine tests have been challenged as unreliable in court, though they are used to prove that someone has consumed marijuana. In Alabama, it is implied that a driver shall consent to a chemical test of their breath, blood, or urine for the purpose of determining the presence of drugs and/or alcohol. However, an individual suspected of being under the influence of cannabis has the right to refuse to submit to a chemical test, and no penalties or sanctions apply for refusing to submit to chemical testing for drugs (Grant, 2017).

## **The Economic Impact of Enforcing Marijuana Laws in Alabama**

### **Law Enforcement Work Load**

The current number of people arrested in Alabama for marijuana possession is not clear. Records on marijuana arrests are spotty due to electronic reporting issues and some police agencies have not provided their arrest numbers to the Alabama Law Enforcement Agency (ALEA) for its annual crime statistics report for the past six years. That includes numbers from the Birmingham Police Department, the state's largest police department, which says the department is not mandated to report its arrest data to ALEA (Faulk, 2017).

A national Pew survey found even among law enforcement attitudes have shifted; more than half of active police favor legalizing medical marijuana and a third favor allowing its recreational use. About 32 percent of police officers and 49 percent of the public support legalizing marijuana for both private and medical use, according to the survey (Faulk, 2017).

### **The Costs**

A fiscal analysis conducted by economists at Western Carolina University found that the enforcement of marijuana possession laws in Alabama, their associated court hearings and trials, and the incarceration of people in local jails and state prisons came with a substantial price tag in 2016. "Each of the 2,351 marijuana arrests in 2016 involved a judge, a clerk, law enforcement officers, forensics, storage, and prosecutors all paid for by Alabama's taxpayers," Dr. Angela Dills and Dr. Audrey Redford, economic professors with the Center for the Study of Free Enterprise at West Carolina University reported. "Taken together, we estimate the cost of enforcing Alabama's marijuana possession laws to be \$22 million in 2016 alone." That estimated \$22 million to enforce the prohibition against marijuana possession in 2016 was potentially enough to fund the hiring of 628 more corrections officers. Additionally, the enforcement of marijuana possession laws has created a crippling backlog at the state agency tasked with analyzing forensic evidence in all criminal cases, including violent crimes (Faulk, 2017).

According to numbers from the Alabama Sentencing Commission's 2016 annual report, as of October 17, 2016, there were 220 inmates convicted of first degree Possession of Marijuana

being held in state prisons. However, that's a 69 percent drop from January 3, 2009, when Alabama's overcrowded prisons held 708 inmates on that same charge (Faulk, 2017).

These latest numbers mark the first time in more than a decade that possession of marijuana was not among the twenty-five most common crimes for inmates in Alabama prisons. In 2009, first-degree marijuana possession ranked 13<sup>th</sup>, just behind manslaughter and third-degree robbery (Faulk, 2017).

Prosecutors and law enforcement officials believe that the number serving time in state prisons for marijuana possession are mostly those who were given probation, but then committed another crime to have their probation revoked. "A lot wouldn't be there if they hadn't messed up again," said Jason Murray, Commander of the Talladega County Drug and Violent Crime Task Force. He went on to say that "more inmates are being released than brought into the system..." and "that was at a time when judges were just implementing new sentencing reforms aimed at thinning Alabama overcrowded prisons." Prosecutors and law enforcement officers point to sentencing reforms for the significant drops in people serving prison time for all possession offenses (Faulk, 2017).

## **The Decriminalization of Marijuana Possession**

### **Examples of States that have Decriminalized Marijuana**

#### **Washington State**

Washington's medical marijuana laws began with the 1998 initiative, I-692. Protections from state criminal sanctions were provided for qualified patients and designated caregivers who comply with the laws' provisions. This initiative established a system overseen by the Washington State Liquor Control Board, to license, regulate, and tax the production, processing, and wholesale and retail sales of marijuana; provided that actions compliant with this regulatory system shall not constitute criminal or civil offenses under Washington law; created the dedicated marijuana fund consisting of excise taxes, license fees, penalties, and forfeitures, and specifies the disbursement of these moneys for a variety of health, education, and research purposes, with the remainder distributed to the state general fund; and amended implied consent laws to specifically provide that any person who operates a motor vehicle in the state is deemed to have given consent to a test to determine the concentration of THC (Summary of Initiative 502, 2012).

The passing of Initiative I-502 marijuana legislation in 2012 changed the number of arrests and criminal charges related to marijuana in Washington State. The Washington State American Civil Liberties Union reported that prior to marijuana legalization the number of marijuana possession cases among adults decreasing from 7,964 in 2009 to 5,531 in 2012. After legalization, the number of filings dropped by 120 in 2013. In the 2019 Update Report released by the Washington State Statistical Analysis Center, the Liquor and Cannabis Board reported that sales and excise taxes increased during the first few months of the legalization passing (“Monitoring Impacts of Recreational Marijuana Legalization: 2019 Update Report,” 2019).

#### **Colorado**

In November of 2000, voters of the state of Colorado passed Amendment 20 to the state's constitution, codified in article XVIII, section 14. This effectively legalized limited amounts of medical cannabis for patients and their primary caregivers. Amendment 20 authorizes a patient who has been issued a Medical Marijuana Registry Identification Card, or that patient's primary

caregiver who has been identified on the patient's Medical Marijuana Registry Identification Card, to possess:

- a) No more than two (2) ounces of a usable form of marijuana, and
- b) Not more than six (6) marijuana plants, with three (3) or fewer being mature, flowering plants that are producing a usable form of marijuana.

Patients and primary caregivers who possess more than two ounces or six plants have an affirmative defense in court after they have been arrested if the amount they have is "medically necessary to address the patient's debilitating medical condition." Patients who have a doctor's recommendation to use medical cannabis, but who have not obtained a Registry Identification Card also have an affirmative defense in court ("History of Colorado's Medical Marijuana Laws," n.d.; "Amendment 20 to Colorado's State Constitution," n.d.).

In the early 2000s, some quality caregivers began providing marijuana to larger numbers of patients. These caregivers mostly operated delivery services or in discreet retail locations. In an attempt to end the commercial distribution of medical marijuana, the Colorado Department of Public Health and Environment ("Health Department"), at the behest of the Drug Enforcement Administration, created an informal rule barring caregivers from providing medical marijuana to more than five patients. An organization called Sensible Colorado sued the state over this arbitrary policy and after an extensive hearing, Sensible Colorado won in 2007. After this victory, caregivers were allowed to provide marijuana to any number of patients that needed their help ("History of Colorado's Medical Marijuana Laws," n.d.).

In 2009, the Health Department tried again to limit the commercial distribution of medical marijuana. This time, they went through a formal rule making process to bring back the five patient caregiver limits. Again, Sensible Colorado organized the opposition. More than 300 patients, caregivers, and supporters came out to testify at the Board of Health hearing in July 2009. By a one vote margin, the Board of Health rejected the five patient limits for caregivers, effectively approving the dispensary model. The Colorado "Green Rush" was born.

Although many caregivers were operating lawful retail outlets, Amendment 20 did not *expressly* authorize or regulate the commercial distribution of medical marijuana. In their next session, the



Colorado Legislature enacted the Colorado Medical Marijuana Code, the most comprehensive system of medical marijuana distribution and regulation at that time through the passage of SB 10-109 and HB 10-1284. Without weighing in on the merits or the constitutionality of these bills, it is important to note that these bills not only license commercial businesses for the distribution and production of medical marijuana, but impose new restrictions on patients, caregivers, and doctors (“History of Colorado’s Medical Marijuana Laws,” n.d.).

Codified at C.R.S. 12-43-3.101 *et seq.*, the Colorado Medical Marijuana Code regulates and licenses: (1) Medical Marijuana Centers (Dispensaries); (2) Medical Marijuana Optional Premise Cultivation Facilities; and (3) Infused Products Manufactured (e.g. edibles, tinctures, lotions, oils). Pursuant to the Code, counties and cities may adopt their own rules and licensing procedures for medical marijuana centers or ban these businesses all together. Given this new statutory option for local bans, access to Medical Marijuana Centers will depend, in large part, on local politics and grassroots organizing. Although local governments can ban medical marijuana businesses, no municipality has the authority to ban caregivers or patients. Senate Bill 10-109 was enacted to regulate doctors who certify medical marijuana for their patients. In short, it mandates that patients see a doctor in-person in order to receive a recommendation. The year after the passage of HB10-1284, the legislature enacted HB11-1043 a bill to clean up some regulatory inconsistencies. This law provides new restrictions on licensed businesses and caregivers. Notably, it requires caregivers to register their “caregiver grow” with the Colorado Medical Marijuana Enforcement Division. HB11-1043 also provided some additional protections for patients and loosened some restrictions for employees of licensed businesses. The bill provides that patients who make less than 185 percent of the federal poverty level are exempt from paying the annual registry fee and from paying state sales tax on their purchases. HB11-1043 also protects patient medical records and prohibits law enforcement from profiling patients (“Amendment 20 to Colorado’s State Constitution,” n.d.).

The Colorado Medical Marijuana Code requires both the Colorado Department of Public Health and Environment and the Colorado Medical Marijuana Enforcement division to enact implementing regulations. These regulations were enacted throughout 2011. The regulations

impose significant requirements on caregivers and require them to provide extra services to their patients besides the provisions of medical marijuana. More regulations will be enacted to implement HB11-1043 (History of Colorado’s Medical Marijuana Laws,” n.d.; “Amendment 20 to Colorado’s State Constitution,” n.d.).

On November 6, 2012, Colorado became the first state to vote in favor of ending marijuana prohibition with about 55 percent of the Colorado electorate voting in favor of Amendment 64. The Sensible Colorado team was one of the primary authors of the measure, along with the Marijuana Policy Project and dozens of other attorneys. A64 went into effect upon the proclamation of the Governor. Additionally, on November 6<sup>th</sup>, the people of Fort Collins voted to overturn their ban on dispensaries becoming one of the first cities in the state to permit dispensaries after banning them (History of Colorado’s Medical Marijuana Laws,” n.d.; “Amendment 20 to Colorado’s State Constitution,” n.d.).

Colorado appears not to have experienced an increase in marijuana use among its youth. The use of marijuana appears to have not had an effect on the dropout rates or graduation rates. Graduation rates have increased while dropout rates have decreased since 2010. Marijuana citations also appear to have been steady from 2014 to 2017 and account for around seven percent of all DUI arrests. This percentage is only 350 citations out of 5,000 DUI arrests. Total car accidents above the legal limit of THC decreased to 35 in 2017, down from 52 in 2016. In addition, arrests for possession dropped by half during a five-year period; decreasing from 12,709 in 2012 to 6,153 in 2017 (Tabachnik, 2019).

#### New York State

New York’s Compassionate Care Act, sponsored by Assembly Health Committee Chair Richard Gottfried and Senator Diane Savino, was approved by the New York Assembly and Senate on June 20 and was signed by Governor Andrew Cuomo on July 5, 2014. The new law protects certain seriously ill patients who use marijuana pursuant to their doctors’ advice from civil and criminal penalties. A number of modifications were made at the insistence of Governor Andrew Cuomo. As a result, patients cannot smoke medical cannabis in public, the law will sunset after seven years, and there will be no more than five manufacturers — with a total of up to 20

locations — in the entire state (“Marijuana Legislation and NY Recreational Push Fails in 2019 Legislative Session,” 2019).

Cuomo's decision to support marijuana legalization followed a series of public hearings in 2018 that endorsed decriminalization efforts after the state Department of Health issued a report advocating a change in law. The six-month Health Department study, commissioned by Cuomo, was released in July and determined that the benefits of legal marijuana outweigh the risks. The department also determined that legalizing the drug for New Yorkers older than 21 would not significantly raise smoking rates and could help reduce racial disparities in police enforcement.

Under the Compassionate Care Act, medical marijuana remains legal in New York State for patients who are certified by medical practitioners as having serious conditions. The conditions include cancer, AIDS and severe chronic pain, among other ailments (Brown, 2019). To be clear, the decriminalization of marijuana is not the same as marijuana legalization. Decriminalization means that a state repealed or amended its laws to make certain acts criminal, but no longer subject to prosecution. In the marijuana context, this means individuals caught with small amounts of marijuana for personal consumption would not be prosecuted and would not subsequently receive a criminal record or a jail sentence. In many states, possession of small amounts of marijuana is treated like a minor traffic violation. But even in states that have decriminalized it, possessing larger quantities or selling marijuana have significant penalties (Brown, 2019).

In New York, the marijuana legislation has presented economic opportunity for its residents. The New York State Department of Health estimated the marijuana market size to be between \$1.7 and \$3.5 billion. A recent study by the Rockefeller Institute of Government, found that a \$1.7 billion industry could generate a total economic output of \$4.1 billion with an estimated 30,700 jobs. Also, millions of dollars in capital investment can be generated by investors pouring in to take advantage of the new market (Schultz, 2019).

## **Steps Alabama has taken to Decriminalize Marijuana Possession**

Alabama has taken its first steps in becoming the 34<sup>th</sup> State to legalize medical marijuana. In 2018, the Alabama Senate passed a medical marijuana bill, known as the Care Act. Senate Bill (SB) 236, sponsored by Senator Tim Melson (R-Florence) passed 17-6. The bill would exempt from the crime of unlawful possession of marijuana a person with a qualifying condition who has a valid medical cannabis card for the medical use of cannabis. The bill would also extend Carly's Law to January 1, 2021, and revise Leni's Law with proposed changes through November 1, 2020 (Wilson, 2019).

The Alabama House Health Committee substituted SB236. The substitute bill set up a commission to study approaches, create regulations, and recommend future legislation on medical marijuana. The bill would renew Carly's Law for one year to July 1, 2020, and establish the Medical Cannabis Study Commission. The Commission would consist of 15 members; three members appointed by the Governor, two members appointed by the Lieutenant Governor, two members appointed by the President Pro Tempore of the Senate, two members appointed by the Speaker of the House of Representatives, three members appointed by the Attorney General, the State Health Officer, the Director of the Department of Forensic Sciences, and one member appointed by the Executive Director of the Drug Education Council. The Alabama House passed the substitute bill by a vote of 80-19 in May 2019. Since the House revised the bill, it will go back to the Senate to vote on the changes and then to be signed by the Governor (Wilson, 2019).

In March 2019, State Representative Hall introduced House Bill (HB) 96 which will change what defines unlawful possession of marijuana in the first degree and second degree while also creating unlawful possession of marijuana in the third degree. The bill would revise the possession of two ounces or more of marijuana in a Class C Felony, the possession of more than one ounce, but less than two ounces of marijuana for personal use is a Class A misdemeanor, and a possession of one ounce or less of marijuana is punishable by fines of not more than \$250 for the first two offenses, and not more than \$500 for any subsequent offense. A similar bill, HB272, was introduced a year ago, but failed to gain any momentum. The bill was assigned to the House Judiciary Committee and was sent to the subcommittee for further consideration. A companion

bill, SB98, was introduced by Senator Singleton in March 2019 and was assigned to the Senate Judiciary Committee. The bill passed unanimously on April 1, 2019, by the Senate Committee, but was stalled in the House (HB96/SB98 (2019) – Marijuana Reclassification, n.d.).

### **Reasons for Decriminalizing Marijuana**

Punishing minor marijuana possession with fines and not incarceration could help generate additional revenue and save the State money through the partial elimination of the law enforcement needed and court related costs associated with the prosecution of such crimes.

The social benefits of decriminalizing marijuana possession are many. Many construe current State and Federal laws to be unwarranted government intrusion into individual freedom of choice. For many, marijuana is viewed as being no more harmful to a person's health than alcohol or tobacco. Yet both alcohol and tobacco are legal, widely used and regulated by the U.S. Food & Drug Administration. However, unlike alcohol and tobacco, marijuana is thought to have medicinal benefits for patients suffering from a host of ailments and diseases including cancer, AIDS, and glaucoma. In addition, crime and violence, both within the U.S. and Mexico, as well as other marijuana producing countries, are greatly increased due to the illegal trafficking of marijuana. Legalization could potentially curtail the need for such criminal behavior (White, 2019).

In regards to marijuana decriminalization benefitting law enforcement, according to the FBI Unified Crime Statistics, 587,700 people were arrested in 2016 for marijuana-related crimes, more than for all violent crimes, like murder and rape, combined. As a result, marijuana arrests in Alabama place an undue burden on the judicial system. In addition, drug busts of youth for marijuana possession often carry harsh penalties that can cause undue social harm with lifelong consequences. Decriminalizing marijuana would go far to help alleviate these burdens (White, 2019).

Marijuana is one of America's top-selling agricultural products. According to the Colorado Department of Revenue, the combined four-year sales of marijuana for Colorado since it legalized cannabis in 2014, has now topped \$4.5 billion (White, 2019). The State of Alabama could realize similar, albeit on a smaller scale, economic benefits if marijuana was to be made legal.



## **Recommendations**

On June 9, 2019, Governor Kay Ivey signed Senate Bill 236 into law. This law provides a “gateway” to pass a full medical marijuana bill in 2020. In addition, the bill seeks to establish a commission (The Care Act Commission) to study the effects of medical marijuana and to extend the end date for “Carly’s Law” which allows children with seizures to continue to obtain CBD Oil. The Care Act Commission will need to be the gatekeepers for establishing and managing a future medical marijuana law.

Based on the research presented in this paper, the Socioeconomic Impact of Marijuana Legislation in Alabama team makes the following recommendations:

1. Implement more research focusing on the medical and economic impacts of marijuana on the citizens and economy of the State of Alabama.
2. Propose legislation for the 2020 legislation that includes the following:
  - Develop legislation to further decriminalize marijuana possession.
  - Create a regulatory agency within the Alabama Department of Public Health to oversee a statewide administered medical marijuana program.
  - Establish a register of qualified medical doctors to treat patients with debilitating illnesses and prescribe medical marijuana as necessary.
  - Establish and administer a patient registry system for certain qualifying conditions and issue cannabis identification cards to authorized medical marijuana users.
  - Develop and establish a dispensary network for medical marijuana, utilizing a sufficient number of dispensaries as not to place an undue hardship on patients.
  - Develop educational programs for medical cannabis users to help prevent abuse, especially to target teenagers.

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