

Marijuana Legalization in Washington State: Monitoring the Impact on Racial Disparities in Criminal Justice

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Overview

This brief report describes the types of marijuana-related crimes after marijuana legalization in the state of Washington, comparing them with the types of crimes before legalization. It also reviews preliminary data on the potential impact of Initiative 502 (I-502, marijuana legalization) on racial disparities in the criminal justice system in Washington. Finally, it provides an overview of Colorado and Oregon findings on the topic, followed by a proposal to better measure the impact of Washington marijuana legalization on racial disparities and criminal justice moving forward.

Introduction

Over the past 20 years, police departments nationwide have been firm in the enforcement of marijuana laws. During 2000–2010, over 8 million marijuana-related arrests were made; 88% of those arrests were for marijuana possession-only.¹ In 2010, African Americans/Blacks were 3.8 times more likely to be arrested for marijuana possession than whites in the US, yet use of marijuana remains similar across racial and ethnic groups.¹ In Washington state, pre-legalization data shows that African Americans/Blacks were 2.8 times more likely to be arrested for marijuana possession than whites.¹

Proponents of legalization have argued that decriminalization of the possession of limited quantities of marijuana could be an effective strategy to reduce arrests and criminal charges, improve societal health and decrease racial disparities.²

What is and is not a crime in Washington State after marijuana legalization?

Washington has a history of disproportionately arresting people of color for marijuana and other drug-related crimes.^{3,4} Effective December 2012, after I-502 was approved by voters, Washington enabled adults age 21 years and older to purchase marijuana in authorized retailers and to possess limited quantities of marijuana (≤ 1 oz of useable, < 16 oz solid infused, 72 oz liquid infused & 7g concentrates) for private use.⁵ Possession of quantities above these limits remains illegal in Washington: adult possession of usable marijuana between 1 oz and 40g is punishable by a misdemeanor charge and possession of greater than 40g remains a Class C felony (Table 1). Because I-502 did not address the severity of marijuana crimes among minors (under the age of 21), possession of any amount up to 40g remains a misdemeanor crime and over 40g remains a Class C felony.⁶ Other crimes impacted by I-502 included possession of marijuana drug paraphernalia, impaired driving/driving under the influence, and public consumption of marijuana. Marijuana legalization in Washington also created a new crime: public consumption of marijuana. Prior to I-502, public consumption of marijuana would have been addressed in possession laws. After I-502, a new crime was implemented that made it unlawful to open marijuana packaging or consume marijuana in public, punishable as a Class 3 civil infraction with a maximum fine of \$50.⁶ A comparable crime was also implemented for using marijuana while in a motor vehicle, even if not driving.

Table 1. Washington State Marijuana-Related Criminal Offenses Before and After I-502

RCW	Offense	Penalty	
		Before I-502	After I-502
Manufacture/deliver/sell			
69.50.401	Manufacture, deliver, sale, possession with intent to deliver	Class C felony	Legal for licensees, Class C felony otherwise
Possession/Use			
69.50.4014	Possession of marijuana less than 1 oz	Misdemeanor	Legal for adults; Misdemeanor for minors
69.50.4014	Possession of marijuana more than 1 oz, less than 40g (1.4 oz)	Misdemeanor	Misdemeanor
69.50.4013	Possession of controlled substance or more than 40g marijuana	Class C felony	Class C felony
69.50.4121/412	Use, manufacture, deliver paraphernalia	Misdemeanor/ Class I civil infraction	Legal for marijuana, age not specified
69.50.445	Public consumption	Possession law would apply; penalty dependent on quantity	Class 3 civil infraction
Driving			
46.61.745	Open container or consumption of marijuana in car	Possession law would apply; penalty dependent on quantity	Traffic infraction
46.61.5249	Negligent driving	Misdemeanor	Misdemeanor
46.61.502/504	Driving under the influence/physical control, 21+	Gross misdemeanor, with no per se blood content limit, or Class B felony	Gross misdemeanor, with per se blood content limit (5 ng), or Class B felony
46.61.503	Driving under the influence/physical control, under 21	Gross misdemeanor, with no per se blood content limit	Gross misdemeanor with per se blood content limit (0 ng)

Source: Darnell A, Bitney K. *I-502 Evaluation and Benefit-Cost Analysis: Second Required Report Technical Appendix*. Olympia: Washington State Institute for Public Policy, 2017.

Marijuana Legalization and Criminal Justice Studies: Statewide, Local, and Beyond Washington

Washington State

To date, the evaluation of I-502 on criminal justice outcomes has focused on changes in the number of arrests and criminal charges related to marijuana crimes; studies examining racial disparities after legalization in Washington are still preliminary. The studies that utilize data routinely collected across the state of Washington are summarized below:

Washington State American Civil Liberties Union. After legalization, the ACLU of Washington requested demographic data from the Association of the Courts (AOC) to assess differences in rates of misdemeanor possession of marijuana court filings by racial group before and after legalization (2009–2013) among adults 21+ years.⁷ Currently, this assessment of marijuana crime by race in Washington is the only published report of its kind. Prior to legalization, the number of marijuana possession filings among adults 21+ years was decreasing from 7,964 in 2009 to 5,531 in 2012, and after legalization the number of filings dropped in 120 in 2013. During 2012, the rate of court filings among African Americans/Blacks was 2.7 times that of whites and a year later, the disparity remained the same. The data suggested that the disparity in court filings persisted after legalization. However, it is unclear when the initial offense and arrest occurred. Because decriminalization of marijuana possession began in December of 2012, it is possible that court cases filed in 2013 were of arrests that occurred prior to marijuana legalization. Therefore, it is imperative to continue to monitor marijuana-related crimes and convictions by racial groups to elucidate any effects of legalization on racial disparities over time in the criminal justice system.

Washington State Office of Financial Management. The Washington State Office of Financial Management (OFM) reported characteristics of marijuana-related incidents and arrests over time as part of their series to monitor impacts of I-502.⁸ The OFM used data reported to the Washington Association of Sheriffs and Police Chiefs (WASPC) by law enforcement agencies to describe the number of marijuana incidents and arrests over time. As the FBI define it, an incident occurs when any law enforcement investigates a scenario, whether it results in an arrest or not.⁹ Incidents included in the OFM report were scenarios in which marijuana was listed as the first or only suspected illicit drug. Since legalization, the number of marijuana incidents has dropped by 58-63% among all ages. Proportionately, the distribution of marijuana incidents by crime type has remained relatively the same. Possession still accounts for nearly 90% of marijuana incidents (Table 2). This finding seems logical given that OFM included offenders under the age of 21, and possession of any quantity of marijuana remained a misdemeanor penalty. Unfortunately, trends specific to demographic groups were not reported in this analysis.

Table 2. Marijuana incidents in Washington by crime type, 2012–2015

	2012	2013	2014	2015
Total Count of Offenses	6336	2689	2326	2313
Offenses by Crime Type				
Possession or Consumption	5786 (91%)	2373 (88%)	2103 (90%)	1999 (86%)
Distribution or Selling	327 (5%)	194 (7%)	126 (5%)	198 (9%)
Cultivating or Manufacturing	127 (2%)	84 (3%)	62 (3%)	47 (2%)

Source: Forecasting and Research Division, Washington State Office of Financial Management. *Monitoring Impacts of Recreational Marijuana Legalization: 2016 Update Report*. Olympia; 2017.

Washington State Institute for Public Policy. WSIPP conducted a comprehensive legislatively-mandated evaluation and benefit-cost analysis of I-502 that included the impacts on convicted criminal charges.¹⁰ The study assessed changes in the rate of convictions over time, the effect of legal cannabis sales, and differences in the effects of legalization by age group (adults 21+ years vs. under 21 years). The only drug-related convictions specific to marijuana that changed was misdemeanor possession of marijuana. As expected, the number of convictions among adults 21+ years of age dropped to 0 and misdemeanor charges for paraphernalia dropped substantially after legalization. Neither marijuana nor paraphernalia possession convictions were affected by the amount of cannabis sales within the corresponding Washington county. For people convicted under the age of 21, misdemeanor possession of marijuana did decline after legalization from 1,015 in the first quarter of 2012 to 722 in the first quarter of 2013, but as with adults, the amount of cannabis sales did not have a significant effect on [was not correlated with / was not related to] drug conviction rates.

Preliminary look at racial disparities in select counties of Washington

The Crime, Cannabis & Police Research Group at Washington State University used preliminary data from a Department of Justice funded study to compare white vs. Black arrests.¹¹ Latinos were not included in the analysis, because of difficulties measuring ethnicity in arrest data. Their main preliminary findings are that after legalization in Washington, African Americans/Blacks continue to be disproportionately arrested for the possession and selling of marijuana when compared to whites. Though the disparity in marijuana possession between African American/Blacks and whites was reduced slightly after legalization, the disparity for selling marijuana has more than doubled since legalization.

Local trends

While statewide studies have the ability to control for individual law enforcement agencies or police departments, monitoring trends in marijuana-related crimes within a local police department can provide details of violations that statewide data systems do not. For example, violations for public consumption of marijuana cannot be directly queried from state-derived data; however, local law enforcement agencies and municipal courts maintain details on the nature of the crime that would indicate whether someone was ticketed for public consumption vs. possession or a different drug-related charge. One example of the potential of local data to explore issues of criminal justice can be made using data from the Seattle Police Department (SPD). A 2015 report for the Seattle Community Police Commission showed a disproportionate number of citations for marijuana public consumption issued to African Americans/Blacks in Seattle.¹² Using local police department data is key to understanding differences in the implementation and enforcement of policies pertaining to the legalization of marijuana.

Beyond Washington State

Compelling evidence in other states suggest racial disparities persist or have become worse after legalization and the opening of a licensed marijuana market, even while total marijuana-related criminal justice incidents have decreased.

In Colorado, marijuana court filings decreased by 85% from 2010 to 2014 after legalizing marijuana in 2012. During the same time frame the rate of arrests for marijuana possession among African Americans/Blacks remained 2.4 times higher compared to the arrest rate for whites. The disparities for African American/Blacks were even larger for arrests for marijuana cultivation (2.5 times the arrest rate for whites) and distribution of marijuana (5.4 times the arrest rate for whites).¹³

Results from Oregon are consistent with findings in Colorado. The Oregon Public Health Division examined changes in the age-adjusted rates of marijuana arrests by racial groups.¹⁴ The age-adjusted rate of marijuana

arrests for African Americans/Blacks was 2 to 3 times the rate of whites during 2010–2014. Oregon legalized marijuana in 2014 and in the following year the disparity between African Americans/Blacks and whites persisted. Specifically, the rate of arrest was 77% higher among African Americans/Blacks in 2015 when compared to whites.

Preliminary results suggest that legalization of marijuana for adults has greatly reduced the number of people arrested and convicted for marijuana-related crimes, yet racial disparities persist in Washington and in other states. Other factors may contribute to sustaining the racial disparities, such as over-policing in low-income neighborhoods, racial profiling, and other racially biased police practices.¹⁵ These inequitable practices may minimize the potential positive impacts of I-502 and marijuana legalization on all communities.

Areas for Future Research

What to measure

Assessment of the impact of I-502 on criminal justice and racial disparities is still in its early stages. In order to measure the impacts of I-502 and local marijuana regulatory policies on criminal justice, it is imperative to consider both direct and indirect consequences of legalization. Initiative 502 directly addressed changes in criminal law around marijuana possession, consumption, paraphernalia and driving under the influence.

Below are suggested measures for assessing the direct and indirect effects of I-502 on criminal justice and racial/ethnic disparities, building on the recommendations put forth by Washington State Institute for Public Policy.¹⁰ The rationale for measuring each indirect effect of I-502 is stated in italics. This list is by no means exhaustive and is meant as a starting place to monitor trends and assess the equitable impacts of legalization across communities—particularly communities of color that have been disproportionately affected by marijuana prohibition.

Aspects directly addressed in I-502 statutory changes, include:

- Changes in marijuana-related offenses and arrests after I-502 by race/ethnicity & age group (adults 21+ years vs. < 21 years).
- Changes in misdemeanor marijuana-related convictions after I-502 by race/ethnicity & age group.
- Changes in drug-related DUI convictions & misdemeanor paraphernalia convictions after I-502 by race/ethnicity & age group.
- Whether changes in marijuana-related convictions vary by the amount of legal marijuana sales within in each age group.

Additional indirect effect of I-502 that warrant consideration, include:

- Changes in the types of marijuana criminal activity (e.g. delivery, manufacture, possession & use) reported in offenses & arrests after I-502 by race/ethnicity & age group.
If I-502 is effective at reducing the marijuana black market, then reduction in crime should be observed within all types of criminal activity.
- Changes in other felony drug-related convictions after I-502 by race/ethnicity & age group.
If less resources are being allocated towards enforcing marijuana laws, than the rate of other drug arrests may increase after I-502.

- Changes in reported crime near marijuana facilities and retail outlets.

It is important to understand how I-502 impacts neighborhoods and changes the built environment. Assessing neighborhood effects can help inform local time, place & manner provisions to ensure public safety near marijuana retail outlets.

- Changes in marijuana-related school discipline and juvenile criminal offenses and arrests after I-502 by race/ethnicity.

Because I-502 may increase underage access to marijuana & alter social norms, it is important to monitor trends in marijuana crime among youth since possession remains illegal.

How to measure

Data available to measure impacts of marijuana legalization on criminal justice in Washington are summarized in Table 3 (end of document). These data sources can be utilized to monitor trends in marijuana-related crime over time and measure the potential impacts of I-502 on criminal justice. In addition, these data sources include demographic data on persons arrested, charged or convicted of marijuana-related crimes. Therefore, each of these sources can be used to assess changes in racial/ethnic disparities after legalization. As described below, each source captures a different aspect of the criminal justice system.

The aspects of I-502 that can be captured within each data source are listed in the “pros” column and limitations of the data source are listed in the “cons” column. In order to evaluate the cumulative impact of I-502 on the criminal justice system, results from each database should be considered in tandem. Unfortunately, Washington does not have a comprehensive criminal justice database that follows people through the justice system from initial police contact, arrest, court filings, to sentencing.

Final Comments

Six years after the passage of I-502, the criminal justice rhetoric used to promote marijuana legalization in Washington has yet to be supported by data. More and better data are needed. Preliminary findings suggest a decrease of marijuana-related arrests in general but not a decrease of racial disparities.

Meanwhile, since legalization, local jurisdictions have tried to promote criminal justice by expunging marijuana-related convictions incurred prior to legalization, given the impact those convictions have on job and education opportunities for ethnic/racial minorities.¹ Recently, the City of Seattle filed a motion to remove misdemeanor possession convictions that occurred prior to legalization from criminal records. Removing hundreds of misdemeanor convictions dating back to 1997 will help communities disproportionately impacted by the criminal justice system, as stated by Seattle Mayor Jenny Durkan.¹⁶

As marijuana legalization spreads to other parts of the nation, Washington and other states that pioneered marijuana legalization have the data needed to be in the forefront of research on racial disparities in marijuana-related criminal justice, and to offer insights to other states moving forward.

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Table 3. Criminal justice data sources to evaluate I-502 in Washington

Data source	Data custodians	Population	Pros	Cons
National Incident-Based Reporting System (NIBRS)	<ul style="list-style-type: none"> Federally, NIBRS is managed by the Federal Bureau of Investigations (FBI). Law enforcement agencies within Washington state submit data to the Washington NIBRS program that is managed by the Washington Association of Sheriffs & Police Chiefs (WASPC) 	All reported criminal incidents and corresponding arrests made prior to court filings.	<ul style="list-style-type: none"> Includes all marijuana-related narcotic offenses. This includes charges related to the possession, manufacture, delivery & use of marijuana. All offenses within a criminal incident are recorded. 	<ul style="list-style-type: none"> NIBRS does not collect traffic-related offenses, this would include DUIs. Not all law enforcement agencies within the state of Washington report to NIBRS. NIBRS has replaced the former FBI Uniform Crime Reporting system. As of 2015, NIBRS reporting covered 83% of the Washington state population.¹
Washington State Patrol (WSP)	Currently, Washington State Department of Transportation is managing collision data requests that are maintained by WSP. ²	All reported roadway, traffic and crash incidents. In particular, collisions that resulted in a criminal offense (e.g. impaired driving)	From using the WSP forensic lab, specific narcotic & illegal substances that were present in the driver around the time of the arrest can be identified. Specifically, marijuana impaired driving can be determined.	<ul style="list-style-type: none"> In reporting, marijuana impaired driving is included in drug-only DUI arrests category. Limitations in assessing marijuana impaired driving because of the lack of point-of-contact testing & reliance on drug recognition experts have been previously discussed.³
Washington State Institute for Public Policy (WSIPP) Criminal History Database	<ul style="list-style-type: none"> This database is a joint effort from the Administrative Office of the Courts (AOC) and the Department of Corrections (DOC). The database is managed by WSIPP & was originally designed to provide timely evaluation of state policies. 	All criminal charge and conviction data that is reported from AOC & DOC.	<ul style="list-style-type: none"> Provides reporting of all charges related to marijuana. Can distinguish between the severity of drug-related crime (either misdemeanor or felony). 	<ul style="list-style-type: none"> Public consumption violations are not specifically reported for marijuana use & the type of criminal activity is not provided. The only marijuana-related charge that can be directly identified in the database is a misdemeanor for marijuana possession. All other marijuana-related crimes would be identified through the category of all other drug-related misdemeanor or possession charges.⁴

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