

# FEDERALISM IN Action

## Marijuana Policy

Texans favor a justice system that's tough on crime, and social conservatives have long warned against the potential dangers of marijuana use. Yet one of the current significant trends across the country is a move away from the criminalization of marijuana. About one-third of states have decriminalized marijuana, meaning possession is now treated as a minor offense involving a small fine. Another six states—Alaska, Colorado, Nevada, New York, Oregon, and Washington, along with the District of Columbia—have legalized marijuana. When these states first chose to legalize marijuana, it created an interesting paradox since possession of the substance was still against federal law. Since then, however, the federal government has said it will only prosecute possession in those states if it is tied to other criminal activity or involves minors in possession.

More recently, President Obama referred to marijuana policy as a states' rights issue. Also, over twenty states have enacted legislation allowing some form of marijuana to be used for medicinal purposes.

The choice to incarcerate people for possession and use of marijuana entails significant costs to Texas. It cost Texans an estimated \$378,820 a day to incarcerate people for simple drug possession.<sup>i</sup> While Texas law no longer deems it a felony to possess even a small amount of marijuana, state law can still seem draconian. Jacob Lavoro made national headlines in 2014 when he was arrested for making a batch of pot brownies. Although Lavoro used 2.5 grams of THC in his brownies, the Texas teen was originally charged for the entire weight of the brownies—one and a half pounds—which carried with it a maximum punishment of life in prison.

The most significant change in Texas law to date came in 2006 when the state's legislature passed a law allowing local police to issue a citation and court date for possession without mandatory arrest. While cities such as Austin have decreased initial arrests, Dallas has continued to employ mandatory arrest for possession. In the 83rd legislative session, the state's legislature considered, but did not pass, changing marijuana possession to a class C misdemeanor. This change would have meant that Texans found guilty of possession would face

a fine but not imprisonment. Although more Texans are embracing the notion of decriminalization, social conservatives still vehemently oppose any move toward legalization. Governor Abbott has clearly stated that he favors existing drug laws and prefers focusing on compliance. Abbott, however, agrees with President Obama that marijuana laws are issues for states to decide.

- To what extent should local governments have authority over marijuana laws?
- Given the costs of incarceration, is the state of Texas fiscally irresponsible in continuing to criminalize marijuana use? Explain your answer.
- How likely do you think it is that marijuana will be decriminalized or legalized in Texas in the next decade?
- How does the federal government's authority over security clash with state governments' power over marijuana laws?

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i. "High Time for Texas to Decriminalize Marijuana," *Daily Texan*, January 30, 2014, [www.dailytexanonline.com/opinion/2014/01/30/high-time-for-texas-to-decriminalize-marijuana](http://www.dailytexanonline.com/opinion/2014/01/30/high-time-for-texas-to-decriminalize-marijuana) (accessed July 17, 2016).