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## The Societal and Economic Impacts of Recent Dramatic Shifts in State Marijuana Law: How Should Minnesota Proceed in the Future?

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# The Societal and Economic Impacts of Recent Dramatic Shifts in State Marijuana Law: How Should Minnesota Proceed in the Future?

By: Andrew L. Scherf<sup>1</sup>

## I. Introduction

In writing this article, I set out to analyze the different types of existing marijuana laws in the United States including the federal laws, state marijuana decriminalization laws, medical marijuana laws, and recreational marijuana laws. Marijuana is illegal in all aspects at the federal government level, and is characterized as a Schedule 1 narcotic with *no legitimate medicinal purpose*.<sup>2</sup> Many states have not held the same belief as the federal government, however, and have passed laws decriminalizing the possession of small amounts of marijuana by issuing fines with no jail time for first-time offenders.<sup>3</sup> Additionally, many state legislatures have enacted medical marijuana statutes, allowing patients with a qualified

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<sup>1</sup> 2016 Juris Doctor Candidate Hamline University School of Law. He'd like to extend his sincere thanks to his primary editor William Miley for all of the help and encouragement throughout the writing process.

<sup>2</sup> The medicinal legitimacy of marijuana under the CSA has been debated for decades. Recently, more physicians opine that marijuana has many legitimate medical benefits. Comprehensive Drug Abuse Prevention and Control Act, PUB. L. NO. 91-513, 84 STAT. 1236 (1970) (codified as amended at 21 U.S.C. §§ 801-889 (2006)); *See generally* Sanjay Gupta, *Why I Changed My Mind on Weed*, CNN (Aug. 8, 2013, 8:44 P.M.), <http://www.cnn.com/2013/08/08/health/gupta-changed-mind-marijuana/>.

<sup>3</sup> There are currently seventeen states and Washington D.C. that have enacted laws decriminalizing the possession of small amounts of marijuana. These states include: Alaska, California, Colorado, Connecticut, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Nebraska, Nevada, New York, North Carolina, Ohio, Oregon, Rhode Island, and Vermont. *See States That Have Decriminalized*, NORML, <http://norml.org/aboutmarijuana/item/states-that-have-decriminalized>, (last visited Sept. 22, 2014, 12:30 P.M.).

condition to use marijuana for relief.<sup>4</sup> Further, in 2012, Colorado and Washington became the first two states to pass laws legalizing the adult recreational use of marijuana.

Section I of this article will briefly describe the history of federal law regulating the use and possession of marijuana. Section II will discuss varying marijuana decriminalization statutes in the United States and what social or economic effects, if any, decriminalization has had on each state. Section III will discuss medical marijuana laws and assess what implications they have had on the society and economy around them. Section IV will discuss the very recent legalization of marijuana for adult recreational use laws passed in Colorado and Washington. After careful consideration of the different types of marijuana laws enacted throughout the country, I conclude by recommending that Minnesota decriminalize marijuana further by decreasing penalties for possession, expand the medical marijuana program, and make a concerted effort to analyze and study the benefits of legalizing marijuana for adult recreational use.

## II. Brief History of Federal Marijuana Law

Prior to the 1930's, marijuana was not treated with the same contempt as it was until fairly recently.<sup>5</sup> This began to change when

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<sup>4</sup> Currently, 35 states and Washington D.C. have laws that allow, or will allow in the future, access to medical marijuana to qualified patients. These states include: Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Washington, Wisconsin. *See Medical Marijuana*, NORML, <http://norml.org/component/zoo/category/recent-research-on-medical-marijuana>, (last visited Sept. 26, 2014, 3:45 P.M.).

<sup>5</sup> Many reasons are purported to be the cause of the surge in political and social attitude shifts toward the prohibition of marijuana. Reasons most often cited include the fear of marijuana use spreading as a substitution for opiates and alcohol as well as the clash between state governments and the steadily growing Mexican-American community. *See* Richard J. Bonnie & Charles H. Whitebread, II, *The*

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the National Conference of Commissioners adopted the Uniform Narcotic Drug Act (UNDA) in 1932.<sup>6</sup> This act was aimed at repealing all previous drug laws in favor of more strict and rigid laws, while simultaneously encouraging states to adopt similar measures to ensure consistency among the states, leading to nearly uniform adoption of laws similar to those in the UNDA.<sup>7</sup>

In 1937, Congress enacted the Marihuana Tax Act, placing a tax on the sale of marijuana in an effort described as facilitating the enforcement of the UNDA.<sup>8</sup> The Marihuana Tax Act was repealed in 1970 with the passage of the Controlled Substances Act (CSA).<sup>9</sup> The CSA set in stone future decades of marijuana prohibition by categorizing it as a Schedule 1 narcotic (a schedule *higher* than cocaine or heroin), in providing that it had *no legitimate current medicinal benefit and a high likelihood of abuse*.<sup>10</sup> Under the CSA, possessing, distributing, cultivating, and prescribing marijuana are punishable as serious felonies.<sup>11</sup> In *Gonzales v. Raich*, a landmark U.S. Supreme Court decision, the Court upheld the constitutionality of the CSA and the power of the United States Congress to regulate marijuana possession, cultivation, and sale under its' commerce clause power.<sup>12</sup>

More recently, despite marijuana still Schedule 1 status, President Obama's administration has declared that it will allow states with medical marijuana laws as well as states with recreational

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*Forbidden Fruit and the Tree of Knowledge: An Inquiry Into the Legal History of American Marijuana Prohibition*, 56 VA. L. REV. 971, 1021 (1970).

<sup>6</sup> *Id.* at 1047.

<sup>7</sup> See Kenneth Baumgartner, *PRESCRIPTIONS*, Part 1306, CONTROLLED SUBSTANCES HANDBOOK, 2005 WL 4913201.

<sup>8</sup> Marijuana Tax Act, PUB. L. NO. 75-238, 50 STAT. 551 (1937).

<sup>9</sup> Under Schedule I, marijuana is included alongside mescaline and peyote, among other arguably more dangerous substances. Schedule II, where the drugs still have a high likelihood of abuse but have "a currently accepted medical use in treatment," includes cocaine, heroin, and strong painkillers. Comprehensive Drug Abuse Prevention and Control Act of 1970, *supra* note 1.

<sup>10</sup> Sam Kamin, *Cooperative Federalism and State Marijuana Regulation*, 85 U. COLO. L. REV. 1105, 1106 (2014).

<sup>11</sup> *Id.*

<sup>12</sup> See *Gonzales v. Raich*, 545 U.S. 1, 6 (2005).

marijuana measures to go forward with implementing those laws without government intervention.<sup>13</sup> However, the Department of Justice and President still have many concerns regarding the changing marijuana laws, including the effects on minor and adult usage, drugged driving rates, and property and violent crime rates.<sup>14</sup>

### III. The Social and Economic Implications of Decriminalizing Marijuana at the State Level

#### A. Introduction

Often times, when a person hears the phrase “decriminalization,” whether it is a drug or different crime, it is assumed that there are no penalties associated with it. However, that is generally not how marijuana decriminalization laws work. When states enact laws that decriminalize marijuana possession, it means that there will be no resulting jail time for first time offenses.<sup>15</sup> There are currently 17 states and the District of Columbia decriminalizing the possession of small amounts of marijuana, with fines as high as \$650 in Oregon to as low as \$25 in Washington D.C.<sup>16</sup>

In this section, I will first look at the laws of Oregon, Minnesota, Massachusetts, and Washington D.C. and use them as examples of the different types of decriminalization laws that

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<sup>13</sup> See James M. Cole, *Guidance Regarding Marijuana Enforcement*, U.S. DEP’T OF JUSTICE, 1, (2013), <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>.

<sup>14</sup> Kamin, *supra* note 9, at 1112.

<sup>15</sup> In many states with decriminalization laws, a second and subsequent possession offense will likely result in a jail sentence. See Nicholas Thimmesh II, *There’s a Big Difference Between Legalization and Decriminalization*, DAILY CALLER (2013), <http://dailycaller.com/2013/10/25/theres-a-big-difference-between-legalization-and-decriminalization/>.

<sup>16</sup> On the other hand, the majority of states have fines between \$100 and \$200. *Oregon Laws & Penalties*, NORML, [http://norml.org/laws/item/oregon-penalties-2?category\\_id=881](http://norml.org/laws/item/oregon-penalties-2?category_id=881) (last visited Sept. 23, 2014); *District of Columbia Laws & Penalties*, NORML, <http://norml.org/laws/item/district-of-columbia-penalties> (last visited Sept. 23, 2014); see generally *States That Have Decriminalized*, *supra* note 2.

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currently exist in the United States. Next, I will analyze the many different arguments surrounding decriminalizing possession of marijuana. More specifically, there are three main issues, which include: whether or not decriminalization will result in higher usage rates among both minors and adults; whether the decriminalization laws truly lower the amount of money spent on marijuana law enforcement; whether racial disparities exist among marijuana possessions arrests and if so, to what extent and how it affects those groups. To conclude this section, I will explore Minnesota's current options regarding reformation of its decriminalization laws. The chart located below is a brief summation of the varying socioeconomic data related to marijuana decriminalization laws in my subject analysis states.

**Table 1 – Comparison of Decriminalization Laws and Marijuana-related Socioeconomic Data for Select States<sup>17</sup>**

State (Year decriminalization law enacted)	Estimated money spent on marijuana enforcement (Spending Year) <sup>i</sup>	Fine for marijuana possession	Arrest rates for marijuana possession (Data Year) <sup>ii</sup>	Minor (age 12-17) Marijuana Usage (Data year) <sup>iii</sup>	Adult (age 18-25) Marijuana Usage (Data year) <sup>iv</sup>	Adult (age 26+) Marijuana Usage (Data year) <sup>v</sup>	Racial Disparities (Blacks more likely to be arrested for marijuana possession) <sup>vi</sup>
<b>Massachusetts (2008)</b>	\$9,327,650 (2010)	\$100 fine for <1 oz <sup>vii</sup>	19 per 100,000 residents (2012)	11.34-13.54% (2010)	25.62-35.09% (2010)	8.22-12.00% (2010)	(3.9x more likely) Blacks: 61/100,000; Whites: 16/100,000
<b>Oregon (1970)</b>	\$50,194,024 (2010)	\$650 fine for <1 oz <sup>18</sup>	295 per 100,000 (2012)	11.34-13.54% (2010)	25.62-35.09% (2010)	8.22-12.00% (2010)	(2.1x more likely) Blacks: 563/100,000; Whites: 271/100,000
<b>Washington D.C. (2014)</b>	\$59,000,000 (2010)	\$25 fine for <1 oz <sup>19</sup>	846 per 100,000 (2012)	11.34-13.54% (2010)	22.13-25.61% (2010)	8.22-12.00% (2010)	(8.05x more likely) Blacks: 1,489/100,000; Whites: 185/100,000
<b>Minnesota (1970's)</b>	\$41,071,288 (2010)	\$250 fine for <42.5 g <sup>20</sup>	141 per 100,000 (2012)	6.89-8.70% (2010)	17.85-20.02% (2010)	3.51-5.03% (2010)	(7.8x more likely) Blacks: 835/100,000; Whites: 107/100,000

**B. Marijuana Decriminalization Laws of Selected Jurisdictions: Massachusetts, Oregon, Minnesota, and Washington D.C.**

<sup>17</sup> See Endnotes for table source information

<sup>18</sup> OR. REV. STAT. § 475.864 (2013).

<sup>19</sup> DC ST. § 48-1201 (2014).

<sup>20</sup> MINN. STAT. § 152.027 (2012).

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In 1973, Oregon became the first state in the United States to decriminalize the possession of marijuana.<sup>21</sup> Under the Oregon law, possession of less than one ounce of marijuana results in a \$650 fine and no jail time.<sup>22</sup> If an individual possesses more than one ounce but less than four ounces, it is a Class B misdemeanor which can result in a jail sentence of no more than six months and a fine of up to \$1,000.<sup>23</sup>

Many states, including Minnesota, followed Oregon's lead and passed laws decriminalizing possession of small amounts of marijuana in the 1970's.<sup>24</sup> Under Minn. Stat. § 152.027, possession of less than 42.5 grams (approximately 1.5 ounces) results in a fine of \$200 and the possibility of a mandatory drug treatment program.<sup>25</sup> While the fine is relatively low for possessing less than 42.5 grams, the punishments for possession of between 42.5 grams and 10 kilograms is a jail sentence of up to five years and a fine of up to \$5,000.<sup>26</sup>

In December 2008, the Massachusetts legislature enacted a measure making possession of small amounts of marijuana a civil penalty.<sup>27</sup> Under this law, possessing less than one ounce of marijuana subjects citizens to a \$100 fine.<sup>28</sup> If an individual possesses more than one ounce, it could result in a jail sentence of up to six months and a fine between \$500 and \$5,000.<sup>29</sup> This penalty is qualified, however, because the law then goes on to state "first-time offenders of the controlled substances act will be placed on probation and all official records relating to the conviction will be sealed upon

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<sup>21</sup> See Chris Suellentrop, *Which States Decriminalized MJ Possession?*, CANNABIS NEWS, <http://cannabisnews.com/news/8/thread8678.shtml> (last updated Feb. 14, 2001).

<sup>22</sup> OR. REV. STAT. § 475.864 (2013).

<sup>23</sup> See *Oregon Laws & Penalties*, *supra* note 15.

<sup>24</sup> Suellentrop, *supra* note 26.

<sup>25</sup> MINN. STAT. § 152.027 (2012).

<sup>26</sup> *Minnesota Laws & Penalties*, <http://norml.org/laws/item/minnesota-penalties-2> (last visited Sept. 21, 2014).

<sup>27</sup> MASS. GEN. LAWS CH. 94C § 32L (2008).

<sup>28</sup> *Id.*

<sup>29</sup> MASS. GEN. LAWS. CH. 94C, § 34 (2008).



successful completion of probation.”<sup>30</sup> A subsequent offense could result in a fine of up to \$2,000 and up to two years in jail.<sup>31</sup>

In July 2014, Washington D.C. became the most recent jurisdiction to decriminalize the possession of less than one ounce of marijuana.<sup>32</sup> The Washington D.C. city council made possession of less than one ounce of marijuana a civil violation, resulting in just a \$25 fine.<sup>33</sup> This fine is \$75 less than the next lowest fine of \$100, which is in place in three states (including Massachusetts).<sup>34</sup> Possession of one ounce or more, on the other hand, can result in up to six months in jail and a fine of \$1,000.<sup>35</sup>

### C. Decriminalization: Is it effective?

#### 1. Usage Rates

According to the most recent Substance Abuse and Mental Health Services Administration (SAMHSA) study on illicit drug use in 2012, 7.3% of Americans reported using marijuana within the last year, making marijuana the most commonly used illicit drug in the United States.<sup>36</sup> This is nothing new, however, as marijuana has been the most widely used drug, behind alcohol and tobacco, for many decades.<sup>37</sup> Many opponents of marijuana decriminalization fear that it will send the wrong message to citizens, inevitably leading to

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<sup>30</sup> MASS. GEN. LAWS. CH. 94C, § 34 (2008).

<sup>31</sup> *Id.*

<sup>32</sup> DC ST. § 48-1201 (2014).

<sup>33</sup> DC ST. § 48-1203(a) (2014).

<sup>34</sup> In addition to Massachusetts, New York and California also have fines of \$100 for possessing small amounts of marijuana. *See generally States That Have Decriminalized*, *supra* note 2.

<sup>35</sup> *District of Columbia Laws & Penalties*, *supra* note 15.

<sup>36</sup> This number represents only those individuals who responded to the survey. *See* Ryan Jaslow, *New U.S. Drug Survey: Marijuana and Heroin Increasing*, CBS NEWS (Sep. 4, 2013, 4:28 P.M.), <http://www.cbsnews.com/news/new-us-drug-survey-marijuana-and-heroin-increasing/>.

<sup>37</sup> *Commonly Used Drug Chart*, NAT. INST. ON DRUG ABUSE (March 2011), <http://www.drugabuse.gov/drugs-abuse/commonly-abused-drugs/commonly-abused-drugs-chart>.

higher use and abuse rates among minors as well as adults.<sup>38</sup> On the other hand, proponents state that decriminalization laws will not lead to higher usage rates and that those using it after the law is passed, will be the ones who used it beforehand.

Marijuana use rates across the United States have been increasing for over a decade, including states where marijuana is still prohibited as well as states with decriminalization laws.<sup>39</sup> The best age range to illustrate adult use rates are those aged 18-25, as this age range consistently has the highest use rates among any adult age group. In 2012, for example, Massachusetts saw a use rate among adults between the ages of 18-25 of just over 25%.<sup>40</sup> Oklahoma, on the other hand, has some of the harshest penalties in the United States for marijuana possession and reported a use rate of just over 14% among those aged 18-25 in 2012.<sup>41</sup>

Comparatively, four years earlier in 2008, the results of the National Survey on Drug Use and Health estimated Massachusetts had an adult use rate of between 22.53% and 30.56%.<sup>42</sup> In addition, Oklahoma had a use rate estimated between 8.06% and 14.19% in 2008.<sup>43</sup> Based on these results, in 2012 both Massachusetts and Oklahoma are still well within the estimates of the survey conducted by SAMHSA in 2008. This indicates two things. First, Massachusetts

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<sup>38</sup> See David Mineta, *Decriminalization Would Increase the Use and the Economic and Social Costs of Drugs*, AMERICA'S QUARTERLY, <http://www.americasquarterly.org/node/1915> (last visited Sept. 18, 2014) (arguing that decriminalization of drugs, including marijuana, will serve only minimal benefits and significantly increase adult and minor use rates).

<sup>39</sup> See generally *Results from the 2012 National Survey on Drug Use and Health: Summary of National Findings*, SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMIN. (2012), <http://www.samhsa.gov/data/NSDUH/2012SummNatFindDetTables/Index.aspx>

<sup>40</sup> Christopher Ingraham, *Where Americans Smoke Marijuana the Most*, THE WASHINGTON POST, <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/08/05/where-americans-smoke-marijuana-the-most/> (last updated August 4, 2014).

<sup>41</sup> *Id.*

<sup>42</sup> *State Estimates from the 2008-2009 NSDUH*, SUBSTANCE ABUSE AND MENTAL SERVICES ADMIN. (2008), <http://www.samhsa.gov/data/2k9State/Ch2.htm#fig2.17>

<sup>43</sup> *Id.*

implemented decriminalization laws in 2008 and it had little to no effect on use rates, with similar usage rates one year before and four years after decriminalization. Second, Oklahoma, having no decriminalization laws in effect, also saw little to no difference on use rates over the same time period. This indicates that if a state implements decriminalization measures, there will not necessarily be any statistically significant effect on use rates of those aged 18-25.<sup>44</sup>

Effects on minor use rates show similar, relatively insignificant increases as compared to adult use. According to the results of the 2012 National Survey on Drug Use and Health, the estimated national average for marijuana use within the last 30 days by those aged 12-17 was 7.55%.<sup>45</sup> In Minnesota, where the decriminalization law took effect in the early 1970s, the 2012 rate of marijuana use for the same age group in the last month was 7.27%, just below the national average.<sup>46</sup> Comparatively, in the neighboring state of South Dakota, where marijuana is not decriminalized, the same use rate for minors was 6.44%.<sup>47</sup> Similar statistically insignificant results occur in California, where both medical and decriminalized marijuana laws are present, with a use rate of 8.83% in 2012 as compared to 7.50-8.45% in 2008.<sup>48</sup> When comparing use rates, states with more relaxed marijuana provisions do not show

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<sup>44</sup> See Kieran Speranzam, *Effects of Massachusetts' Decriminalization of Marijuana Law on Use Patterns*, 7 BRIDGEWATER ST. U. UNDERGRADUATE REV. 101 (2011).

<sup>45</sup> *Marijuana Use in the Past Month: 2011-2012 National Survey on Drug Use and Health*, SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMIN. (2012), [www.samhsa.gov/data/NSDUH/2k12State/Tables/NSDUHsaeTables2012.pdf](http://www.samhsa.gov/data/NSDUH/2k12State/Tables/NSDUHsaeTables2012.pdf)

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> California became the first state to implement a medical marijuana program in 1996. Despite the medical marijuana law, marijuana was not decriminalized until 2010 in California. See *State Estimates from the 2008-2009 NSDUH*, SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMIN. (2008), <http://www.samhsa.gov/data/2k9State/Ch2.htm#fig2.10>; See Susan Ferriss, *Marijuana Decriminalization Law Brings Down Juvenile Arrests in California*, CENTER FOR PUB. INTEGRITY (May 19, 2014, 12:19 P.M.), <http://www.publicintegrity.org/2012/11/26/11842/marijuana-decriminalization-law-brings-down-juvenile-arrests-california>.

significant statistical increases as compared to states with continued marijuana prohibition.

## 2. Money Spent on Marijuana Possession Enforcement

According to Jeffrey Miron, who studied the possible impacts of drug legalization, state and local governments in the United States spend an estimated \$25 billion annually enforcing the marijuana prohibition laws.<sup>49</sup> Taking into account money spent on the police force, court system, and corrections system used in enforcing marijuana prohibition, it is clear that states spend far less money where marijuana is decriminalized.<sup>50</sup> In 2010, for example, the Texas state government spent more money on marijuana possession prohibition than any other state with an estimated \$251,648,800.<sup>51</sup> Comparatively, Massachusetts now spends an estimated \$9,000,000 after enactment of decriminalization measures and was spending an estimated \$200,000,000 annually enforcing previous marijuana possession laws.<sup>52</sup> While the numbers do show remarkable cost savings, they are qualified in that marijuana possession arrests are a rather small portion of the criminal justice system, so one must examine the figures through that lens.<sup>53</sup>

## 3. Marijuana Possession Arrests and Racial Disparities

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<sup>49</sup> Jeffrey Miron & Kathleen Waldo, *The Budgetary Impact on Ending Drug Prohibition*, CATO INST. 1, 5 (2010), [object.cato.org/sites/cato.org/files/pubs/pdf/DrugProhibitionWP.pdf](http://object.cato.org/sites/cato.org/files/pubs/pdf/DrugProhibitionWP.pdf).

<sup>50</sup> *War on Marijuana in Black and White*, *supra* note 16, at 113.

<sup>51</sup> *Id.* at 178.

<sup>52</sup> *War on Marijuana in Black and White*, *supra* note 16, at 114; see Jon Gettman, *Marijuana in Massachusetts*, *The Bulletin for Cannabis Reform*, [www.drugscience.org/States/MA/MA.pdf](http://www.drugscience.org/States/MA/MA.pdf) (last updated Oct. 19, 2009).

<sup>53</sup> For example, in 2003, the total number of individuals arrested in the United States was 13,699,254 and marijuana possession arrests accounted for 613,986, or approximately 4% of the total arrests. See James Austin, *The Decriminalization Movement*, THE JFA INSTITUTE, <http://norml.org/library/item/part-2-2#govtexp> (last visited Sept. 18, 2014).

The most persuasive argument in favor of decriminalizing or legalizing (to be discussed in Section IV) marijuana is the clear racial disparity existing in marijuana possession rates.<sup>54</sup> Despite comparable use rates, arrest rates reflect a clear racial bias toward arresting Blacks at alarmingly higher rates for possession of marijuana.<sup>55</sup> As a result, these communities are disproportionately affected when individuals are placed in jail for possessing small amounts of marijuana.<sup>56</sup> In the United States, the arrest rate for Blacks in 2010 for marijuana possession (716 per 100,000) was four times as high as Whites (192 per 100,000).<sup>57</sup> States that have decriminalized the use and possession of marijuana have seen a decline in the amount of arrests across race lines, but still possess a significant amount of racial disparity.<sup>58</sup>

Furthermore, the total number of Blacks arrested has significantly decreased when marijuana is decriminalized.<sup>59</sup> In Massachusetts, for example, the actual number of Blacks arrested in 2010 decreased 83% from 2008, the year before the decriminalization law took effect.<sup>60</sup> The resulting incredible decrease in arrests can be contributed directly to the decriminalization law put in place in 2008.<sup>61</sup> On the other hand, Texas, the state associated with the highest number of arrests for marijuana possession,<sup>62</sup> has seen nearly a full decade of Blacks being arrested at a rate more than two times higher than Whites.<sup>63</sup>

#### D. Recommendations for Minnesota

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<sup>54</sup> *War on Marijuana in Black and White*, *supra* note 16, at 9.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 10.

<sup>59</sup> *Id.* at 114.

<sup>60</sup> *War on Marijuana in Black and White*, *supra* note 16, at 114.

<sup>61</sup> *Id.*

<sup>62</sup> Stephen Carter, *Texas a Leader in Cannabis Arrests*, TEXAS CANNABIS REPORT, <http://txcann.com/2013/06/27/texas-a-leader-in-cannabis-arrests/> (last visited Sept. 21, 2014).

<sup>63</sup> *The War on Marijuana in Black and White*, *supra* note 16, at 178.

Marijuana has been decriminalized in Minnesota since the 1970's<sup>64</sup> and it should continue, with two major modifications. First, while an arrest for less than 42.5 grams only leads to a fine of \$200 and possibility of mandatory drug treatment,<sup>65</sup> possession of over 42.5 grams and up to 10 kilograms can land a citizen in jail for up to five years and a fine of \$5,000.<sup>66</sup> The law includes an amount just over 42.5 grams (e.g. 42.6 grams) within the same penalty structure as 10 kilograms, which in relative terms, is a significant difference in volume. To alleviate this issue and create a more reasonable middle ground, the legislature should amend the penalties under the statute and create a new second tier including 42.6 grams up to one kilogram under the same penalty. At the same time, create a third tier consisting of quantities of 1 kilogram to 10 kilograms. Second, Minnesota should take Washington D.C.'s lead and reduce the fine for possessing less than one ounce of marijuana to \$25. Some will argue that a \$200 fine does not seem burdensome, but it is actually a larger fine than many other states that have decriminalized marijuana use and possession.<sup>67</sup> Another reason for lowering the fine is because Blacks are 7.8 times more likely to be arrested than Whites in Minnesota for marijuana possession, making Minnesota home to the nation's second most disproportionate marijuana possession rates, behind only Iowa.<sup>68</sup> By reducing the fine, while not necessarily affecting the racial disparity in arrest rates, it will lessen the burden that disproportionately affects Blacks.

#### **IV. The Recent Wave of State Medical Marijuana Laws: Economic and Societal Impacts**

##### **A. Introduction**

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<sup>64</sup> See Suellentrop, *supra* note 26.

<sup>65</sup> MINN. STAT. § 152.027 (2012).

<sup>66</sup> *Minnesota Laws & Penalties*, *supra* note 31.

<sup>67</sup> *States That Have Decriminalized*, *supra* note 2.

<sup>68</sup> *The War on Marijuana in Black and White*, *supra* note 16, at 158.

The passage of the Controlled Substances Act (CSA) in 1970 classified marijuana as a Schedule I narcotic with no legitimate medical purpose and a high potential for abuse.<sup>69</sup> Despite this federal regulation, there has been much conversation in the medical community regarding the legitimacy of marijuana as medicine.<sup>70</sup> California became the first state to pass a medical marijuana law in the United States when it did so in 1996, although it was not without controversy. In a span of just eighteen years, 34 more states as well as Washington D.C. have enacted some form of medical marijuana law.<sup>71</sup> Moreover, as a result of marijuana still being a Schedule 1 narcotic at the federal level, states with medical marijuana systems have no guidance on implementation and the result is inconsistent medical marijuana laws among the states.<sup>72</sup> Medical marijuana is such a vast topic that encompasses so many different issues, including the fact that no two states have the same system,<sup>73</sup> that medical marijuana and its' sub-parts are worthy of individual articles, separate from this one. Here, an overview of how the different types of laws operate as well as how they affect society and the economy in states where medical marijuana laws are implemented is appropriate to understand the public policy implications.

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<sup>69</sup> See Comprehensive Drug Abuse Prevention and Control Act of 1970, *supra* note 1.

<sup>70</sup> See J. Michael Bostwick, *Blurred Boundaries: The Therapeutics and Politics of Medical Marijuana*, 87 MAYO PROC CLIN. 172 (2012) (arguing that the federal government treat marijuana in the same vein as certain opiates and stimulants by giving it statutory medical legitimacy).

<sup>71</sup> Of these states, 22 have “comprehensive” medical marijuana programs, in that they allow the more potent levels of THC (in addition to CBD). Eleven of these states, however, have extremely limited CBD-specific laws outlawing forms of marijuana high in levels of THC. See *State Medical Marijuana Laws*, NAT. CONF. OF ST. LEGISLATORS, <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx> (last updated Aug. 25, 2014).

<sup>72</sup> See Claire Frezza, *Medical Marijuana: A Drug Without a Medical Model*, 101 GEO. L.J. 1117, 1125 (2013) (arguing that the federal laws and lack of enforcement of those laws are contributing to the inconsistency among the states in implementing medical marijuana programs).

<sup>73</sup> *Id.*

### 36.1 Shifts in Marijuana Law: How Should Minnesota Proceed? 133

In this section, I will analyze several medical marijuana laws around the United States operating in different ways and examine arguments surrounding the possible implications of implementing the laws. First, I will analyze the types of medical marijuana laws by using the systems in place (or soon to be in place) in California, Alaska, and Minnesota. Second, I will look at the arguments surrounding social and economic implications of medical marijuana laws including the legitimacy of marijuana for medicinal purposes, possible tax income incentives, and potential effects on crime rates. Finally, after weighing the benefits and risks of expanding the medical marijuana system, I will recommend Minnesota expand the program so that it does not leave out patients with serious conditions who can legitimately benefit from medicinal marijuana.

The table presented below provides a brief overview of medical marijuana laws selected from states with differing systems. I chose California, Alaska, and Minnesota as examples of the different types of laws. California has one of the broadest medical marijuana laws around the country, allowing for medicinal dispensaries. Alaska and Minnesota, on the other hand, have medical marijuana laws that are more restrictive in the conditions that are covered as well as forms of ingestion. In addition, one of the main concerns of medical marijuana laws are related increases in crime rates. Presented below are property and violent crime rates from the year prior to enacting medical marijuana laws and those same rates in 2012.



**Table 2 – Summary of Medical Marijuana Laws in Select States**

State (Year medical marijuana law enacted)	Number of Serious Conditions Covered	Forms of Ingestion Allowed	Dispensaries of Medical Marijuana	Tax income	Potential Effect on Property Crime Rates	Potential Effect on Violent Crime Rates
<b>California (1996)</b>	Most broad system in nation	Leaf (can possess any reasonable amount), oils, edibles, liquid, pill <sup>viii</sup>	Yes	Yes; est. between \$58-105 million annually <sup>ix</sup>	1996: 1,710.1/100,000 <sup>x</sup> 2012: 2,772.6/100,000 (up almost 1,000) <sup>xi</sup>	1996: 848.2/100,000 2012: 424.7/100,000 (down over 400)
<b>Alaska (1998)</b>	Most restrictive system in nation	Leaf (up to 6 plants), any usable form <sup>xii</sup>	No (home-grown, provided by care specialists)	Yes (very limited); estimated \$20,633 in 2012 <sup>xiii</sup>	1998: 4,123.1/100,000 <sup>xiv</sup> 2012: 2,739.4/100,000 (down nearly 1,400) <sup>xv</sup>	1998: 653.9/100,000 2012: 603.2/100,000 (down 50)
<b>Minnesota (2014)</b>	Range of conditions covered at relative middle point between CA and AK laws	Liquid, pill, vaporized oil <sup>xvi</sup>	No (provided by caregivers who receive it from 1 of 2 manufacturers)	No data; will make money from application fees (patients and two manufacturers) <sup>xvii</sup>	(new law, so crime rates will need to be examined later) 2012: 2,544/100,000 <sup>xviii</sup>	2012: 231/100,000 <sup>xix</sup>

### **B. State Medical Marijuana Law Examples: California, Alaska, Minnesota**

In 1996, the citizens of California passed Proposition 215 (also known as the Compassionate Use Act) with a vote of 56%, making California the first state to legalize marijuana for medical

purposes.<sup>74</sup> Under the California law, patients can seek medical marijuana where it “has been recommended by a physician who has determined that the person’s health would benefit from the use of marijuana.”<sup>75</sup> Conditions that qualify for use of medical marijuana include the treatment of cancer, AIDS, glaucoma, anorexia, chronic pain, arthritis, migraine, “or any other illness for which marijuana provides relief.”<sup>76</sup> In addition to California being the first state to pass a medical marijuana law, it is also home to the most lenient law in terms of qualifying conditions and forms of ingestion.<sup>77</sup><sup>78</sup> As a result of the lack of regulation, the statute governing medical marijuana leaves substantial room for cities and counties to implement the program in the best way they see fit.<sup>79</sup> Some cities, including Los Angeles, allow medical marijuana patients to form non-profit collectives to cultivate and sell out of dispensaries while the city collects taxes from the sales.<sup>80</sup>

Moreover, under this law the amount of marijuana a citizen can possess is entirely dependent upon the severity of the individual’s illness.<sup>81</sup> The California Court of Appeals qualified this by stating “while a ‘reasonable amount’ of marijuana which may be possessed by a qualified individual under the Compassionate Use Act (CUA) is

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<sup>74</sup> *Proposition 215*, CAL. DEP’T OF PUB. HEALTH 2014, <http://www.cdph.ca.gov/programs/MMP/Pages/CompassionateUseact.aspx> (last visited Sept. 12, 2014).

<sup>75</sup> CAL. HEALTH & SAFETY CODE § 11362.5 (West-1996).

<sup>76</sup> *Id.*

<sup>77</sup> See Michael Berkley, *Mary Jane’s New Dance: The Medical Marijuana Tango*, 9 *Cardozo PUB. L. POL’Y & ETHICS J.* 417, 439 (2011).

<sup>78</sup> In 2014, a medical marijuana regulatory bill was introduced into the California Assembly that would provide more control and direction for cities in implementing medical marijuana systems, but the bill did not advance passed a committee in the Assembly. *California, MARIJUANA POLICY PROJECT*, <http://www.mpp.org/states/california/> (last visited Sep. 11, 2014).

<sup>79</sup> *California’s Medical Marijuana Laws & Regulations*, AMERICANS FOR SAFE ACCESS, [http://www.safeaccessnow.org/californias\\_medical\\_marijuana\\_laws](http://www.safeaccessnow.org/californias_medical_marijuana_laws) (last visited Sept. 20, 2014).

<sup>80</sup> *Id.*

<sup>81</sup> *Littlefield v. County of Humboldt*, 159 Cal. Rptr.3d 731, 738 (Cal. Ct. App.2013).

a flexible standard based upon the individual user, it is not without reasonable limits that include consideration of quantity.”<sup>82</sup> Further, because the statute is silent as to the allowable methods of ingestion of medical marijuana to be used by patients, they are allowed to consume any marijuana compound— whether it’s in leaf, oil, liquid, or edible form.<sup>83</sup> Additionally, Proposition 215 allows patients with a physician’s recommendation or their primary caregiver to cultivate their own marijuana plants to be used for medicinal purposes.<sup>84</sup>

In 1998, Alaska became the second state to enact medical marijuana legislation.<sup>85</sup> Under this law, a patient with a debilitating medical condition such as cancer, glaucoma, HIV/AIDS, or treatment of conditions or illnesses that can be alleviated with the use of marijuana including: “cachexia; severe pain; severe nausea; seizures, including those that are characteristic of epilepsy; or persistent muscle spasms, including those that are characteristic of multiple sclerosis.”<sup>86</sup> In addition to a qualifying condition, a patient needs a physician’s examination to determine if marijuana is the right course of treatment.<sup>87</sup> A patient can then apply to be on the registry and get an identification card.<sup>88</sup> This card allows the patient and a primary caregiver, designated by the patient, to possess up to one ounce of marijuana in “usable form” as well as growing up to six plants in a

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<sup>82</sup> *Littlefield*, 159 Cal.Rptr.3d at 738.

<sup>83</sup> *California NORML Patient’s Guide to Medical Marijuana*, CAL. NORML <http://www.canorml.org/medical-marijuana/patients-guide-to-california-law> (last visited Sep. 10, 2014).

<sup>84</sup> An individual is limited to four plants total, of which just two can be flowering at any one time. *Id.*

<sup>85</sup> Alaska was technically tied for second with Oregon, which also passed a medical marijuana law in 1998. 1999 ALASKA LAWS CH. 37 (S.B. 94); *see* Or. Rev. Stat. § 475.300 (2007).

<sup>86</sup> ALASKA STAT. § 17.37.070 (2007).

<sup>87</sup> To find a physician willing to do this in Alaska is very difficult, however, because of the conflict with federal law. *See The Twenty-Three States and One Federal District With Effective Medical Marijuana Laws*, MARIJUANA POLICY PROJECT, <http://www.mpp.org/assets/pdfs/library/MMJLawsSummary.pdf> (last visited Sep. 12, 2014).

<sup>88</sup> *Id.*

private residence.<sup>89</sup> Significantly, a problem arises in that the law provides for only an affirmative defense of medical marijuana, not protection for physicians or patients from being arrested.<sup>90</sup> The law provides no legal way to acquire medical marijuana, like in California through cooperative run dispensaries.<sup>91</sup> This also inhibits the amount of patients able to access the medical marijuana system in Alaska because of the lack of physicians willing to treat conditions with marijuana.<sup>92</sup> As of March 2014, there were only 1,898 “patients” in Alaska, including both patients and primary caregivers because Alaska does not separate the two.<sup>93</sup>

Minnesota became the 22<sup>nd</sup> state to legalize medical marijuana when Governor Mark Dayton signed the bill into law on May 29, 2014.<sup>94</sup> It is not set to take effect until mid-2015, but it is one of the most restrictive medical marijuana laws in the country in that it severely restricts the list of medical conditions covered in addition to the forms of ingestion allowed.<sup>95</sup> Health care practitioners must diagnose a patient with a qualifying condition and sign a written form stating that they will be responsible for the treatment of that patient.<sup>96</sup> Qualifying medical conditions include “cancer (if the patient has severe pain, nausea, or wasting), HIV/AIDS, Tourette’s,

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<sup>89</sup> “Usable form” of marijuana is defined as “the seeds, leaves, buds, and flowers of the plant (genus) cannabis, but does not include the stalks or roots.” *The Twenty-Three States and One Federal District With Effective Medical Marijuana Laws*, , *supra* note 104; ALASKA STAT. § 17.37.070 (2007).

<sup>90</sup> *Id.*

<sup>91</sup> See Jeff Richardson, *Medical Marijuana: Why It’s Not an Issue in Alaska*, NEWS MINER (May 22, 2011, 12:18 A.M.), [http://www.newsminer.com/medical-marijuana-why-it-s-not-a-big-issue-for/article\\_ad775be2-8130-557a-afea-840a062f2106.html](http://www.newsminer.com/medical-marijuana-why-it-s-not-a-big-issue-for/article_ad775be2-8130-557a-afea-840a062f2106.html).

<sup>92</sup> *Id.*

<sup>93</sup> *Medical Marijuana Patient Numbers*, MARIJUANA POLICY PROJECT, <http://www.mpp.org/states/medical-marijuana-patient.html> (last updated April 24, 2014).

<sup>94</sup> 2014 MINN. SESS. LAW SERV. CH. 311 (S.F. 2470) (West).

<sup>95</sup> This was due, in part, to Governor Dayton’s insistence on coming up with a compromise that local law enforcement would support (which proved to very difficult). *Minnesota Medical Marijuana Law Overview*, *supra* note 88.

<sup>96</sup> *Id.*

ALS, seizures, severe and persistent spasms, Crohn's disease, and terminal illnesses (if the patient has severe pain, nausea, or wasting)."<sup>97</sup> By leaving patients with legitimate medical conditions out of the program – such as people without cancer or a terminal illness suffering from wasting, nausea, or intractable pain, Minnesota is home to one of the most restrictive medical marijuana laws in the country.<sup>98</sup>

Moreover, the law is restrictive in the forms of administration it allows. Under the Minnesota law, a patient can only ingest medical marijuana through liquids, oils, and pills made from marijuana and cannot use the drug in plant form.<sup>99</sup> A patient will be allowed to inhale the marijuana through a vaporized oil.<sup>100</sup> This law is different from both California and Alaska in that, the law provides for just two in-state manufacturers of all the marijuana used for medicinal purposes.<sup>101</sup> Pharmacists working for the manufacturers will be dispensing the marijuana to patients.<sup>102</sup> Further, the amount allowed under the law will be a 30-day supply, which is currently an undetermined amount.<sup>103</sup>

### **C. Societal and Economic Implications of Medical Marijuana**

#### **1. Medical Legitimacy: Conditions and Forms of Ingestion**

Many different arguments permeate the medical marijuana legitimacy debate. Opponents of medical marijuana laws believe that for the most part, marijuana provides no medicinal purpose or if it is medically legitimate, the potential benefits are outweighed by the

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<sup>97</sup> 2014 MINN. SESS. LAW SERV. CH. 311 (S.F. 2470) (West).

<sup>98</sup> The law potentially leaves thousands of individuals who are suffering from diseases causing severe symptoms treatable by medical marijuana without the most effective method of relief available. *Minnesota Medical Marijuana Law Overview*, *supra* note 88.

<sup>99</sup> 2014 MINN. SESS. LAW SERV. CH. 311 (S.F. 2470) (West).

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Minnesota Medical Marijuana Law Overview*, *supra* note 88.

<sup>103</sup> *Id.*

various risks associated with its use.<sup>104</sup> Conversely, proponents believe that marijuana serves many different legitimate medicinal purposes including neuropathy pain (associated with AIDS, diabetes, and cancer), glaucoma, Crohn's Disease, nausea (associated with chemotherapy), epilepsy, and Tourette's syndrome.<sup>105</sup> In addition, proponents argue that marijuana provides relief to many patients by effectively treating conditions currently only treated with painful, nauseating prescription drugs.<sup>106</sup>

Medical professionals disagree as to whether marijuana is proven to be legitimate for medicinal purposes. Many physicians argue that marijuana has not been tested enough to definitively determine whether it is medically beneficial.<sup>107</sup> This has been due, in part, to onerous federal restrictions medical marijuana research.<sup>108</sup> There is evidence of possible risks associated with ingesting marijuana medically including respiratory issues connected to smoke inhalation of marijuana as well as possible dependency issues.<sup>109</sup> In recent years, however, marijuana has been more widely accepted as an effective means in treating certain medical conditions.<sup>110</sup>

While there is disagreement about whether to prescribe marijuana to patients, marijuana has gained recognition in effectively treating certain medical conditions including neuropathy pain (associated with AIDS, diabetes, and cancer), glaucoma, Crohn's Disease, nausea (associated with chemotherapy)<sup>111</sup>, epilepsy, and

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<sup>104</sup> Bostwick, *supra* note 75, at 172.

<sup>105</sup> Paul Armentano, *Recent Research on Medical Marijuana*, NORML, <http://norml.org/component/zoo/category/recent-research-on-medical-marijuana> (Last updated Jan. 7, 2014).

<sup>106</sup> Bostwick, *supra* note 75, at 172.

<sup>107</sup> See Igor Grant, *Medical Marijuana: Clearing the Smoke*, 6 J. OPEN NEUROLOGY 18 (2012).

<sup>108</sup> *Id.*

<sup>109</sup> While these risks are possible, when the risks do materialize, they are found to be much less problematic as compared to side effects of long-term cigarette smoking. Grant, *supra* note 123.

<sup>110</sup> See Bostwick, *supra* note 75, at 172.

<sup>111</sup> Barth Wilsey et al., *A Randomized, Placebo-Controlled, Crossover Trial of Cannabis Cigarettes in Neuropathic Pain*. 9 J. PAIN 506 (2008).

Tourette's syndrome.<sup>112</sup> Research has also suggested marijuana could be effective in treating multiple sclerosis (MS) as well as amyotrophic lateral sclerosis (ALS; commonly known as Lou Gherig's Disease).<sup>113</sup>

States that have passed medical marijuana laws differ in conditions covered. Under the broad law in California, for example, all of the conditions listed may be treated with medical marijuana.<sup>114</sup> On the other hand, Minnesota has restricted access to those who have acquired cancer or a terminal illness, but denies access to those suffering from severe pain, nausea, and wasting.<sup>115</sup> Some states, such as Iowa, North Carolina, and Wisconsin<sup>116</sup>, have restricted medical marijuana laws to only cover oil extracts from strains of marijuana high in cannabidiol (CBD) and low in tetrahydrocannabinol (THC), the two main active components in marijuana.<sup>117</sup> CBD is non-psychoactive and has been linked in effectively treating many conditions including chronic pain, nausea, schizophrenia, and epilepsy.<sup>118</sup> Unlike CBD, THC is the psychoactive component giving users euphoric feelings but has still proven to be extremely effective at alleviating many medical conditions.<sup>119</sup>

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<sup>112</sup> See Armentano, *Recent Research on Medical Marijuana*, *supra* note 122.

<sup>113</sup> *Id.*

<sup>114</sup> See CAL. HEALTH & SAFETY CODE § 11362.5 (West-1996).

<sup>115</sup> 2014 MINN. SESS. LAW SERV. CH. 311 (S.F. 2470) (West).

<sup>116</sup> There are eleven total states with CBD-specific medical marijuana laws. See John Ingold, *Lawmakers in 11 States Approve CBD Low-THC Medical Marijuana Bills*, THE DENVER POST, [http://www.denverpost.com/marijuana/ci\\_26059454/lawmakers-11-states-approve-low-thc-medical-marijuana](http://www.denverpost.com/marijuana/ci_26059454/lawmakers-11-states-approve-low-thc-medical-marijuana). (Last updated June 30, 2014).

<sup>117</sup> *Science*, PROJECT CBD, <http://www.projectcbd.org/medicine/science/> (last visited Sep. 10, 2014).

<sup>118</sup> *Conditions*, PROJECT CBD, <http://www.projectcbd.org/medicine/conditions/> (last visited Sep. 10, 2014); see also *Cannabis and Cannabinoids*, NAT. CANCER INST. <http://www.cancer.gov/cancertopics/pdq/cam/cannabis/patient/page2> (last visited Sep. 11, 2014) (discussing the benefits that tetrahydrocannabinol (THC), the psychoactive component of the marijuana plant, is beneficial in treatment of all of the same conditions. The concern with THC is the subsequent "high" feeling after consumption).

<sup>119</sup> See *Science*, PROJECT CBD, *supra* at note 134.

Further, as previously mentioned, there are many different means of administering medical marijuana including inhaling smoke, swallowing a pill/liquid, or vaporizing oils.<sup>120</sup> There is argument amongst scholars and physicians to what method of ingestion is safest and most effective for patients. Inhaling marijuana through smoking has been the traditional method of delivery because of its ease and immediate effectiveness.<sup>121</sup> In addition, preference for smoking marijuana, despite risks, exists because patients are able to more effectively control dosage to obtain the desired effect.<sup>122</sup> It has been proven, however, that there are various risks associated with smoke inhalation, such as lung damage and respiratory issues/problems.<sup>123</sup> As a result, methods to extract the active components of marijuana (THC and CBD) into a liquid or oil form have been developed for pill production or for use in vaporizing inhalation devices.<sup>124</sup> It is argued that these forms of ingestion present a safer way to still effectively obtain relief from marijuana without the negative side effects associated with smoke inhalation.<sup>125</sup>

## 2. Economic Benefits: Tax Income and Other Fees

States with medical marijuana laws are able to collect taxes and/or fees derived from various sources.<sup>126</sup> For example, some states such as California and Colorado have allowed for the opening of

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<sup>120</sup> See Arno Hazecamp et al., *Evaluation of a Vaporization Device (Volcano) for the Pulmonary Administration Tetrahydrocannabinol*, 95 J. PHARM. SCI. 1 (2006).

<sup>121</sup> *Id.*

<sup>122</sup> *Id.* at 9.

<sup>123</sup> *Id.* at 1.

<sup>124</sup> *Id.*

<sup>125</sup> *Hazecamp, supra note 136*, at 9.

<sup>126</sup> Erecting dispensaries to sell medicine to patients allows the state or city/local governments to collect taxes raised from the proceeds. In addition, states without dispensaries can still collect patient, caregiver, producer, and doctor fees associated with the different laws. See Solar Thermal, *The Economic Ripple Effects of Medical Marijuana Dispensary Boom*, DAILY KOS (Mar. 2, 2010, 11:45 AM), <http://www.dailykos.com/story/2010/03/02/842254/-The-Economic-Ripple-Effects-Of-The-Medical-Marijuana-Dispensary-Boom#>.



public dispensaries to sell medical marijuana to patients.<sup>127</sup> The dispensaries in California are not allowed to collect profits from the retail sale of medical marijuana and instead, the tax revenue generated from medical marijuana sales go straight to the California government.<sup>128</sup> Additionally, there is no state agency regulating the medical marijuana industry, so it is left up to city and local governments to decide how to best regulate medical marijuana in their respective communities.<sup>129</sup> California does collect taxes from medical marijuana, however, through the Board of Equalization.<sup>130</sup> It is estimated that the state of California generates between \$58 and \$105 million annually from medical marijuana taxes.<sup>131</sup> In addition, cities can also impose their own tax on retail sales. Los Angeles, for example, imposes a 0.6% tax on gross receipts of revenue and collected an estimated \$2.5 million in 2012.<sup>132</sup>

Most states, however, have not implemented a medical marijuana dispensary system, instead only generating income from collecting fees from patients, manufacturers, and physicians.<sup>133</sup> These states will charge patients an amount as a fee for registering to receive medical marijuana. In Alaska, for example, the fee is \$25<sup>134</sup> and in Vermont it is \$50.<sup>135</sup> In addition, some states tax the marijuana after it is manufactured and before it is given to physicians or primary caregivers to administer to patients.<sup>136</sup> For example, in Minnesota's new system, there will be only two designated manufacturers (yet to be chosen) and each manufacturer applying for consideration must

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<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> See *State Medical Marijuana Programs' Financial Information*, SUPRA NOTE 80.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> See 2014 MINN. SESS. LAW SERV. CH. 311 (S.F. 2470); ALASKA STAT. § 17.37.070 (2007).

<sup>134</sup> ALASKA STAT. § 17.37.070 (2007).

<sup>135</sup> See *Patient Information*, VT. DEP'T PUB. SAFETY, [http://vcic.vermont.gov/marijuana\\_registry/patients](http://vcic.vermont.gov/marijuana_registry/patients) (last visited Sept. 11, 2014).

<sup>136</sup> 2014 MINN. SESS. LAW SERV. CH. 311 (S.F. 2470) (West).

pay a \$20,000 fee to the state.<sup>137</sup> In comparison to states with dispensary systems generating tax revenue from retail sales, these medical marijuana programs take in a substantially lower amount of revenue.<sup>138</sup> In Alaska, where the government collects only a \$25 fee from new patients and a \$20 renewal fee, the state income from medical marijuana sales was only \$20,632 in 2012.<sup>139</sup> This income did not even cover the costs associated with the program.<sup>140</sup>

### 3. Crime Rates

One central argument against enactment of medical marijuana programs is that property and violent crime rates will increase because marijuana dispensaries and cultivation facilities are likely to have large amounts of cash on hand.<sup>141</sup> Medical marijuana and crime rates do not necessarily correlate, as there are countless factors to consider.<sup>142</sup> It is worth asking, however, whether there has been any increase in violent or property crimes in states that have enacted medical marijuana laws. In 2014, researchers at the University of Texas published their findings on the correlation between crime rates and medical marijuana.<sup>143</sup> According to this study, enactment of medical marijuana laws is not predictive of crime rates and may actually reduce homicide and assault rates.<sup>144</sup> Additionally, the study concluded that robbery and burglary rates were not affected which contradicts the argument that the existence

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<sup>137</sup> *Id.*

<sup>138</sup> *See* Thermal, *supra* note 142.

<sup>139</sup> *See* State Medical Marijuana Programs' Financial Information, *supra* note 80.

<sup>140</sup> *Id.*

<sup>141</sup> *See* Nancy J. Kepple & Bridget Freisthler, *Exploring the Ecological Association Between Crime and Medical Marijuana* Dispensaries, 73 J. STUDY ALCOHOL DRUGS 523 (2012).

<sup>142</sup> *Id.* at 528.

<sup>143</sup> *See* Robert G. Morris et al., *The Effect of Medical Marijuana Laws on Crime: Evidence from State Panel Data, 1990-2006*, 9 PLOS ONE 1 (2014).

<sup>144</sup> *Id.*

of dispensaries and marijuana cultivation facilities would increase those specific crimes.<sup>145</sup>

Another argument against medical marijuana laws is that since marijuana laws are liberalized to allow medicinal use, more people will be under the influence of marijuana while driving, leading to more traffic accidents and fatalities.<sup>146</sup> A study conducted in the *Journal of Economics* examining the 19 states with medical marijuana laws up to that point, concluded that while more individuals tested positive for marijuana in traffic fatalities, there was an 8-11% decrease in traffic fatalities one year after enactment of medical marijuana laws.<sup>147</sup> In addition, the authors concluded that medical marijuana laws were associated with a marked decrease in alcohol consumption, which is associated with much higher rates of traffic fatalities.<sup>148</sup> The authors argue this suggests that many people are substituting marijuana use in place of alcohol.<sup>149</sup>

#### **D. How Should Minnesota Proceed Regarding Medical Marijuana?**

While the new medical marijuana law is a step in the right direction, it is too restrictive with regard to the covered medical conditions. There are thousands of citizens in Minnesota suffering from medical conditions that cause extreme nausea, pain, and wasting and yet, unless they have a terminal illness or cancer they cannot receive relief in the form of medical marijuana.<sup>150</sup> While the forms of ingestion are limited to only pills, oils, and liquid, these

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<sup>145</sup> *Id.*

<sup>146</sup> Mark B. Johnson et al., *The Prevalence of Cannabis-Involved Driving in California*, *J. DRUG ALCOHOL DEPENDENCE* 105 (2013).

<sup>147</sup> D. Mark Anderson et al., *Medical Marijuana Laws, Traffic Fatalities, and Alcohol Consumption*, 56 *J. L.ECON.* 333 (2013).

<sup>148</sup> Alcohol is associated with much higher impairment, leading to a decreased capacity to drive vehicles. Marijuana, on the other hand, is very dependent on the individual user. It can impair individuals, but the extent is generally far less. *Id.* at 359.

<sup>149</sup> *Id.*

<sup>150</sup> *Minnesota Medical Marijuana Law Overview*, *supra* note 88.

ingestion options are sufficient to effectively provide treatment to most patients as smoking marijuana can potentially cause injurious side effects to some patients.<sup>151</sup> On the other hand, the legislature should consider making the plant form legal for medicinal marijuana patients to use in vaporizers as well.<sup>152</sup> This is because there is research to suggest that patients who need accelerated relief from symptoms associated with their illnesses often prefer to vaporize the plant form of marijuana because it begins to provide relief faster.<sup>153</sup> As such, it should be left up to the diagnosing physician to determine form of marijuana is best for a patient. As the law stands, however, a majority of patients using marijuana for treatment may do so by taking the marijuana in pill or liquid form.

Furthermore, the Minnesota legislature should consider adopting a dispensary system similar to those enacted in several other states. Dispensaries allow convenience for patients in obtaining access to necessary medical treatment for debilitating conditions as well as providing tax income to the Minnesota government. In addition, many studies conclude that crime rates generally do not rise after passing medical marijuana laws, even laws allowing dispensaries.<sup>154</sup> In fact, some of these studies have concluded that medical marijuana laws have led to a decrease in major crime categories including homicide and assault.<sup>155</sup> Furthermore, there is some evidence to suggest that medical marijuana laws lead to decreases in alcohol consumption and total traffic fatalities, two major public safety concerns.<sup>156</sup>

## V. The Legalization Realization: Possible Societal and Economic Impacts in Colorado and Washington

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<sup>151</sup> Even if smoking marijuana has been shown to be more effective in pain management, it can cause certain unintended consequences that other forms of ingestion simply cannot. Hazecamp, *SUPRA* note 136, at 1.

<sup>152</sup> Charles W. Webb & Sandra M. Webb, *Therapeutic Benefits of Cannabis: A Patient Survey*, 73(4) HAWAII J. MED. PUB. HEALTH 109 (2014).

<sup>153</sup> Webb & Webb, *supra* note 169, at 109.

<sup>154</sup> See Anderson et al., *supra* note 164, at 333; Morris et al., *supra* note 160.

<sup>155</sup> Morris et al., *supra* note 160.

<sup>156</sup> Anderson et al., *supra* note 164, at 359.

### A. The Recreational Model: Colorado and Washington

The citizens of Colorado and Washington voted to legalize the possession of marijuana, making these the first states to allow individuals over the age of twenty-one to possess marijuana for recreational use.<sup>157</sup> Each law is significantly different in the way each system operates. First, the initiative passed by the citizens of Colorado was a constitutional amendment commonly known as “Amendment 64” to Article 18, § 16 of the Colorado Constitution.<sup>158</sup> Under Article 18, § 16(1)(a) of the Colorado Constitution, the stated purpose of the amendment is

“in the interest of the efficient use of law enforcement resources, enhancing revenue for public purposes, and individual freedom, the people of the state of Colorado find and declare that the use of marijuana should be legal for persons twenty-one years of age or older and taxed in a manner similar to alcohol.”<sup>159</sup>

Further, § 16(3) states that possession, distribution, transportation, using, or displaying marijuana accessories or one ounce of marijuana is no longer unlawful.<sup>160</sup> Additionally, the amendment allows individuals to possess up to six marijuana plants, with three flowering at any one time.<sup>161</sup> Under the law, it is still unlawful to consume marijuana openly and publicly.<sup>162</sup>

The constitutional amendment passed by voters in 2012 did not establish the amount of taxes to be collected under the new law.<sup>163</sup> Subsequently, voters in 2013 overwhelmingly passed Proposition AA which established three separate taxes to be imposed on

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<sup>157</sup> Keith Coffman & Nicole Neroulis, *Colorado, Washington First States to Legalize Recreational Pot*, REUTERS (Nov. 7, 2012, 4:43 AM), <http://www.reuters.com/article/2012/11/07/us-usa-marijuana-legalization-idUSBRE8A602D20121107>

<sup>158</sup> C.R.S.A. CONST. ART. 18, § 16 (West).

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

recreational marijuana.<sup>164</sup> First, there is a 2.9% sales tax that applies to all goods in Colorado.<sup>165</sup> Second, there is an extra 10% sales tax on the sale of marijuana and marijuana related accessories.<sup>166</sup> Lastly, there is a 15% excise tax when “unprocessed marijuana is first sold or transferred by a retail marijuana cultivation facility.”<sup>167</sup>

Voters in Washington passed “Initiative 502,” creating a tightly controlled legal marijuana system regulated by the Washington Liquor Control Board.<sup>168</sup> Unlike the constitutional amendment passed in Colorado, this is a general law enacted by the Washington legislature. As a result, the Washington law can be changed by simple legislative action, whereas, in Colorado another constitutional amendment is needed to change the current law.<sup>169</sup> Initiative 502 allows citizens of Washington over the age of twenty-one to legally possess up to one ounce of marijuana.<sup>170</sup> Also unlike the Colorado law, Washington citizens cannot grow any marijuana plants within their homes.<sup>171</sup>

Initiative 502 imposes a 25% tax on retail marijuana at the production, wholesale, and retail stages in addition to state and local sales taxes.<sup>172</sup> In comparison to Colorado, the taxes on legal marijuana are significantly higher in Washington.<sup>173</sup> The prices of

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<sup>164</sup> See *Retail Marijuana Taxes*, PROPOSITION AA, <https://www.sos.state.co.us/pubs/elections/Initiatives/titleBoard/results/2013-2014/PropositionAAText.pdf> (last visited Sept. 23, 2014).

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> Jonathan Martin, *Voters Approve I-502, Legalizing Marijuana*, THE SEATTLE TIMES (Nov. 6, 2012, 10:26 PM), available at [http://seattletimes.com/html/localnews/2019621894\\_elxmarijuana07m.html](http://seattletimes.com/html/localnews/2019621894_elxmarijuana07m.html)

<sup>169</sup> See Phillip A. Wallach & John Hudak, *Legal Marijuana: Comparing Colorado and Washington*, BROOKINGS INST. (July 8, 2014, 9:51 AM), <http://www.brookings.edu/blogs/fixgov/posts/2014/07/08-washington-colorado-legal-marijuana-comparison-wallach-hudak>.

<sup>170</sup> *FAQ's On I-502*, WASHINGTON STATE LIQUOR CONTROL BOARD, [http://lcb.wa.gov/marijuana/faqs\\_i-502](http://lcb.wa.gov/marijuana/faqs_i-502) (last visited Sep. 13, 2014).

<sup>171</sup> *Id.*

<sup>172</sup> See Wallach & Hudak, *supra* note 183.

<sup>173</sup> *Id.*

legal marijuana are comparable to those in Colorado, however, because of the lower price of the product before tax.<sup>174</sup> There are potential upsides and downsides to the higher taxes.<sup>175</sup> Higher taxes could lead to higher revenue if individuals are not turned away because of the steep tax rates.<sup>176</sup> On the other hand, it is argued the high tax rates can end up limiting the amount of money Washington is able to collect.<sup>177</sup> In addition, there are some concerns that the high tax rates can lead to individuals reverting back to the illegal market to purchase marijuana.<sup>178</sup> These concerns are quelled, however, by the fact that the prices of legal marijuana in Washington will still be lower than illicit marijuana prices.<sup>179</sup>

## B. Societal and Economic Impact Arguments

### 1. Usage Rates

Critics of recreational marijuana use argue that legalization efforts will lead to increasing usage rates among minors.<sup>180</sup> Conversely, it is argued that legalization bears no direct relationship with rises in marijuana usage rates.<sup>181</sup> Opponents argue specifically that legalizing marijuana will make people think of marijuana in a positive light, leading to higher use rates resulting from a more

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<sup>174</sup> Katy Steinmetz, *Everything You Need to Know About Buying Legal Weed in Washington State*, TIME (July 8, 2014), <http://time.com/2955024/washington-where-to-buy-pot/>.

<sup>175</sup> See Jason Toon, *Legal Weed in Washington State Has Been Completely Screwed Up*, VICE NEWS (Mar. 10, 2014, 11:15 A.M.), <https://news.vice.com/article/legal-weed-in-washington-state-has-been-completely-screwed-up>.

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> See Toon, *supra* note 193.

<sup>179</sup> See Steinmetz, *supra* note 191.

<sup>180</sup> Jacob Sullum, *If Marijuana Legalization Sends the Wrong Message to Teenagers, Why Aren't They Listening?*, FORBES (Dec. 18, 2013, 5:10 PM), available at <http://www.forbes.com/sites/jacobsullum/2013/12/18/if-marijuana-legalization-sends-the-wrong-message-to-teenagers-why-arent-they-listening/>

<sup>181</sup> *Id.*

accepting attitude toward it.<sup>182</sup> Though marijuana is apt to lose its stigma through legalization, there is preliminary evidence from Colorado to suggest that usage rates are relatively unaffected from legalization of marijuana.<sup>183</sup>

The Colorado Department of Public Health and Environment partnered with the University of Colorado to publish a biennial report entitled the Healthy Kids Colorado Survey.<sup>184</sup> The report found that in 2013, 20% of high school students reported marijuana use within the last month.<sup>185</sup> Additionally, 37% of high school students reported that they had used marijuana once in their lifetimes.<sup>186</sup> Compared to 2011, where rates for high school students using marijuana within the last month was 22% and marijuana use in their lifetime was 39%, there is a slight decrease in minor usage following legalization.<sup>187</sup> While the survey is not conclusive, it is inconsistent with the notion that marijuana use in teens will increase with the legalization of marijuana.<sup>188</sup>

Opponents also argue legalization poses the threat of a “gateway effect”.<sup>189</sup> This theory purports that marijuana use will significantly heighten the chances that users will be more likely to experiment with different drugs or move on to become addicted to more dangerous drugs like cocaine and heroin.<sup>190</sup> The correlation

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<sup>182</sup> *Id.*

<sup>183</sup> 2013 *Healthy Kids Colorado Survey*, COLO. SCH. OF PUB. HEALTH, available at [www.ucdenver.edu/academics/colleges/PublicHealth/community/CEPEG/UnifYouth/Documents/HKCS%202013%20Form%20A.pdf](http://www.ucdenver.edu/academics/colleges/PublicHealth/community/CEPEG/UnifYouth/Documents/HKCS%202013%20Form%20A.pdf) (last visited Sep. 13, 2014).

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> Morgan Fox, *Teen Marijuana Use on the Decline in Colorado After Adult Legalization*, MARIJUANA POLICY PROJECT, <http://blog.mpp.org/tax-and-regulate/teen-marijuana-use-on-the-decline-in-colorado-after-adult-legalization/08082014/> (last updated Aug. 8, 2014).

<sup>189</sup> See Ralph E. Tarter et al., *Predictors of Marijuana Use in Adolescents Before and After Licit Drug Use: Examination of the Gateway Hypothesis*, 163 AM. J. PSYCHIATRY 2134 (2006).

<sup>190</sup> *Id.* at 2137.



between marijuana and other illicit drug use can be explained by a wide variety of reasons that do not support the “gateway effect” theory. First, marijuana is not always the first illicit drug tried and the vast majority of individuals whose first illicit drug experience is marijuana do not go on to try other, harder illicit drugs.<sup>191</sup> Second, some individuals are simply more likely to try mind altering substances.<sup>192</sup> Factors such as psychological stress and employment tend to have a greater impact on drug use.<sup>193</sup> Third, because marijuana is illegal it is more likely to be sold by individuals who are also involved with other illicit substances.<sup>194</sup> Thus, individuals using and buying marijuana and not other illicit substances are forced to go to the black market for marijuana, where individuals are more likely to encounter other dangerous illicit substances.<sup>195</sup> It is argued further that legalizing marijuana can alleviate this type of behavior by diverting those individuals in the illicit market (near other dangerous drugs) to a more safe, controlled, and legal environment.<sup>196</sup>

## 2. Crime Effects

There are many potential effects on crime when marijuana is legalized for recreational purposes.<sup>197</sup> First, much discussion centers on whether legalization leads to an increase in property or violent

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<sup>191</sup> Rashi K. Shukla, *Inside the Gate: Insiders' Perspectives on Marijuana as a Gateway Drug*, 35 HUMBOLDT J. SOC. REL. 5, 17 (2013).

<sup>192</sup> Aina Hunter, *Marijuana a “Gateway” Drug? Scientists Call Theory Half Baked*, CBS NEWS (Sep. 2, 2010, 1:01 P.M.), <http://www.cbsnews.com/news/marijuana-a-gateway-drug-scientists-call-theory-half-baked/>.

<sup>193</sup> *Id.*

<sup>194</sup> Maia Szalavitz, *Marijuana as a Gateway Drug: The Myth That Won't Die*, TIME (Oct. 29, 2010), *available at* <http://healthland.time.com/2010/10/29/marijuana-as-a-gateway-drug-the-myth-that-will-not-die/> (last updated Oct. 29, 2010).

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> See German Lopez, *Everything you Need to Know About Marijuana Legalization*, VOX (Sep. 27, 2014, 9:38 A.M.), <http://www.vox.com/cards/marijuana-legalization/Colorado-legalized-marijuana>.

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crimes rates.<sup>198</sup> Generally, opponents posit that marijuana legalization will result in more individuals under the influence of marijuana, a mind altering substance, thereby leading to an increase in crime rates.<sup>199</sup> More specifically, one of the main propositions of this argument is that the dispensaries opening under the laws in Colorado and Washington will become magnets for property and violent crimes.<sup>200</sup> It is argued that increased crime will result from the large amounts of marijuana and cash these places deal with on a daily basis.<sup>201</sup> On the contrary, preliminary evidence out of Colorado's recreational marijuana epicenter, Denver, indicates that these concerns may have been overstated.<sup>202</sup> Just over a half a year has passed since Colorado began selling marijuana at the retail level and through July 2014, compared to 2013, three of the four main violent crime categories have shown marked decreases.<sup>203</sup> Data compiled by the Denver Police Department indicates that violent crime has decreased over 3% and the crimes of homicide, robbery, and sexual assault have all seen decreases.<sup>204</sup> Aggravated robbery, the fourth of the main violent crime categories, saw a 2.2% increase.<sup>205</sup> Additionally, Denver saw a drop of 11% in property crimes as compared to the same time in 2013.<sup>206</sup>

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<sup>198</sup> *Id.*

<sup>199</sup> See Lopez, *supra* note 209.

<sup>200</sup> See German Lopez, *Since Denver Legalized Pot Sales, Revenue is Up and Crime is Down*, VOX (May 14, 2014, 10:10 A.M.), <http://www.vox.com/2014/5/13/5711370/since-denver-legalized-pot-sales-revenue-is-up-and-crime-is-down>.

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> *Citywide Reported Offenses*, DENVER POLICE DEP'T, available at [http://www.denvergov.org/Portals/720/documents/statistics/2014/Citywide\\_Reported\\_Offenses\\_2014.pdf](http://www.denvergov.org/Portals/720/documents/statistics/2014/Citywide_Reported_Offenses_2014.pdf) (last updated Aug. 2014).

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> See German Lopez, *Remember When Legal Marijuana was Going to Send Crime Skyrocketing?*, VOX (Apr. 7, 2014, 7:41 A.M.), <http://www.vox.com/2014/4/3/5563134/marijuana-legalization-crime-denver-colorado>.

A second consideration when analyzing the crime effects of legalizing marijuana is whether it has increased the amount of individuals driving under the influence of marijuana, commonly referred to as “drugged driving”.<sup>207</sup> Marijuana prohibition supporters point to reports indicating the number of individuals testing positive for marijuana has increased in states legalizing medical marijuana.<sup>208</sup> One major criticism of these reports, however, is how road-side marijuana tests are unreliably measured.<sup>209</sup> When stopped of suspicion driving under the influence of marijuana, a test is administered measuring the number marijuana metabolites in an individual’s system at the time, rather than measuring an individual’s level of inebriation as in road-side alcohol tests.<sup>210</sup> In addition, there is some interesting research indicating that legalizing marijuana may lead to reduced alcohol consumption because users tend to choose between the two.<sup>211</sup> This, in turn, may lead to lower traffic fatalities overall because of evidence suggesting alcohol is much more inebriating than marijuana.<sup>212</sup>

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<sup>207</sup> Erin Fuchs, *Why It’s Crazy to Set DUI Limits for Marijuana*, BUS. INSIDER (Dec. 19, 2013, 1:45 P.M.). <http://www.businessinsider.com/why-dui-limits-for-pot-are-bad-2013-12>.

<sup>208</sup> See Dan Freedman, *Marijuana’s Risk to Drivers Debated*, S. F. GATE (Nov. 29, 2013, 11:13 P.M.). <http://www.sfgate.com/nation/article/Marijuana-s-risk-to-drivers-debated-5022778.php>.

<sup>209</sup> See Fuchs, *supra* note 219.

<sup>210</sup> Further, it is said that hospitals have more reliable tests to measure the level of marijuana’s psychoactive ingredient (THC) in one’s system. The tests still run into the problem of varying tolerance levels of the individuals using marijuana, as it affects novice users differently than longtime users. The problem with this is that tests resulting in high levels of marijuana metabolites do not necessarily prove the individual was inebriated by marijuana at the time of the accident. This is because it can take the human body days or even weeks to metabolize marijuana. Unlike alcohol, a person testing positive for marijuana might not have ingested within days or even weeks before the accident. See Fuchs, *supra* note 219.

<sup>211</sup> See D. Mark Anderson & Daniel L. Rees, *The Legalization of Recreational Marijuana: How Likely is the Worst Case Scenario?*, 33 J. POL’Y ANA. & MGMT. 221, 224 (2014).

<sup>212</sup> *Id.*

Moreover, after analyzing data from the Colorado Department of Transportation regarding traffic fatalities, it is shown that between January 2014, when full legalization took effect, and July 2014, traffic fatalities are down compared to 2013.<sup>213</sup> Five out of the seven months in 2014, as compared to 2013, are lower.<sup>214</sup> These results are not necessarily indicative of a causal relationship between marijuana legalization and drugged driving rates as there are many different factors included in assessing traffic fatalities.<sup>215</sup> It does, however, lend credence to the argument hypothesizing various public benefits associated with the legalization of marijuana.<sup>216</sup>

### 3. Economic Effects

Perhaps the most compelling of arguments in legalizing marijuana for recreational adult use are the possible economic implications including taxes, jobs, and spending.<sup>217</sup> The first economic implication is the amount of income generated through the different taxes incorporated within the laws.<sup>218</sup> The potential income that can be made off of retail marijuana sales could be substantial.<sup>219</sup> The Colorado Department of Revenue has stated that in January 2014 (the first full month of legalization) the Colorado government

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<sup>213</sup> See Jacob Sullum, *As Colorado Loosened Its Marijuana Laws, Underage Consumption and Traffic Fatalities Fell*, FORBES (Aug. 11, 2014, 3:27 P.M.) <http://www.forbes.com/sites/jacobsullum/2014/08/11/as-colorado-loosened-its-marijuana-laws-underage-consumption-and-traffic-fatalities-fell/>.

<sup>214</sup> *Id.*

<sup>215</sup> See Sullum, *supra* note 224.

<sup>216</sup> See Anderson & Rees, *supra* note 222, at 230 (arguing that legalization of marijuana may actually serve a public benefit by decreasing the consumption of a more intoxicating substance, alcohol).

<sup>217</sup> See Ranjit Dighe, *Legalize It – The Economic Argument*, THE HUFFINGTON POST (Jan. 30, 2014, 1:17 P.M.) [http://www.huffingtonpost.com/ranjit-dighe/legalize-marijuana-economic-argument\\_b\\_4695023.html](http://www.huffingtonpost.com/ranjit-dighe/legalize-marijuana-economic-argument_b_4695023.html).

<sup>218</sup> *Id.*

<sup>219</sup> See Tony Nitti, *Understanding The Impact of Legalized Recreational Marijuana On State Tax Revenue*, FORBES (Sept. 24, 2013, 10:12 P.M.) <http://www.forbes.com/sites/anthonymitti/2013/09/24/understanding-the-impact-of-legalized-recreational-marijuana-on-state-tax-revenue/>.

generated over \$2 million from recreational marijuana revenue.<sup>220</sup> Subsequently, the state generated just over \$47 million in tax revenue from the sale of legal and medical marijuana in 2014.<sup>221</sup>

Proponents of the legalization effort in Colorado hailed the plan to divert income generated through recreational marijuana sales to public school funding.<sup>222</sup> Under the law in Colorado, the first \$40 million of the taxes collected from the recreational system will be diverted to the construction of new public schools.<sup>223</sup> There is some question and debate, however, as to where the money will be going after that.<sup>224</sup>

The second major economic implication is if and to what extent legalizing marijuana creates new jobs and businesses. In Colorado, the marijuana industry has exploded since the legalization measure passed as a result of the recognition that high demand for marijuana could result in financial benefits for businesspeople.<sup>225</sup> The Medical Industry Group estimates that there are over 10,000

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<sup>220</sup> John Ingold, *Colorado Saw \$2 Million in Recreational Marijuana Taxes in January*, THE DENVER POST (March 10, 2014, 3:56 P.M.), available at [http://www.denverpost.com/news/ci\\_25314108/colorado-saw-2-million-recreational-marijuana-taxes-january](http://www.denverpost.com/news/ci_25314108/colorado-saw-2-million-recreational-marijuana-taxes-january).

<sup>221</sup> See *State of Colorado: Marijuana Taxes, Licenses, and Fees Transfers and Distribution, December 2014 Sales Reported in January 2015*, COLO. DEP'T REV., <https://www.colorado.gov/pacific/sites/default/files/1214%20Marijuana%20Tax%2C%20License%2C%20and%20Fees%20Report.pdf> (last visited Sep. 14, 2014).

<sup>222</sup> Yesenia Robles, *Pot Revenues Starting to Help Select Schools on Pricey Projects*, THE DENVER POST (July 31, 2014, 12:01 A.M.), [http://www.denverpost.com/marijuana/ci\\_26247743/pot-revenues-starting-help-select-schools-pricey-projects](http://www.denverpost.com/marijuana/ci_26247743/pot-revenues-starting-help-select-schools-pricey-projects).

<sup>223</sup> See Kelly Phillips Erb, *It's No Toke: Colorado Pulls in Millions In Marijuana Tax Revenue*, FORBES (Mar. 11, 2014, 9:12 A.M.), <http://www.forbes.com/sites/kellyphillipserb/2014/03/11/its-no-toke-colorado-pulls-in-millions-in-marijuana-tax-revenue/>.

<sup>224</sup> *Id.*

<sup>225</sup> German Lopez, *Legal Marijuana Created Thousands of Jobs in Colorado*, VOX (May 20, 2014, 3:00 P.M.), <http://www.vox.com/2014/5/20/5734394/legal-marijuana-created-thousands-of-jobs-in-colorado>.

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people working within Colorado's marijuana system.<sup>226</sup> There are no signs to indicate that job growth will slow any time soon.<sup>227</sup>

Furthermore, according to a recent report published by the ArcView Group, there are indications that legal marijuana is the fastest growing business in the United States.<sup>228</sup> In 2014, the legal marijuana market grew to \$2.7 billion, up from \$1.5 billion in 2013.<sup>229</sup> If the trend of marijuana legalization continues throughout the country, the report projects that the legal marijuana market could topple other fast-growing industries such as the organic food industry.<sup>230</sup>

Third, it is argued that legalizing marijuana could potentially help decrease spending associated with enforcement of previous marijuana laws. Proponents argue that once marijuana is legalized, law enforcement can shift its focus to enforcing other crimes that warrant increased attention.<sup>231</sup> Moreover, money may be saved by not spending on the expensive process of putting individuals through the court system for marijuana possession.<sup>232</sup>

On the other hand, others argue that even if legalization doesn't lead to higher crime rates, the money spent enforcing previous laws is only being diverted to enforcing new challenges that accompany the recreational marijuana law, such as drugged driving.<sup>233</sup> Higher enforcement of drugged driving, as compared to

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<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

<sup>228</sup> Matt Ferner, *Legal Marijuana is the Fastest Growing Industry in the U.S.: Report*, HUFFINGTON POST (January 26, 2015, 10:59 A.M.), [http://www.huffingtonpost.com/2015/01/26/marijuana-industry-fastest-growing\\_n\\_6540166.html](http://www.huffingtonpost.com/2015/01/26/marijuana-industry-fastest-growing_n_6540166.html).

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

<sup>231</sup> See Aaron Smith, *Legal Pot Means Big Savings on Law Enforcement*, CNN (Oct. 21, 2010, 1:58 P.M.), [http://money.cnn.com/2010/10/21/news/economy/marijuana\\_california/](http://money.cnn.com/2010/10/21/news/economy/marijuana_california/).

<sup>232</sup> *Id.*

<sup>233</sup> Jacob Sullum, *How is Marijuana Legalization Going? The Price of Pot Peace Looks Like a Bargain*, FORBES (July 10, 2014, 5:47 P.M.), <http://www.forbes.com/sites/jacobsullum/2014/07/10/how-is-marijuana-legalization-going-so-far-the-price-of-pot-peace-looks-like-a-bargain/>.

pre-legalization, assumes that more people will both be using marijuana and then subsequently driving after using.<sup>234</sup> As previously noted, those propositions are not necessarily true and legalization may actually lead to lower traffic accidents and fatalities resulting from reduced alcohol-related consumption and driving.<sup>235</sup> It must be conceded, however, that there has been an increase in drugged driving traffic fatalities associated with marijuana.<sup>236</sup> This is explained and contradicted by the increase in marijuana users in Colorado as well as the fact that because drugged driving deaths may be up, overall traffic fatalities in Colorado have decreased since implementing legalization laws.<sup>237</sup>

Furthermore, it is estimated that Colorado will save between \$12 and \$60 million on law enforcement expenses per year as a direct result of legalizing marijuana.<sup>238</sup> Before the passage of the law, police officers in Colorado were arresting nearly 10,000 individuals per year for marijuana possession.<sup>239</sup> The law has allowed thousands of citizens to purchase marijuana in a safe environment, without fear of being prosecuted and becoming criminals.<sup>240</sup> Additionally, the total number of court filings associated with marijuana plummeted 77% from 2012 to 2013 as a result of the legalization measure.<sup>241</sup> Both of these pieces of preliminary data are further evidence of cost savings associated with legalizing marijuana.

#### 4. Legalization in Minnesota?

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<sup>234</sup> See Bill Briggs, *Pot Fuels Surge in Drugged Driving Deaths*, NBC NEWS (Feb. 15, 2014, 12:58 P.M.), <http://www.nbcnews.com/health/health-news/pot-fuels-surge-drugged-driving-deaths-n22991>.

<sup>235</sup> See Sullum, *supra* note 224.

<sup>236</sup> Briggs, *supra* note 243.

<sup>237</sup> See Sullum, *supra* note 224.

<sup>238</sup> *Id.* at 242.

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> John Ingold, *Marijuana Case Filings Plummet in Colorado Following Legalization*, THE DENVER POST (Jan. 12, 2014, 12:01 A.M.), [http://www.denverpost.com/marijuana/ci\\_24894248/marijuana-case-filings-plummet-colorado-following-legalization](http://www.denverpost.com/marijuana/ci_24894248/marijuana-case-filings-plummet-colorado-following-legalization).

5.

There are countless considerations to take into account when examining whether Minnesota should follow the footsteps of Colorado and Washington in legalizing marijuana for adult recreational use. While the laws in Colorado and Washington are still relatively new and research on each law is preliminary, analyzing the laws and possible effects assists citizens and state legislatures around the country in understanding the impact of legalization. Concerns about legalization include potential addiction and abuse, possible increase in usage rates among the youth, increases in driving under the influence of marijuana, and overstated economic benefits.<sup>242</sup> On the other hand, proponents of legalization argue the economic and societal benefits are substantial and the purported effects on use and crime rates are exaggerated.<sup>243</sup>

Utilizing a cost-benefit analysis, I conclude that the people of Minnesota and the Minnesota legislature should propel the idea of legalizing marijuana for adult recreational purposes and regulating it in a similar fashion to alcohol for four reasons. First, there is scientific evidence supporting the theory that marijuana is simply no more unsafe than alcohol.<sup>244</sup> Outlawing the use and possession of marijuana at the same time as commercializing and encouraging the consumption of alcohol, a substance that is arguably more destructive to individuals and the public,<sup>245</sup> is contradictory.

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<sup>242</sup> See Kristen Wyatt, *Legal Weed in Colorado and Washington Could Come With These Big Problems*, BUS. INSIDER (Dec. 29, 2013, 7:34 P.M.), <http://www.businessinsider.com/legal-weed-in-colorado-and-washington-could-come-with-these-big-problems-2013-12>.

<sup>243</sup> See Hunter Stuart, *If You Support Legal Marijuana, Memorize These 13 Stats*, THE HUFFINGTON POST (Apr. 19, 2014, 2:59 P.M.), [http://www.huffingtonpost.com/2014/04/19/benefits-legalizing-weed-by-the-numbers\\_n\\_5173785.html](http://www.huffingtonpost.com/2014/04/19/benefits-legalizing-weed-by-the-numbers_n_5173785.html).

<sup>244</sup> Steve Fox et al., *MARIJUANA IS SAFER: SO WHY ARE WE DRIVING PEOPLE TO DRINK?* 156 (2009). (arguing that there is evidence of marijuana being a far safer substance to use than alcohol and yet, commercialization pushes consumers to drink).

<sup>245</sup> *Id.*



Second, Colorado has already proven the economic benefits of legalization can be immediate and substantial.<sup>246</sup> A particularly inviting approach to tax revenue exists in Colorado where the first \$40 million in recreational marijuana revenue goes to public school construction.<sup>247</sup> Unlike Colorado, however, if Minnesota pursues legalization, it should not make the public school funding a one-time payment. Citizens are more likely to support legalization if they know the law will result in consistent public benefit funding.

Third, there is preliminary evidence to support the theory that marijuana legalization doesn't correlate with increased violent and property rates.<sup>248</sup> On the contrary, evidence suggests that marijuana legalization may actually be correlated with a drop in major categories of crime rates.<sup>249</sup> Fourth, initial evidence examining legalization's effect on traffic fatalities associated with "drugged driving" suggests a decrease in traffic fatalities post-legalization in Colorado.<sup>250</sup> These four reasons and countless others support the idea of legalization and Minnesota needs to take a close look at the systems operating in Colorado and Washington and legalize marijuana for adult recreational use.

## VI. Conclusion

Marijuana laws around the country have been rapidly changing, resulting in three types of enacted law. First, seventeen states and Washington D.C. have enacted measures decriminalizing the possession of small amounts of marijuana.<sup>251</sup> Second, twenty-three states and Washington D.C. have enacted laws legalizing marijuana for medicinal purposes.<sup>252</sup> Third, the citizens of Colorado

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<sup>246</sup> See Erb, *supra* note 235.

<sup>247</sup> See Robles, *supra* note 234.

<sup>248</sup> Lopez, *supra* note 212.

<sup>249</sup> *Id.*

<sup>250</sup> Sullum, *supra* note 224.

<sup>251</sup> *States That Have Decriminalized*, *supra* note 2.

<sup>252</sup> *State Medical Marijuana Laws*, *supra*. note 76.

and Washington legalized the adult possession of marijuana for recreational use.<sup>253</sup>

The state of Minnesota already has a law decriminalizing possession of small amount of marijuana, which is a commendable start.<sup>254</sup> The law, however, may require some minor changes to effectively address public policy concerns such as lowering the fine (which is higher than the majority of states with similar laws) that disproportionately disadvantages minority populations.<sup>255</sup> In addition, Governor Dayton recently signed a medical marijuana bill that will take effect in 2015.<sup>256</sup> While the bill addresses many legitimate purposes, the outcome is that it is too restrictive of medical conditions protected under the law. Those who suffer from an illness associated with nausea, severe pain, and severe wasting cannot obtain relief in the form of medicinal marijuana unless their illness is terminal.<sup>257</sup> Finally, after closely analyzing the preliminary data coming from Colorado regarding legal recreational marijuana, the Minnesota legislature needs to take action to study the possibility of legalizing marijuana for adult recreational use. As the public attitude and perception of marijuana continues to shift increasingly in the direction of favoring legalization,<sup>258</sup> the people of Minnesota and the

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<sup>253</sup> See Coffman & Neroulias, *supra* note 171.

<sup>254</sup> See MINN. STAT. § 152.027 (2012).

<sup>255</sup> *The War on Marijuana in Black and White*, *supra* note 16, at 158.

<sup>256</sup> *Minnesota Medical Marijuana Law Overview*, *supra* note 88.

<sup>257</sup> *Id.*

<sup>258</sup> The Gallup Poll conducted in 2013 revealed that 58% of Americans favored the legalization of marijuana for adult recreational use, up 14% since 2009. Additionally, residents Alaska, Oregon, and Washington D.C. voted on measures to legalize marijuana in the November 2014 election cycle, resulting in all three jurisdictions voting in favor of legalizing marijuana for adult recreational use. Further, at least six states (including California, Nevada, Mississippi, Arizona, and Massachusetts) will be voting on similar measures in 2016. Art Swift, *For First Time, Americans Favor Legalizing Marijuana*, GALLUP, <http://www.gallup.com/poll/165539/first-time-americans-favor-legalizing-marijuana.aspx> (last updated Oct. 22, 2013); See Dan Merica, *Oregon, Alaska, and Washington, D.C. Legalize Marijuana*, CNN, <http://www.cnn.com/2014/11/04/politics/marijuana-2014/index.html> (last updated Nov. 5, 2014); See Niraj Choksi, *Forget 2014, Pot Advocates are Already Pushing*

individuals representing them in the state legislature should analyze the current marijuana laws and decide whether continued prohibition is really in the best interest of the citizens of Minnesota.

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<sup>i</sup> These figures are calculated in relation to that states' overall spending in "The War on Drugs". In the three states other than Massachusetts, marijuana enforcement results in the highest allocation of resources. *The War on Marijuana in Black and White: Billions of Dollars Wasted on Racially Biased Arrests*, AM. CIV. LIBERTIES UNION (hereinafter *War on Marijuana in Black and White*) (2013), <https://www.aclu.org/files/assets/090613-mj-report-rfs-re11.pdf>.

<sup>ii</sup> These arrest rates are calculated based on marijuana possession arrests per 100,000 citizens of the state. *DUI's and Drugs: Which States Are Enforcing the Law? Marijuana Arrests per 100,000 Citizens*, ADDICTION TREATMENT (2014), <http://www.addiction-treatment.com/in-depth/duis-and-drugs-state-enforcement/> (last visited Sept. 23, 2014).

<sup>iii</sup> By using the age group of 18-25 in the table, the group with the highest marijuana use rates, I wanted to illustrate the potential effects decriminalization may have had on the age group with the most participants. *2008-2010 National Survey on Drug Use and Health National Maps of Prevalence Estimates, by Substate Region*

SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMIN. (2012), <http://www.samhsa.gov/data/NSDUH/2k10State/NSDUHsae2010/NSDUHsaeCh2-2010.htm#fig2.1>.

<sup>iv</sup> *Id.*

<sup>v</sup> *Id.*

<sup>vi</sup> See generally *War on Marijuana in Black and White*, *supra* note 16.

<sup>vii</sup> MASS. GEN. LAWS CH. 94C § 32L (2008).

<sup>viii</sup> CAL. HEALTH & SAFETY CODE § 11362.5 (West-1996).

<sup>ix</sup> See *State Medical Marijuana Programs: Financial Information*, MARIJUANA POLICY PROJECT, <http://www.mpp.org/assets/pdfs/library/State-Medical-Marijuana-Programs-Financial-Information.pdf>.

<sup>x</sup> *Crime and Delinquency in California, 1996*, OFF. CAL. ATT'Y GEN., (1996), [ag.ca.gov/cjsc/publications/candd/cd96/cd96cr1.pdf](http://ag.ca.gov/cjsc/publications/candd/cd96/cd96cr1.pdf).

<sup>xi</sup> *Crime in California, 2012*, OFF. CAL. ATT'Y GEN., (2012), [oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/candd/cd12/cd12.pdf](http://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/candd/cd12/cd12.pdf)

<sup>xiii</sup> ALASKA STAT. § 17.37.040 (2007).

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*Legalization in at Least Six States for 2016*, THE WASH. POST, available at <http://www.washingtonpost.com/blogs/govbeat/wp/2014/10/01/forget-2014-pot-advocates-are-already-pushing-legalization-in-at-least-six-states-for-2016/> (last updated Oct. 1, 2014).

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<sup>xiii</sup> See *State Medical Marijuana Programs: Financial Information*, *supra* note 80.

<sup>xiv</sup> *Crime Reported in Alaska: Uniform Crime Reporting 1998*, ALASKA DIV. OF PUB. SAFETY, <https://www.ncjrs.gov/App/publications/abstract.aspx?ID=180540>.

<sup>xv</sup> *Uniform Crime Reports, 2012*, ALASKA DIV. OF PUB. SAFETY, [dps.alaska.gov/statewide/docs/UCR/UCR\\_2012.pdf](https://dps.alaska.gov/statewide/docs/UCR/UCR_2012.pdf).

<sup>xvi</sup> 2014 MINN. SESS. LAW SERV. CH. 311 (S.F. 2470) (West).

<sup>xvii</sup> *Minnesota Medical Marijuana Law Overview*, **MINNESOTANS FOR COMPASSIONATE CARE**, [www.mpp.org/states/minnesota/MNCompromise-Summary.pdf](http://www.mpp.org/states/minnesota/MNCompromise-Summary.pdf) (last visited Sep. 11, 2014).

<sup>xviii</sup> *2012 Uniform Crime Report*, MINN. DEP'T OF PUB. SAFETY 1, 13, (July 1, 2013), <https://dps.mn.gov/divisions/bca/bca-divisions/mnjis/Documents/2012%20Crime%20Book.pdf>.

<sup>xix</sup> *Id.*