

TX L HIST

# MARIJUANA IN TEXAS



PROPERTY OF SOUTH TEXAS  
COLLEGE OF LAW LIBRARY  
LAW LIBRARY, SOUTH TEXAS COLLEGE

KFT  
1574.5  
M3  
S6  
1972  
Hist

CrL  
Tex

A REPORT  
TO THE  
SENATE INTERIM DRUG STUDY COMMITTEE  
MARCH, 1972

# **MARIJUANA IN TEXAS**



**A REPORT  
TO THE  
SENATE INTERIM DRUG STUDY COMMITTEE  
MARCH, 1972**

The Senate Interim Drug Study Committee  
S. R. 1442  
62nd Texas Legislature  
State Capitol  
Austin, Texas

Third Printing  
September, 1972



SENATOR DON KENNARD  
CHAIRMAN

## The Senate of The State of Texas

INTERIM DRUG STUDY COMMITTEE  
CAPITOL STATION  
AUSTIN, TEXAS 78711

March 15, 1972

### MEMBERS

SENATOR JOE CHRISTIE  
SENATOR O. H. HARRIS  
SENATOR BARBARA JORDAN  
SENATOR OSCAR MAUZY

GRIFFIN SMITH, JR., COUNSEL

Senator Don Kennard, Chairman  
Interim Drug Study Committee  
Texas Senate  
Austin, Texas

Dear Senator Kennard:

The following Report has been prepared by the staff of the Senate Interim Drug Study Committee to assist the members of the Committee and their legislative colleagues in determining the extent of marijuana use in Texas and the sociological impact of our present drug laws.

The information contained in this Report is the most accurate and comprehensive currently available. It is not as complete as we would wish; but until Texas establishes a working system of criminal justice record-keeping, the gaps in our knowledge will always exceed the known data.

We are indebted to, and wish to thank, the many public officials, employees, and other interested citizens who so generously contributed their time and effort in preparing the statistics that have gone into this report.

Respectfully submitted,

A handwritten signature in cursive script that reads "Griffin Smith, Jr.".

Griffin Smith, Jr.  
Committee Counsel

A handwritten signature in cursive script that reads "Alan Holman".

Alan Holman  
Research Director



## TABLE OF CONTENTS

### PART ONE: MARIJUANA USE IN TEXAS

A Prefatory Note . . . . .	1
Texas Students and Marijuana Use . . . . .	2
Marijuana Use and the Nonstudent Population of Texas . . . . .	12
Summary . . . . .	16
Bibliography . . . . .	18

### PART TWO: MARIJUANA AND THE CRIMINAL LAW

The Position of Marijuana in Texas Criminal Law . . . . .	23
Marijuana Laws in Other States . . . . .	26
Marijuana Arrests . . . . .	35
Marijuana Convictions . . . . .	39
Marijuana Offenders in Prison . . . . .	42
Summary of Findings and Policy Alternatives . . . . .	51
A Final Word . . . . .	61

*PART ONE*

**THE EXTENT OF MARIJUANA USE IN TEXAS**

J. ALAN HOLMAN

## A PREFATORY NOTE

One of the most emotional issues to plague Texas lawmakers in recent years is that of how marijuana use should be approached as a matter of public policy. There are many Texans who vehemently clamor for the preservation of harsh criminal penalties, just as there are equally vociferous citizens who call for a relaxation of the present statute or even for legalization of the controversial drug. But emotion and controversy aside, perhaps the most objective approach to the issue lies in attempting to weigh the relative costs and benefits that accrue to society as a result of the present law which makes first offense possession of even noncommercial amounts of marijuana a serious felony.

Clearly one of the principal social costs of the current Texas statute regarding marijuana is related to the fact that violation of that law is so widespread. Just how widespread is difficult to determine, especially in light of the relative dearth of reliable and informative drug use statistics. Nevertheless, it is imperative that the legislator know, as nearly as possible, the extent to which marijuana is used by the citizens of this state and, therefore, the extent to which the present law is broken.

In this part of the report, an attempt will be made to survey what data is currently available so as to arrive at what should represent at least an informed estimate of the prevalence of marijuana use in Texas. An initial *caveat* is in order. That is, one should be aware that Texas drug use data are rather scant in general, and this paucity is particularly acute in terms of data describing drug usage patterns among the state's nonstudent citizenry. Virtually all Texas drug use studies to date deal only with the student population of the state, especially with secondary- and college-level students. Thus our best estimates of marijuana use among that vast majority of Texans who no longer attend school must be derived largely by inferring and extrapolating from the measured experience of states where patterns of drug consumption have been more thoroughly analyzed. Any conclusions reached in this fashion must necessarily be of a general and tentative nature, for the social and cultural climate of Texas differs markedly, of course, from that of such states as New York and California, where drug use has generated serious problems for many years now and, consequently, where it has been most comprehensively studied.

One might logically begin an examination of marijuana use in Texas by considering that sector of the population where descriptive evidence of use is most readily obtainable. Thus we shall first attempt to answer the question: To what extent is marijuana used by Texas students?

## TEXAS STUDENTS AND MARIJUANA USE

It appears certain that a disproportionately large amount of marijuana use in Texas occurs within the student sector of the state's population, as seems to be the case nationwide. Fortunately, there does now exist a set of empirical data, though by no means a comprehensive one, which is of assistance in attempting to assess the extent of student marijuana use. In fact, during the last three years drug use studies of varying levels of sophistication have been completed in a number of Texas cities. Most of these survey the incidence of drug use among public high school and junior high students. The Dallas and Houston studies merit greatest attention, for they appear to have been not only the most methodologically sound, but also the most comprehensive in scope. Nevertheless, important information is additionally provided by other studies such as those conducted in San Antonio, Fort Worth, Amarillo, the Rio Grande Valley, and in the Galveston-Texas City area. A view of student marijuana use at the collegiate level is similarly afforded by surveys administered at the University of Texas at Austin and to freshmen at the University of Houston.

Each of these studies is discussed individually below. Those salient points which emerge when the results of the various studies are considered collectively as a body of data describing student marijuana use in Texas are included in the final section of Part I, where conclusions are drawn.

### The Dallas Studies

Probably the most thorough series of drug use studies yet conducted in this part of the United States was that carried out during the last two years under the sponsorship of the Dallas Independent School District. Actually, three separate studies have been completed to date, with yet another scheduled for the current academic year. The first consisted primarily of a questionnaire survey, developed by associates of Dallas' Timberlawn Foundation, which was administered to almost 57,000 junior and senior high students (those in grades 7-12) in the Dallas Independent School District during October, 1969. The survey was repeated a year later when essentially the same questionnaire was administered again, this time to a carefully drawn, five percent stratified random sample of DISD students enrolled in grades *five* through twelve. Then this same sample was surveyed yet again seven months later, in May, 1971. In this way DISD officials were able to collect information that is not only useful in

ascertaining present levels of student marijuana use, but which is also valuable as an indicator of possible changes in the incidence of use over a recent two-year period.

In the October, 1969, administration of the survey, 14 percent of those high school students interviewed reported having used marijuana. Approximately 17 percent of the twelfth-graders interviewed reported usage, as did three percent of the seventh-graders. Moreover, almost half of those high school seniors reporting usage also said they had smoked marijuana at least ten times, which is indicative of the extent to which the drug was being used regularly.

Glancing at TABLE I below, one can obtain an approximate idea of the degree to which reported use of marijuana rose between the first and second surveys, and again between the second and third. In general, there was a marked increase in reported marijuana use during the one-year period between the first two surveys, followed by a somewhat milder elevation during the seven months between the second and third surveys. The percentage of Dallas twelfth-graders reporting marijuana use increased from 17 to 28 percent during the one-year interval between October of 1969 and October, 1970. The May, 1971, survey revealed a further increase of only one percent. Meanwhile, marijuana use among seventh-graders was increasing steadily, from three to six percent during the first interval, and rising further to ten percent by the 1971 survey.

**TABLE I**  
**STUDIES IN DALLAS AND HOUSTON**  
**MARIJUANA USAGE AMONG PUBLIC SECONDARY STUDENTS**  
**(Data Rounded to Nearest Whole Percent)**

City	Date	Ever Tried	Use Regularly	12th Graders/ 7th Graders Ever Tried	12th/7th at least 10 Times	12th/7th at least once Last Week	12th/7th at least 4 Times Last Wk.
Dallas <sup>a</sup>	Oct, 69	14 <sup>b</sup>	—	17/3	8/1	8/2	3/1
	Oct, 70	—	—	28/6	16/2	16/3	5/1
	May, 71	26 <sup>b</sup>	—	29/10	19/4	14/7	4/2
Houston	May, 70 <sup>c</sup>	24	18	—	—	—	—
	Dec, 70	22 <sup>d</sup>	12 <sup>e</sup>	48/8 <sup>f</sup>	—	29/2 <sup>f</sup>	—

<sup>a</sup>Dallas figures include THC; do not include hashish

<sup>b</sup>Represents percentage of DISD *high school students only* who reported usage

<sup>c</sup>This study was of five HISD high schools only

<sup>d</sup>Percentage of those in grades 7-12 reporting usage of marijuana or hashish

<sup>e</sup>Percentage of those in grades 7-12 reporting usage of marijuana or hashish 10 or more times

<sup>f</sup>Percentages of 12th and 7th grades *BOYS ONLY*

The 14 percent usage figure for Dallas high school students (grades 10-12) in the 1969 survey increased to approximately 26 percent by the May, 1971, administration of the survey, as TABLE I shows. Increases in marijuana use by Dallas junior high students were equally dramatic during this same nineteen-month period. It is also important to note that by the 1971 survey more than half of those high school students reporting marijuana use also reported having used the drug more than ten times, as did quite a substantial percentage of junior high school marijuana users. Therefore, it appears that simple "experimentation" with marijuana by secondary students in Dallas is not an adequate explanation of the sudden increase in use.

A number of correlates and other statistical tendencies and trends should be mentioned that also issue from the Dallas data. But since similar findings can be drawn from the results of the Houston studies as well, they will be discussed after we first examine this latter set of surveys.

### **The Houston Studies**

Two studies of drug use among students in the Houston Independent School District have been completed to date; these were conducted independently of each other. The first, in May, 1970, consisted of a questionnaire survey developed by Dr. James D. Preston of Texas A&M University and administered to students from five Houston high schools. The schools were selected so as to obtain a reasonably wide range of socio-economic and subcultural representation. The second study, patterned in part after the Dallas series, was conducted under the direction of Dr. J. Ray Hays of the Texas Research Institute of Mental Sciences. It consisted of a rather comprehensive survey of drug use patterns and attitudes of HISD students in grades seven through twelve. A six percent stratified sample of the more than 98,000 secondary students enrolled in Houston schools was successfully surveyed when the questionnaire was administered in December, 1970.

In the Preston study, 24 percent of those high school students interviewed reported having used marijuana. Moreover, three-fourths of those admitting use appeared to be using the drug on a more or less regular basis.

An even higher incidence of marijuana use was reported six months later in the Hays study. Approximately 22 percent of all students surveyed said they had used either marijuana or hashish, with more than half indicating usage ten or more times (See TABLE I). Moreover, when one

considers that the sample in this case included junior high as well as senior high students, he can begin to visualize how prevalent marijuana use must have been among high school students alone. For example, almost half (48 percent) of all twelfth-grade boys reported having used marijuana, as did more than one-fourth (26 percent) of all senior girls. In fact, from this survey it appeared that between 35 and 40 percent of *all* high school boys and slightly less than one-fourth of all high school girls in Houston had smoked marijuana.

Thus on the basis of the Hays survey, it is instructive to note that over 21,000 secondary students in Houston alone had used marijuana by the spring of 1970, and that number would seem certain to have risen significantly since that time. It also appears that a substantial proportion — probably a majority — of these marijuana users had used the drug frequently enough that they might be classified as regular users. Again, this would indicate something more than simple experimentation on the part of these students.

In sum, marijuana use figures produced by these two Houston studies, when coupled with those from the Dallas studies, tend to verify the proposition that use of marijuana is quite widespread among secondary students in our state's largest cities, where it appears that perhaps one-fourth to one-third of all high school students have used the drug.

#### Some Correlates of Student Drug Use

The Dallas and Houston studies represent the best efforts yet undertaken in Texas to assess student drug use. In addition to providing the most reliable indication to date of the extent to which certain drugs, including marijuana, are used by secondary students in the state's large metropolitan areas, these studies also reveal several correlates of drug use that are important to note, inasmuch as these correlates all appear applicable specifically to student marijuana use as well as to student drug use in general.

On the basis of the studies in point, it appears that a positive correlation exists between incidence of reported drug use among secondary students, including marijuana use, and the following:

- 1) *a student's sex* — Males display a much greater tendency to use drugs than do females.

- 2) *a student's grade level* — Though there are numerous exceptions, students have a greater tendency to use drugs as they advance in grade level.
- 3) *a student's ethnicity* — A larger percentage of whites, then *chicanos*, then blacks, in that order, tend to use drugs.
- 4) *the education, occupation and affluence of a student's parents* — The better educated and more affluent are a student's parents, the greater is the probability that the student will be a drug user. Also, those students whose parents work in white collar, managerial, and professional occupations exhibit a greater propensity to use drugs.

Emphasis should be given to the fact that exceptions exist, of course, to all of these correlates. But as a rule, on the basis of the best available Texas studies to date, they seem to hold true for secondary students in regard to drug use in general and for marijuana use in particular. One significant exception which should be mentioned, however, is that marijuana use sometimes appears to level off or even drop slightly with rising grade level. By way of illustration, in the Hays study, females in the tenth grade displayed a greater tendency to use marijuana than did girls in the eleventh grade, thereby conflicting with the general correlation between marijuana use and advancing grade level.

One final proposition which emerged from the Houston and Dallas studies should also be underscored before we proceed to discuss other Texas studies. Information obtained in both the Houston surveys and the Dallas series reveals that an overwhelming majority of those students who use marijuana secure the drug not from adult "pushers," as seems so commonly thought, but from their peers, from friends roughly their own age.

#### **The Fort Worth, San Antonio, and Gulf Coast Surveys (1970)**

In addition to those studies just discussed, three surveys were carried out in other Texas cities during 1970 to determine the extent to which certain drugs, including marijuana, were being used by students in secondary schools. These surveys, the results of which are summarized in TABLE II below, were conducted in Fort Worth and in the San Antonio and Galveston-Texas City areas.



TABLE II  
OTHER TEXAS STUDIES OF MARIJUANA USAGE  
AMONG PUBLIC SECONDARY STUDENTS  
(Data Rounded to Nearest Whole Percent)

Location	Date	Ever Tried	Use Regularly
Fort Worth <sup>a</sup>	April, 70	15	—
San Antonio-AACOG Region <sup>b</sup>	Spring, 70	12	—
Gulf Coast <sup>c</sup>	Spring, 70	23	6 <sup>d</sup>
Rio Grande Valley	March, 71	11	2
Amarillo <sup>e</sup>	March, 71	7	3 <sup>f</sup>

<sup>a</sup>Survey was of high school students only

<sup>b</sup>San Antonio Survey was of 67 junior and senior high schools in Bexar County and seven surrounding cities

<sup>c</sup>Survey of students at Galveston Ball and Texas City high schools

<sup>d</sup>Percentage reporting use more than ten times

<sup>e</sup>Survey of students in grades 7-12

<sup>f</sup>Percentage in grades 7-12 reporting weekly usage

High school students themselves, under the supervision of their own city-wide student organization, the United High School Council, conducted the Fort Worth survey during the spring of 1970. Approximately 15 percent of the roughly 17,000 students who replied in the questionnaire survey reported having smoked marijuana, with slightly over eight percent admitting current use. However, because many students expressed a fear of possible incrimination, and since 29 percent of the city's 24,000 public high school students did not choose to reply, it seems a likely possibility that these figures were somewhat deflated.

The San Antonio area survey was conducted under the aegis of the Alamo Area Council of Governments by O Z White and Howard Cave, both of Trinity University, also in the spring of 1970. A ten percent sample of students from 67 junior and senior high schools in Bexar County and seven surrounding cities was administered a questionnaire polling the students regarding, *inter alia*, the extent to which they used certain drugs. Twelve percent of the total sample reported having used marijuana, but again there is reason to suspect that the students interviewed in this survey may have tended to minimize their reported use of illicit drugs.

The so-called Gulf Coast Surveys were conducted at two high schools, one in Galveston and one across the bay in Texas City. Overall, 23 percent of those surveyed reported having “ever tried” marijuana; six percent reported regular use. Usage figures did not vary appreciably between the two schools. When one considers that Galveston and Texas City can be viewed as lying within the Greater Houston-Gulf Coast urban complex, these data would seem reciprocally to corroborate those from the Houston studies cited previously.

#### **The Amarillo and Valley Surveys (1971)**

Two drug use surveys were recently administered in cities far removed from Texas’ three major urban areas – Houston-Gulf Coast, Dallas-Fort Worth, and San Antonio. These studies were conducted in Amarillo and in the Rio Grande Valley during March, 1971. As one might expect, their results suggest that student use of marijuana in such areas is significantly lower than in the state’s largest population centers, though levels of reported usage are by no means insignificant.

In the Amarillo poll, seven percent of those students surveyed in grades seven through twelve (See TABLE II) reported having used marijuana, with three percent reporting weekly usage. Five percent of those in grade twelve said that they were using the drug on a weekly, or regular, basis.

As for the Valley survey, over 11 percent reported having smoked marijuana, while only two percent admitted current regular use of the drug. Again, it would seem wise to bear in mind the possibility that a deflation factor may be reflected in these figures. Writers such as Professor John Kaplan have emphasized the far greater probability for students to minimize rather than exaggerate their reported use of illicit drugs in studies such as those we have been considering.

#### **Collegiate Surveys**

The only empirical data relating to marijuana use among college students in Texas are provided by the results of surveys conducted on the campuses of the University of Texas at Austin and the University of Houston. Students at the former institution were polled twice regarding their use of illicit drugs, first in the spring of 1970, then again one year later. In the 1970 survey 36 percent of those students polled reported having “ever tried” marijuana; 16 percent of those surveyed indicated

having smoked marijuana weekly, and ten percent reported having used the drug daily (See TABLE III below). Thus a considerable proportion (44 percent) of those reporting any use of marijuana also reported use on a more or less regular basis.

**TABLE III**  
**SURVEYS AT TWO TEXAS UNIVERSITIES**  
**REPORTED STUDENT MARIJUANA USAGE**  
**(Data Rounded to Nearest Whole Percent)**

Location	Date	Ever Tried	Use Weekly	Use Daily	Used in Last 6 Mos.	Used 10 or
						More Times Last 6 Mos.
U. of Texas at Austin	Spring, 70	36	16	10	—	—
	Spring, 71	46	12	6	—	—
U. of Houston *	Fall, 70	—	—	—	29	13

\*Survey of U.H. Freshmen Students ONLY

When a similar survey was conducted on the Austin campus in the spring of 1971, the percentage of those reporting use of marijuana had risen to 46 percent, a figure representing over 18,000 students from that one campus alone who had used the drug. However, only 12 and six percent of those polled reported weekly and daily usage, respectively. It is worthwhile to note, too, the relatively high incidence of reported use of hashish, which was not categorized together with marijuana in the University of Texas surveys. In the 1970 poll 18 percent of those students surveyed reported having smoked hashish, and this figure had risen to 23 percent by the time of the 1971 survey.

Only freshmen students were polled in the University of Houston survey. Nevertheless, the results do lend support to the comparatively high levels of reported marijuana use reflected in the University of Texas findings. Twenty-nine percent of those polled in the University of Houston survey reported having used marijuana during the previous six months, with 13 percent reporting usage ten or more times during that same period (See TABLE III). Students were not surveyed specifically as to hashish use, but one can assume that use of hashish is reflected somewhat in the marijuana figures.

It is significant that these data are within the range of what one might expect, judging from nationwide surveys of drug use among college students. For instance, in a 1969 national survey of college students, the

Gallup Poll reported that 22 percent of those interviewed said they had tried marijuana. When the survey was repeated in December, 1970, this figure had risen dramatically to 42 percent, which almost doubled the 1969 percentage, and which was more than eight times the five percent figure reported in a 1967 Gallup Poll. Moreover, in the 1970 poll, 28 percent of the total sample reported having smoked marijuana during the 30 days prior to the interview, while 17 percent had used the drug an average of at least once a week during the same period. Therefore, it seems evident that a substantial proportion — perhaps a majority — of those reporting marijuana usage were presently using the drug on something like a regular basis.

Recently the results of the 1971 Gallup Poll on student drug use have been released. These indicate a further increase in incidence of marijuana use to 51 percent, which marks the first time that the Poll has revealed a majority of the nation's college students to be users of the drug. Three-fifths of those reporting marijuana use also report use during the 30 days prior to their interview. Marijuana use figures from the four Gallup drug polls to date are summarized in TABLE IV below.

**TABLE IV  
RESULTS OF NATIONWIDE GALLUP POLL ON  
USE OF MARIJUANA BY COLLEGE STUDENTS**

Date of Poll	% Ever Used	% Used in Last 12 Mos.	% Used in Last 30 Days
1967	5	—	—
1969	22	—	—
1970	42	39	28
1971	51	41	30

A major American magazine conducted two similar nationwide surveys of college campuses in 1970 and 1971, with resultant data indicating an even more startling prevalence of marijuana use. In the 1970 poll 47 percent of those interviewed reported having used the drug. But by the time of the 1971 repetition of the survey, this figure had further soared to 62 percent. In addition to this surprisingly high incidence statistic, 13 percent of the total sample reported having used marijuana

from one to three times, ten percent said they had used it between four and nine times, and 39 percent of all those students interviewed reported use of the drug on at least ten different occasions.

Again, the trend seems unmistakable: A rapidly increasing number of college students across the nation are smoking marijuana, with perhaps a majority of these users doing so on a more or less regular — if not frequent — basis. Moreover, though Texas data are admittedly scarce, it seems improbable that patterns of marijuana use by Texas college students differ drastically from the national norm, and in fact marijuana use among Texas collegians also appears to be rising dramatically. Indeed, if present trends continue, it may not be long until more college students in Texas will have smoked marijuana than will have not, if such is not already the case.

## MARIJUANA USE AND THE NONSTUDENT POPULATION OF TEXAS

As already pointed out, data on which to base an estimate of marijuana use among Texas' nonstudent citizenry are extremely scarce. During the summer of 1970, the State of New York completed an elaborate statewide survey of drug use, based on a scrupulously drawn stratified sample of all New Yorkers over the age of thirteen. Unfortunately, no such study has ever been conducted in Texas. Nevertheless, it is abundantly clear that drug use and drug abuse in Texas are not simply student phenomena.

One indication that marijuana use is more common than many Texans may think was furnished by a November, 1969, administration of The Texas Poll. At that time a sample representing a cross section of Texas adults (i.e., those 21 years old and older) was asked the following question: "We are not interested in specific names, but just to get an idea of how many use it, do you happen to be acquainted with anyone who is a marijuana user?" Almost one out of every five adult Texans polled, nearly 20 percent, stated that they knew a marijuana user. Extrapolated to the state's total adult population, this figure would represent literally hundreds of thousands of Texans. And even if this does not provide direct evidence of the extent to which marijuana use has spread among nonstudents, it might be interpreted as providing some sort of indirect indication. Indeed, Joe Belden, Director of The Texas Poll, felt that this finding perhaps provided "a rough approximation of the incidence of use," and he went on to note that the 19 percent figure was "probably conservative; some people may not want to admit they know a user and some users probably go undetected."

Now, it may well be true that one out of every five adult Texans is in fact aware that a friend or acquaintance uses marijuana, as the poll indicates. If so, then when one compares this datum with the much lower population percentage of those actually arrested for marijuana offenses in Texas, such a figure becomes useful in pointing out the possible extent to which violations of the law regarding marijuana — all serious felony offenses in this state — go unreported. On the other hand, Mr. Belden's intimation that his datum rudely approximates the actual *incidence* of adult use of marijuana in Texas seems almost certainly excessive, especially when one considers that even New York's statewide study did not reveal

such a high incidence figure, as we shall see. Nevertheless, such a figure from The Texas Poll at least elevates the possibility that marijuana use is more prevalent among Texas adults than many might tend to believe.

The Texas Poll also produced some other interesting and instructive findings. Results revealed that those adults who have attended college, those who live in large cities, and young adults are much more likely to know a marijuana user than are adults in general. Thirty percent of those Texas adults who had attended college indicated that they knew a marijuana user, as did 25 percent of those adults residing in cities of 50,000 or more population. The percentage of those in each of four age brackets who reported knowing a user broke down as follows:

Age Bracket	% Knowing a User
21-25	37%
25-34	23%
35-49	16%
50 or older	14%

Indirect evidence is thus again provided to support the contention that, while marijuana is surely most prevalent among the relatively young, its use is not isolated to the student sector of the population, or even to that of the youthful.

Studies conducted in other parts of the country lend credence and support to this proposition. For example, in a 1967-1968 survey of a representative cross section of the age 18 and over population in a major California city, it was discovered that sizeable percentages of those adult males falling in the middle age range of 30 to 55 had used marijuana. Approximately one-fourth of those men aged 30 through 34 reported use of the drug, as did some 15 percent of those males in the 35 through 54 age bracket. Nearly one-third of those in their late twenties reported marijuana use. Thus marijuana was clearly popular, not only among the young, but also among many of those middle aged and older.

Many Texans would discount these findings because they originate from the West Coast. But lest they be ignored completely, one should bear in mind that such Texas data that are available, principally surveys of collegiate and secondary students, point toward the conclusion that marijuana use in our state, especially in its more urbanized areas, is approaching that of California during the middle and late 1960's. Thus

such information must not be discharged as completely irrelevant to the drug scene in Texas, for it might provide a glimpse of where Texas may be in the not-too-distant future, at least in regard to the spreading use of marijuana.

However, it is the New York State study, mentioned previously, which deserves our greatest attention, for it is the most comprehensive drug use survey yet conducted of such an extensive population (all New Yorkers over 13 years old). That study, conducted during the summer of 1970, revealed that more than 12 percent of all New Yorkers over the age of thirteen had smoked marijuana or hashish. This figure represented over 1,700,000 persons. Approximately 487,000 of these were identified as "regular users" who smoked cannabis at least six times per month. But for our purpose here, it is most important that we note the breakdown of these nearly half a million regular users of the drug. In terms of age, almost 30 percent of them were over 25 years old. Moreover, most regular users of the drug were *not* students. Rather, the largest single group were employed persons (excluding employed students), who comprised 36 percent of the total number of regular marijuana users.

In sum, it is admittedly difficult to discern, on the basis of such information as that provided above, exactly how prevalent marijuana use is among Texas' general adult population, particularly among the state's nonstudent citizenry. However, those data which are available — whether they be the results of The Texas Poll, surveys from California, or New York's comprehensive drug use survey — seem to lead to one inevitable conclusion: that marijuana use in Texas, while surely most prevalent among young, secondary and collegiate students, is not simply an incidence of one's being young or of one's membership in a student community; rather, use of the drug is becoming increasingly common in other quarters and among older members of our society as well.

#### A Final Note

In closing, it is fitting that we attempt to come up with some sort of an estimate as to the total number of Texans who have used marijuana, realizing, of course, that the results of such an endeavor must necessarily be regarded as speculative. According to a government study to be released this March (1972) by the National Commission on Marijuana and Drug Abuse, also known as the Shafer Commission, 14 percent of all American young people between the ages of 12 and 17 have used marijuana.



Similarly, as we have seen, a recent Gallup Poll revealed that 51 percent of the nation's college students have used the drug. Applying these figures to the approximately 1,470,000 Texans falling in the 12 to 17 age bracket, which roughly represents those of secondary school age, and to the 468,000 students attending Texas colleges and universities, we come up with, in terms of student users alone, almost 450,000 Texans who have used marijuana. In turn, we can use this figure as a point of departure or a minimal base on which to project a conservative estimate of the number of Texans who have used the drug.

The rest, of course, is largely speculation. It could be that the 450,000 figure for student users is overly cautious, for there are factors (e.g., the fact that Texas is more urbanized than is the nation as a whole; also, Texas' proximity to Mexico) that would lead one to the conclusion that use of marijuana might be more common in Texas than across the nation as a whole. We must bear in mind, too, that our student use figure does not take into account use among other certain key population groups, such as those comprising the majority (i.e., those not attending college) of the more than 850,000 Texans in the 18 to 21 age bracket, and most of the approximately 1,400,000 Texans between the ages of 22 and 29.

It is the studied opinion of this writer that a *conservative* estimate of the number of Texans who have used marijuana would be somewhere in the range of 800,000 to 1,000,000, many of whom either have used or presently use the drug on something approaching a regular basis. The actual figure could be considerably higher. Another expected announcement of the Shafer Commission is their finding that approximately 24 million Americans have used marijuana, which would represent roughly 12 percent of the country's population. Applying a 12 percent figure to Texas' population, one might expect there to be as many as 1.4 or 1.5 million Texans who have used the drug.

## MARIJUANA USE IN TEXAS: A SUMMARY

One fact continually emerges from the foregoing discussion of marijuana use in Texas: that more research is sorely needed to produce reliable data describing drug use by Texans.

Nevertheless, for the moment, we must attempt to draw conclusions based on that data presently available, which we have just surveyed. The best information on hand suggests that the following currently typify the use of marijuana in Texas:

1. Marijuana use is becoming increasingly widespread, and is rising dramatically among certain population groups.
2. Secondary and college students presently account for most marijuana usage, though it appears that an increasing number of young and middle aged adults are also beginning to use the drug.
3. Best studies available indicate that the incidence of reported marijuana usage among secondary students is highest for those residing in the state's largest metropolitan areas, such as Houston and Dallas, where perhaps one-fourth to one-third of all high school students have used the drug. Moreover, in such metropolitan areas, usage among junior high students may be as prevalent as it is among high school students in many other cities.
4. In other cities, student use of marijuana appears to be less prevalent, but far from insignificant. Reported incidence figures range from seven percent for all Amarillo secondary students to 23 percent for high school students in the Galveston-Texas City area.
5. Marijuana use among Texas college students seems even more prevalent than among metropolitan area high school students. Incidence figures in Texas have run as high as 46 percent, and over 18,000 students on the campus of one major state university alone report use of the drug.

6. Recent increases in marijuana use have been unusually rapid. Incidence of reported use among Dallas high school students more than doubled in rising from 14 to 26 percent in just a year and a half. Incidence on one college campus recently rose from 36 to 46 percent in a single year.
7. Simple “experimentation” does not adequately explain these increases in marijuana use, for a sizeable percentage of those using the drug appear to be doing so on a regular basis. In several studies more than one-half of those students reporting marijuana use also report regular use of the drug.
8. There is evidence of a tendency for such marijuana use data to be deflated rather than exaggerated.
9. Males have a much greater tendency to use marijuana than do females. In fact, in studies to date, the highest incidence of use in the state is among twelfth-grade males in Houston, where 48 percent report having used marijuana.
10. There is evidence that marijuana use among Texas secondary students generally increases with increasing grade level, increases with the increasing education and affluence of a student’s parents, and is more prevalent among whites than *chicanos* and *chicanos* than blacks.
11. There is some evidence to support the contention that marijuana users, or at least student users, usually obtain marijuana from their peers, from friends roughly their own age, rather than from adult “pushers.”
12. Although evidence is indirect at best, it appears that marijuana may also be becoming more popular among certain nonstudent, adult groups. Of these, young adults, those living in large cities, and those who have attended college are probably more likely to use the drug than are other adults.
13. A *conservative* estimate of the number of Texans who have used marijuana would be between 800,000 and 1,000,000, including almost 450,000 student users alone. However, a very real possibility exists that the actual number may be considerably higher than this.

## BIBLIOGRAPHY

- An Assessment of Drug Use in the General Population.* Albany: New York State Narcotic Addiction Control Commission, May, 1971.
- Belden, Joe, "The Texas Poll," in *The Dallas Morning News*, November 17, 1969, Section A, p. 5, and November 23, 1969, Section A, p. 13.
- Berg, Dorothy F., *Illicit Use of Dangerous Drugs in the United States: A Compilation of Studies, Surveys, and Polls.* Washington: Bureau of Narcotics and Dangerous Drugs, September, 1970.
- "Cities' Anti-Drug Campaigns Differ," *The Austin American*, January 24, 1972.
- "Drop in Heroin Addiction Tied to Legal Marijuana," *The New York Times*, February 14, 1972, p. 24.
- Drug Abuse: Impact on Education.* Houston: The Board of Education of the Houston Independent School District, November, 1971.
- Drugs and Dallas: Report of the Ad Hoc Committee on Drug Abuse.* Dallas: Dallas Independent School District, December, 1970.
- Drug Usage Among DISD Students: Concomitants, Trends, and Effects of Intervention.* Department of Planning, Research, and Evaluation Research Report 71-7. Dallas: The Dallas Independent School District, July, 1971.
- "Drug Use and Abuse in the AACOG Region." San Antonio: The Alamo Area Council of Governments, April 21, 1971.
- "Gallup Poll: Hallucinogens Being Used More," *The Dallas Morning News*, February 10, 1972, Section AA, p. 2.
- Gossett, John T., Jerry M. Lewis, and Virginia Austin Phillips, "Extent and Prevalence of Illicit Drug Use as Reported by 56,745 Students," *The Journal of the American Medical Association*, Vol. 216 (May 31, 1971), pp. 1464-70.

- Guest, Charlotte, "Survey Shows Pot Tried by 15.3 Pct.," *Fort Worth Star-Telegram*, May 5, 1970, Section C, p. 7.
- Jones, Woodie, "Grass: A Time for Change," *The Daily Texan*, February 2, 1972, p. 2.
- Kaplan, John, *Marijuana: The New Prohibition*. New York: Simon and Schuster, Inc., 1971, pp. 22-53.
- Maxwell, Jane C., "Profile of Drug Abusers in Texas." Austin, Texas: State Program on Drug Abuse, 1971.
- Nelson, Harry, "How Harmful is Marijuana?," *The Dallas Times Herald*, January 16, 1972, Section F, p. 5.
- Preston, James D., and Patricia A. Fry, "Marijuana Use Among Houston High School Students," *Social Sciences Quarterly* (June, 1971), pp. 170-78.
- Preston, James D., *A Survey of Drug Use Among High School Students in Houston*. Department of Agricultural Economics and Rural Sociology Information Report No. 70-9. College Station, Texas: Texas A&M University, 1970.
- Ragland, Ruth Ann, "Word's Out: Dallas Drug Use Shocking," *The Dallas Times Herald*, May 3, 1970, Section B, p. 10.
- "Student Drug-Taking Doubled Since '69 Survey," *Gallup Opinion Index* Report No. 68, pp. 1-10. Princeton, New Jersey: Gallup International, February, 1971.
- White, O Z, and Howard Cave, *Drug Use and Abuse in the AACOG Region: Statistical Analysis of Student Drug Use in Grades 7-12*. San Antonio: The Alamo Area Council of Governments, 1970.

*PART TWO*

**MARIJUANA AND THE CRIMINAL LAW**

**GRIFFIN SMITH, JR.**

**THE POSITION OF MARIJUANA IN TEXAS  
CRIMINAL LAW**

Under Texas law, possession of any amount of marijuana is a felony offense carrying a penalty of two years to life imprisonment in the state penitentiary. Sale of any amount of marijuana is likewise a felony offense, carrying a penalty of five years to life.

Subsequent offenses carry penalties of ten years to life – or death, in some situations. No distinction is drawn between marijuana and narcotic drugs under Texas law; the penalties for marijuana are the same as the penalties for heroin. The Texas Court of Criminal Appeals has held that possession of sixty-three milligrams of marijuana is sufficient to support conviction. This amount represents approximately one-twentieth of one marijuana cigarette.

It is significant to note that only three offenses in Texas have maximum penalties that equal or exceed the penalty for simple, first-offense marijuana possession. These are murder with malice, rape, and robbery by firearms, all three of which carry maximum penalties of death or life imprisonment. By contrast, numerous crimes of violence carry lesser penalties, as TABLE I illustrates:

**TABLE I  
COMPARISON OF PENALTIES: POSSESSION OF MARIJUANA  
CONTRASTED WITH CRIMES OF VIOLENCE**

Crime	Penal Code Art.	Max. No. of Yrs.
Possession of Marijuana	725b	LIFE
Administering Poison	1198	5
Assault with Intent to Murder	1160	25
Assault with Prohibited Weapon	1151	5
Castration	1168	15
Disfiguring	1167	5
Kidnapping	1177	25
Murder without Malice	1257b	5
Resisting Arrest with Arms	341	10

Moreover, many serious crimes against property, including arson and burglary, also carry less severe penalties. These are shown in TABLE II.

**TABLE II**  
**COMPARISON OF PENALTIES: POSSESSION OF MARIJUANA**  
**CONTRASTED WITH CRIMES AGAINST PROPERTY**

Crime	Penal Code Art.	Max. No. of Yrs.
Possession of Marijuana	725b	LIFE
Arson	1314	20
Burglary	1397	12
Destruction of Private Property of Value over \$50	1350	20
Embezzlement	1534	10
Extortion	1268a	25
Forgery	995	7
Swindling	1545-1550	10
Theft of Property of Value over \$50	1421	10

Although the startling severity of marijuana penalties is among the more remarkable aspects of the Texas criminal law, one should note in passing that the penalties for other drugs are also quite high when compared with violent crimes and property crimes. A person who possesses one capsule of mescaline for his personal use may be punished twice as severely as one who administers poison to another. The person who plucks one bud from a peyote cactus growing wild can be sent to prison for ten years — a period equal to the maximum for embezzlement, and three years longer than the maximum for forgery.

The consequences of a felony conviction are drastic indeed. Even if the offender is put on probation and is never sent to the penitentiary, his permanent police record will show that he was convicted as a felon. He will lose the right to vote, the right to serve on juries, and the right to hold many public offices. He cannot pursue a career as an attorney, and many other fields of employment are effectively closed to him.



Article 42.12 of the Code of Criminal Procedure permits a person who is placed on felony probation to be released "from all penalties and disabilities resulting from the offense" upon order of the Court after a specified period of time; but *this procedure does not constitute an "expungement" of his record*. It merely restores his civil rights, such as the right to vote. The Attorney General has ruled that "the statute by its own wording makes it clear that the 'conviction' has not been entirely erased." His record still shows that he is a convicted felon, and he must continue to make this detrimental admission for the rest of his life in every questionnaire, application for employment, or other inquiry. Many states now permit expungement of the record for drug offenders; but in Texas such a person is marked for life.

With respect to the position of marijuana in Texas criminal law, therefore, two observations may be made. The first is that the present treatment of marijuana possession has created an enormous class of felons far too large for law enforcement authorities to apprehend, and far too large to be incarcerated even if they were apprehended. The second is that even the most minor marijuana offense is, in the contemplation of Texas law, regarded as one of the four most serious crimes that an individual can commit.

## MARIJUANA LAWS IN OTHER STATES

Forty-eight states and the federal government now permit first-offense marijuana possession to be treated as a misdemeanor (See TABLE III below). Rhode Island is considering misdemeanor legislation which is expected to pass in its current session. Should this occur, Texas will be the only state in which simple possession of marijuana is always treated as a felony.

Thirty-one states revised their marijuana laws during 1971, and others are in the process of doing so in 1972. The maximum penalty for simple, first-offense possession of *any amount* of marijuana in three of the four states bordering Texas (Oklahoma, Arkansas, and Louisiana), is one year in jail. The maximum penalty in New Mexico ranges from 1 to 5 years or a \$5,000 fine for possession of more than eight ounces to a misdemeanor penalty of not more than fifteen days in jail or a \$100 fine for possession of an ounce or less. As early as 1969, Nebraska established a maximum penalty of seven days in jail for possession of one pound or less. During a general review of that state's drug laws in 1971, the seven-day provision was reenacted unanimously. Jail sentences for first-offense possession have been virtually excluded by New Jersey and Massachusetts law; a short probation is the required procedure except in extraordinary circumstances. Several states, including Tennessee, Massachusetts, Oklahoma, and others, provide a procedure by which a judgment of guilt is not entered, probation is required, and upon completion of the probation all evidence of the charge is ordered expunged from the individual's criminal record.

In Mississippi, possession of marijuana carries a penalty of not more than six months in jail. In Alabama, a law providing a one year maximum sentence was signed into law in November, 1971 by Governor George Wallace.

**TABLE III**  
**STATE LAWS – STATUTORY SCHEMES FOR**  
**MARIJUANA PROHIBITION**

Jurisdiction	Distinction between marijuana and narcotics	First Offense possession classified as misdemeanor	Has adopted version of Uniform Controlled Substances Act
Alabama	Yes	Yes	Yes
Alaska	Yes	Yes	
Arizona	Yes	Yes	
Arkansas	Yes	Yes	Yes
California	Yes	Yes	
Colorado	No	Yes	
Connecticut	Yes	Yes	
Delaware	Yes	Yes	
Florida	Yes	Yes	
Georgia	Yes	Yes	
Hawaii	Yes	Yes	Yes
Idaho	Yes	Yes	Yes
Illinois	Yes	Yes	Yes
Indiana	No	Yes	
Iowa	Yes	Yes	Yes
Kansas	Yes	Yes	Yes
Kentucky	Yes	Yes	Yes
Louisiana	Yes	Yes	Yes
Maine	Yes	Yes	
Maryland	Yes	Yes	Yes
Massachusetts	Yes	Yes	Yes
Michigan	Yes	Yes	Yes

TABLE III (continued)

Jurisdiction	Distinction between marijuana and narcotics	First Offense possession classified as misdemeanor	Has adopted version of Uniform Controlled Substances Act
Minnesota	Yes	Yes	Yes
Mississippi	Yes	Yes	Yes
Missouri	Yes	Yes	Yes
Montana	Yes	Yes	
Nebraska	Yes	Yes	Yes
Nevada	Yes	Yes	Yes
New Hampshire	Yes	Yes	
New Jersey	Yes	Yes	Yes
New Mexico	Yes	Yes	Yes
New York	No	Yes	
North Carolina	Yes	Yes	Yes
North Dakota	Yes	Yes	Yes
Ohio	Yes	Yes	
Oklahoma	Yes	Yes	Yes
Oregon	No	Yes	
Pennsylvania	Yes	Yes	Yes
Rhode Island	No	No	
South Carolina	Yes	Yes	Yes
South Dakota	Yes	Yes	Yes
Tennessee	Yes	Yes	Yes
Texas	No	No	
Utah	Yes	Yes	Yes
Vermont	Yes	Yes	
Virginia	Yes	Yes	Yes
Washington	Yes	Yes	Yes
West Virginia	Yes	Yes	Yes
Wisconsin	Yes	Yes	Yes
Wyoming	Yes	Yes	Yes
District of Columbia	Yes	Yes	

**TABLE IV  
PENALTIES FOR FIRST OFFENSE  
MARIJUANA POSSESSION**

Alabama	Up to 1 year and/or \$1,000
Alaska	0 to 1 year and/or \$1,000 or rehabilitation treatment by State for 1 year
Arizona	0 to 1 year in county jail and/or \$1,000 or 1 to 10 years
Arkansas	0 to 1 year and/or \$250
California	County jail for up to 1 year or 1 to 10 years
Colorado	Under ½ oz., 0 to 1 year and/or \$500; Over ½ oz., 2 to 15 years and/or \$10,000
Connecticut	0 to 1 year and/or \$1,000 or up to 3 years in custody of commissioner
Delaware	0 to 2 years and/or \$500
Florida	Less than 5 grams, 0 to 1 year and/or \$1,000; More than 5 grams, 0 to 2 years and/or \$1,000
Georgia	Under 1 oz., 0 to 1 year and/or \$1,000; Over 1 oz., 0 to 2 years and/or \$2,000
Hawaii	0 to 5 years
Idaho	0 to 6 months and/or \$300
Illinois	Less than 25 grams, 90 days; 2.5 to 10 grams, 180 days; 10 to 30 grams, 1 year; 30 to 500 grams, 1 to 3 years; more than 500 grams, 1 to 5 years
Indiana	Less than 25 grams or 5 grams hashish, 0 to 6 months and/or \$25 to \$100; over these amounts, 30 days to a year and/or \$500
Iowa	0 to 6 months and/or \$1,000
Kansas	0 to 1 year
Kentucky	0 to 1 year mental health facility

**TABLE IV (continued)**

Louisiana	0 to 1 year and/or \$500
Maine	0 to 11 months and/or \$1,000
Maryland	0 to 1 year and/or \$1,000
Massachusetts	0 to 6 months and/or \$500 (probation usually required)
Michigan	0 to 1 year and/or \$1,000
Minnesota	Under 1.5 oz., 0 to 1 year and/or \$1,000; over 1.5 oz., 0 to 3 years and/or \$3,000
Mississippi	0 to 6 months and/or \$500
Missouri	Under 35 grams or 5 grams hashish, 0 to 1 year and/or \$1,000; over these amounts, 0 to 5 years and/or \$1,000
Montana	Up to 60 grams or 1 gram of hashish, 0 to 1 year and/or \$1,000; over these amounts, 0 to 5 years
Nebraska	Less than 1 pound, 7 days in county jail to be held separately and/or \$500; over 1 pound, 0 to 6 months in county jail or 1 year in prison and/or \$500
Nevada	If under 21 and less than 1 oz., 0 to 1 year and/or \$1,000 and/or suspension of driver's license; if over 1 oz., 1 to 6 years and/or \$2,000
New Hampshire	Less than 1 pound, 0 to 1 year and/or \$500; Over 1 pound, 0 to 5 years and/or \$2,000
New Jersey	Under 25 grams or 5 grams hashish, 0 to 6 months; Over 25 grams, 0 to 5 years and/or \$15,000
New Mexico	Under 1 oz., 0 to 15 days and/or \$100; 1 oz. to 8 oz., 0 to 6 months and/or \$1,000; Over 8 oz., 1 to 5 years and/or \$5,000
New York	Less than 25 cigarettes or ¼ oz., up to 1 year; 25-99 cigarettes or ¼ to 1 oz., 1 to 7 years; over 100 cigarettes or over 1 oz., 1 to 15 years
North Carolina	Less than 1 gram, misdemeanor with fine or imprisonment left to court; over 1 gram, 0 to 5 years and/or \$1,000

**TABLE IV (continued)**

North Dakota	0 to 1 year and/or \$500
Ohio	0 to 1 year and/or \$1,000
Oklahoma	0 to 1 year
Oregon	0 to 1 year in county jail and/or \$5,000 or 0 to 10 years in prison and/or \$5,000
Pennsylvania	Under 30 grams or 8 grams hashish, up to 30 days; over these amounts, up to 1 year and/or \$5,000.
Rhode Island	0 to 10 years and \$5,000
South Carolina	Under 1 oz. or 10 grams of hashish, 0 to 3 months and/or \$100; Over these amounts, 0 to 6 months and/or \$1,000
South Dakota	Less than 1 oz., 0 to 1 year in county jail and/or \$500, Over 1 oz., 0 to 5 years and/or \$5,000
Tennessee	Commitment to a State-operated drug treatment facility or community mental health center or, at the discretion of the court, up to 11 months, 29 days and/or \$1,000
Texas	2 years to life
Utah	0 to 6 months and/or \$299
Vermont	0 to 6 months and/or \$500
Virginia	0 to 12 months and/or \$1,000
Washington	Less than 40 grams, 30 days; Over 40 grams, 0 to 5 years and/or \$10,000
West Virginia	90 days to 6 months and/or \$1,000
Wisconsin	0 to 1 year in county jail and/or \$500
Wyoming	0 to 6 months and/or \$1,000
District of Columbia	0 to 1 year and/or \$100 to \$1,000

NOTE: Several of these penalties are in the process of change during current legislative sessions in some states. They are the most accurate currently available to us.

**TABLE V  
PENALTIES FOR FIRST OFFENSE  
SALE OF MARIJUANA**

Alabama	2 to 15 years and/or \$25,000
Alaska	0 to 25 years and/or \$20,000
Arizona	2 to 10 years
Arkansas	0 to 5 years and/or \$15,000
California	5 years to life
Colorado	2 to 15 years and/or \$10,000
Connecticut	5 to 10 years and/or \$3,000
Delaware	5 to 10 years and/or \$1,000 to \$10,000
Florida	0 to 10 years and/or \$10,000
Georgia	0 to 2 years and/or \$2,000
Hawaii	0 to 10 years and/or \$1,000
Idaho	0 to 5 years and/or \$15,000
Illinois	Less than 2.5 grams, 6 months; 2.5 to 10 grams, 1 to 2 years; 10 to 30 grams, 1 to 3 years; 30 to 500 grams, 1 to 4 years; over 500 grams, 1 to 7 years
Indiana	5 to 20 years and/or \$2,000
Iowa	0 to 5 years and/or \$1,000
Kansas	1 to 3 years
Kentucky	0 to 5 years and/or \$5,000
Louisiana	0 to 10 years and/or \$15,000
Maine	1 to 5 years
Maryland	0 to 5 years and/or \$15,000
Massachusetts	0 to 2 years and/or \$5,000
Michigan	information not available
Minnesota	0 to 5 years and/or \$15,000
Mississippi	0 to 4 years and/or \$2,000
Missouri	5 years to life



**TABLE V (continued)**

Montana	1 year to life
Nebraska	0 to 6 months in jail or 1 to 5 years in prison and/or \$2,000
Nevada	By minor, 1 to 20 years with possible probation; Adult, 1 to 20 years and/or \$5,000
New Hampshire	0 to 10 years and/or \$2,000
New Jersey	0 to 5 years and/or \$15,000
New Mexico	1 to 5 years and/or \$5,000
New York	1 to 15 years
North Carolina	0 to 5 years and/or \$1,000
North Dakota	0 to 10 years and/or \$5,000
Ohio	20 to 40 years
Oklahoma	2 to 10 years and/or \$5,000
Oregon	0 to 1 year and/or \$5,000 or 0 to 10 years and/or \$5,000
Pennsylvania	5 to 10 years separate or solitary confinement and \$5,000
Rhode Island	0 to 40 years maximum
South Carolina	0 to 5 years and/or \$5,000
South Dakota	0 to 10 years and/or \$5,000
Tennessee	1 to 5 years and/or \$3,000
Texas	5 years to life
Utah	0 to 5 years and/or \$5,000
Vermont	0 to 5 years and/or \$10,000
Virginia	1 to 40 years and/or \$25,000
Washington	0 to 10 years and/or \$10,000
West Virginia	1 to 5 years and/or \$15,000
Wisconsin	0 to 5 years and/or \$5,000
Wyoming	0 to 10 years and/or \$10,000
District of Columbia	0 to 1 year and/or \$100 to \$1,000

NOTE: Several of these penalties are in the process of change during current legislative sessions in some states. They are the most accurate currently available to us.

These tables show how stringent the Texas marijuana penalties are. Yet even the tables do not tell the full story. While they do show that in more than forty states first-offense possession of small amounts of marijuana carries a penalty of not more than one year, they cannot show that in actual practice other states' courts regularly impose much less than these maximum sentences. Few persons outside of Texas receive sentences of as much as one year. In Texas, however, *every* person convicted of even the most minor marijuana violation receives a sentence of at least two years, and several have been sentenced to the full term of life imprisonment for first-offense possession of small amounts of the drug. The fact that these sentences are often probated does not, of course, alter their length or their fundamental severity. And many first-offense marijuana possessors are indeed sent to prison in Texas – a practice which is now virtually unheard of in other states.

Nationally, the trend is toward fines rather than jail terms, even short ones, in marijuana possession cases. Nebraska, which, as was noted, pioneered the seven-day penalty in 1969, is now finding that judges commonly impose only a \$50 or \$100 fine for first-offenders – approximately the same penalty as for underage possession of alcohol. Tennessee provides that the offender may be given rehabilitative treatment rather than be fined or jailed.

Although many foreign countries, particularly those of the Middle East, are reputed to have harsh drug laws, data provided by the federal government fails to disclose any other country with marijuana possession penalties as severe as those in Texas.

The reason for this extraordinary situation is historical rather than logical. The Texas Uniform Narcotics Act, which inaccurately classifies marijuana as a narcotic drug, was enacted in 1937, at a time when marijuana was a strange and unfamiliar substance. The popularly accepted “facts” about marijuana were that it was physically addictive, caused insanity, and generated crime and violence. Since 1965, however, the use of marijuana has increased manyfold, particularly among white, middle-class persons; and the experience during this period has tended to refute the “facts” upon which the original criminalization was based. The overwhelming majority of states have recognized this situation and have begun to amend their laws accordingly; Texas has not.

## MARIJUANA ARRESTS

The abrupt arrival of widespread marijuana smoking in the mid-1960's is clearly reflected in the arrest statistics of state and local law enforcement authorities. As late as 1965, for example, the Houston Police Department's narcotics division was reporting that marijuana arrests had declined over the previous year. Since 1968, however, they have multiplied rapidly. While it is doubtful that the arrest rate has kept pace with the rate of increased marijuana usage, the possibility of arrest nevertheless remains significant in Texas.

Only a few states have adequate statewide systems for reporting criminal statistics, and Texas, unfortunately, is not one of them. To the question, "How many persons were arrested on drug charges (or marijuana charges) in 1971?" the answer is that no one really knows. Individual localities may or may not keep accurate records, and they may or may not report arrests to the Department of Public Safety in Austin. The DPS, of course, maintains careful records of its own arrests; but they are not always kept informed by city and county authorities.

Compounding these problems is the failure of many local law enforcement agencies to break down drug arrests according to the type of drug and the type of offense. One large metropolitan county, for example, lumps together all drug offenses under the single heading "Narcotics." Another files all arrests for the *sale* of marijuana under the category of "Marijuana Possession."

Nevertheless, the following tables collate some of the best information presently available to the Committee and should serve at least to indicate the unprecedented acceleration in numbers of marijuana arrests over the past few years:

**TABLE VI**  
**CHARGES FILED BY TEXAS DEPT. OF PUBLIC SAFETY**

	1969	1970	(first 9 mos.) 1971
Marijuana Possession	213	531	345
Marijuana Sale	131	310	209
Total - All Drug Cases	679	1439	1028
Marijuana Cases as % of All Drug Cases	51	58	53

**TABLE VII  
CHARGES FILED BY HOUSTON POLICE DEPT.**

	1965	1966	1967	1968	1969	1970
Marijuana Possession	54	78	188	433	482	1094
Total — All Drug Cases	653	451	659	854	1410	2040
Marijuana Cases as % of All Drug Cases	8	17	28	51	34	53

**TABLE VIII  
CHARGES FILED BY DALLAS POLICE DEPT.**

	1965	1966	1967	1968	1969	1970	1971 (first 11 mos.)
Marijuana Possession	41	53	171	343	495	1128	1174
Marijuana Sale	0	4	7	78	16	50	46
Total — All Drug Cases	251	251	609	795	1202	2074	2037
Marijuana Cases as % of All Drug Cases	16	23	29	53	42	57	60

**TABLE IX  
CHARGES FILED BY FORT WORTH POLICE DEPT.**

	1965	1966	1967	1968	1969	1970	1971 (first 6 mos.)
Marijuana Possession	9	16	34	71	109	323	161
Marijuana Sale	0	8	1	7	9	45	28
Total — All Drug Cases	52	104	78	159	284	675	435
Marijuana Cases as % of All Drug Cases	17	23	45	49	42	55	43

**TABLE X**  
**CHARGES FILED BY AUSTIN POLICE DEPT.**

	(first 10½ mos.)				
	1967	1968	1969	1970	1971
Marijuana Possession and Sale	50	110	193	490	612
Total – All Drug Cases	103	198	378	777	879
Marijuana Cases as % of All Drug Cases	49	56	51	63	70

What conclusions may be drawn from these figures? Aside from the rapid, steady increase in the number of marijuana arrests, the most striking fact is that more than fifty percent of the total drug arrest activity has been centered upon marijuana offenders, a substantial majority of whom are charged with possession rather than sale of the drug. At a time when heroin addiction and the abuse of such dangerous drugs as the amphetamines and barbiturates have risen to unprecedented levels in Texas, it may seem surprising that an ever-increasing portion of law enforcement activity is being directed against users of a drug which is, relatively speaking, so much less harmful to society and to the individual.

A primary reason for this phenomenon is, of course, the fact that present Texas law makes marijuana possession as serious an offense as heroin possession, and far more serious than possession of "speed," or methamphetamine. So long as Texas law continues to classify marijuana as a felony offense, law enforcement officials will feel duty-bound to divert resources into marijuana control which could be much better used to control the traffic in narcotics, "speed," barbiturates, and other illegally distributed drugs. The distorted priorities implicit in the present Texas drug laws have led to an astonishing waste of manpower and resources in a losing effort to combat marijuana usage, while criminal control of heroin and other insidious drugs has consequently been less effective than it might otherwise have been.

Statistics on the number of first offenders arrested for marijuana possession are difficult to obtain, since neither the DPS nor most large city police departments maintain such a statistical category. It was possible to obtain this information from several smaller cities, however. Of the 233 marijuana possession offenses in Arlington since 1968, approximately 70 percent were first offenders. Of the 42 marijuana possession offenses in Texarkana since 1966, 45 percent were first offenders. Of the 70 marijuana possession offenses in Longview, moreover, all but two of the marijuana offenders had never before been convicted of *any* offense, other than minor traffic violations.

While it has regrettably not been possible to obtain any statewide information on the number of marijuana offenders who have had no prior involvement whatever with the criminal law, informal evidence suggests that the proportion is extremely high. In California, where such statistics are available, 80 percent of all adult marijuana offenders and 98 percent of all juvenile marijuana offenders have had no previous involvement with the criminal law, other than minor offenses. There is no reason to suppose that the situation is substantially different in Texas. The obvious inference is that marijuana criminalization has injected the very real possibility of criminal conviction into a large stratum of society which is otherwise basically law abiding. This in turn poses grave questions for a legal system based upon public support for law and order; and nowhere are those questions focused more sharply than in Texas.

## MARIJUANA CONVICTIONS

The inadequate system of criminal justice record-keeping in Texas has made it very difficult to obtain comprehensive figures on marijuana convictions. In many jurisdictions (Harris County is one example) records have traditionally been kept only under the general category of "Narcotics Cases." A separate breakdown of marijuana cases has been impossible to obtain except in Tarrant and Lubbock counties. This information is presented in TABLES XI and XII.

**TABLE XI**  
**LUBBOCK COUNTY DRUG CASES**  
**1968 - 1971**

All drug indictments . . . . .	503
All drug convictions . . . . .	127
All drug acquittals . . . . .	2
<i>All drug sentences:</i>	
Number of years in TDC . . . . .	125
Number of years probated . . . . .	572
TOTAL . . . . .	697
<i>Possession of Marijuana:</i>	
Indictments . . . . .	252
Convictions . . . . .	86
Acquittals . . . . .	1
<i>Sentences:</i>	
Number of years in TDC . . . . .	27
Number of years probated . . . . .	454
TOTAL . . . . .	481
<i>Sale of Marijuana:</i>	
Indictments . . . . .	59
Convictions . . . . .	9
Acquittals . . . . .	1
<i>Sentences:</i>	
Number of years in TDC . . . . .	15
Number of years probated . . . . .	40
TOTAL . . . . .	55

**TABLE XII**  
**TARRANT COUNTY DRUG CASES**  
**1968 — 1971**

All drug indictments . . . . .	1,379
All drug convictions . . . . .	493
All drug acquittals . . . . .	532
<i>All drug sentences:</i>	
Number of years in TDC . . . . .	1,154
Number of years probated . . . . .	1,244
TOTAL . . . . .	2,398
<i>Possession of Marijuana:</i>	
Indictments . . . . .	631
Convictions . . . . .	259
Acquittals . . . . .	194
<i>Sentences:</i>	
Number of years in TDC . . . . .	322
Number of years probated . . . . .	836
TOTAL . . . . .	1,158
<i>Sale of Marijuana:</i>	
Indictments . . . . .	24
Convictions . . . . .	2
Acquittals . . . . .	11
<i>Sentences:</i>	
Number of years in TDC . . . . .	3
Number of years probated . . . . .	0
TOTAL . . . . .	3
<i>Possession and Sale of Marijuana:</i>	
Indictments . . . . .	67
Convictions . . . . .	24
Acquittals . . . . .	17
<i>Sentences:</i>	
Number of years in TDC . . . . .	74½
Number of year probated . . . . .	82½
TOTAL . . . . .	157



It should be noted that convictions for possession do not always reflect simple possession situations. Because Texas law permits substantially similar sentences for both possession and sale of marijuana, some prosecutors employ a two count indictment for "sale and possession of marijuana," and the State elects which one it will proceed under. Some "possession" offenses may involve persons who are believed to have engaged in selling marijuana. Thus, generalizations about marijuana convictions in Texas cannot always differentiate between possession and sale offenses. With this in mind, several significant facts still emerge from the available statistics.

First, the majority of *indictments* for drug offenses involve marijuana cases. In the past four years, 52 per cent of the Fort Worth indictments and 62 per cent of the Lubbock indictments have been for marijuana.

Second, an even greater proportion of drug *convictions* are for marijuana offenses. During the four-year period in Fort Worth, 58 per cent of all drug convictions were for marijuana; in Lubbock, 75 per cent. The trend, moreover, is upward: in Lubbock during 1971 marijuana cases accounted for 84 per cent of all drug convictions.

Third, *substantial felony sentences are still being imposed* for marijuana offenses in Texas. During the four-year period in Fort Worth, the 285 persons convicted of marijuana offenses received a total of 399½ years in the penitentiary and a total of 918½ years on felony probation. In Lubbock, sentences have ranged downward from 25 years in prison to two years in prison, although felony probation of five years or more is the usual rule.

The available data on marijuana convictions, sketchy as it is, clearly indicates that the bulk of prosecutorial activity in drug cases is directed toward marijuana. This represents a major diversion of law enforcement time and energy away from cases involving hard drugs, since the time which prosecutors and their staffs must use to prepare marijuana cases is necessarily time taken away from the preparation of other criminal cases, including hard drug cases. Removal or reduction of the number of marijuana cases would free these resources for other matters, permitting better preparation of cases against hard drug offenders and reducing the number of instances in which "plea bargaining" is required. One may question whether law enforcement against hard drug traffic can ever be fully effective so long as the major portion of prosecutorial activity in drug cases is consumed by marijuana offenses.

## MARIJUANA OFFENDERS IN PRISON

The most noteworthy aspect of the Texas Department of Corrections' report on drug offenders is also the most obvious: in Texas, persons are still sent to prison for marijuana offenses. Although prison sentences for sale offenses are still relatively common in other states, such sentences for possession are almost unheard of. Even in a state like California, which permits "judicial discretion," 95 per cent of marijuana possession offenses are classed as misdemeanors and only 1.7 per cent of persons convicted of felony marijuana possession are actually sent to prison. It has been asserted that few people actually go to prison for marijuana offenses in Texas, but as TABLE XIII shows, the truth is otherwise: of the 1,894 identifiable drug offenders in the Department of Corrections, 800 are being held for marijuana offenses. Of these, 691 have been convicted of marijuana possession.

**TABLE XIII  
POPULATION DISTRIBUTION OF NARCOTIC AND DANGEROUS  
DRUG OFFENDERS IN THE TEXAS DEPARTMENT  
OF CORRECTIONS BY DRUG**

Drug	Possession	Sale	Sale/ Possession	Total
Opium and Derivatives	816	88	27	931
Marijuana	691	79	30	800
Marijuana and Other Drugs	55	6	14	75
Hallucinogenics	3	20	4	27
Amphetamines	20	6	1	27
Barbiturates	5	1	0	6
Combination of Two or More Drugs Other than Marijuana	23	1	4	28
<b>TOTAL</b>	<b>1,613</b>	<b>201</b>	<b>80</b>	<b>1,894</b>

At the request of this Committee the TDC has accumulated statistical information on drug offenders with emphasis on violators of the marijuana laws. On January 24, 1972, when the study was undertaken, there were exactly 2,075 drug offenders in TDC, but records were available on only 1,894. Data in the accompanying tables has been printed exactly as received from TDC; generalizations and conclusions from this data have been made by the Committee staff.

TABLE XIV indicates that females are much less likely to receive prison sentences for marijuana offenses than males. Only four per cent of the total marijuana offenders are female. Since the available arrest figures (from Houston) disclose that females account for 10 per cent of the marijuana arrests, it is apparent that the unlikelihood of a woman being arrested for this offense is matched by the relative reluctance of courts to sentence women to prison.

**TABLE XIV  
SEX OF MARIJUANA OFFENDERS**

Sex	TOTAL MARIJUANA OFFENDERS		MARIJUANA SALES OFFENDERS		MARIJUANA POSSESSION OFFENDERS		MARIJUANA SALE/POSSESSION OFFENDERS	
	Number Inmates	Percent Inmates	Number Inmates	Percent Inmates	Number Inmates	Percent Inmates	Number Inmates	Percent Inmates
Females	32	4.00%	6	7.59%	24	3.47%	2	6.66%
Males	768	96.00%	73	92.40%	667	96.52%	28	93.33%
<b>TOTAL</b>	<b>800</b>	<b>100.00%</b>	<b>79</b>	<b>100.00%</b>	<b>691</b>	<b>100.00%</b>	<b>30</b>	<b>100.00%</b>

The likelihood of a prison sentence is heavily influenced by the race of the accused. As TABLE XV indicates, blacks account for 37.5 per cent of imprisoned marijuana offenders, although they comprise less than 12 per cent of the state's population. Discrimination against *chicanos* is somewhat less marked: they account for 19 per cent of the inmates, and approximately 15 per cent of the state's population. Whites, who account for almost 73 per cent of the state's population, represent only 43.5 per cent of persons sent to prison for marijuana.

TABLE XV  
ETHNIC GROUPS FOR MARIJUANA OFFENDERS

Ethnic Group	TOTAL MARIJUANA OFFENDERS		MARIJUANA SALES OFFENDERS		MARIJUANA POSSESSION OFFENDERS		MARIJUANA SALE/POSSESSION OFFENDERS	
	Number Inmates	Percent Inmates	Number Inmates	Percent Inmates	Number Inmates	Percent Inmates	Number Inmates	Percent Inmates
Negro	300	37.50%	28	35.44%	264	38.20%	8	26.66%
Caucasian	348	43.50%	41	51.89%	291	42.11%	16	53.33%
Mexican or Latin	152	19.00%	10	12.65%	136	19.68%	6	20.00%
TOTAL	800	100.00%	79	100.00%	691	100.00%	30	100.00%

Other biographical data on marijuana offenders indicates that although usage of the drug is popularly considered to be greatest among middle-class, college-educated persons, it is the poorly-educated, noncollegiate Texan who stands by far the greatest chance of being sent to prison. Less than five per cent of all marijuana inmates have an educational achievement of twelfth grade or above; a majority have less than eighth grade educational achievement. Although a few geniuses are presently imprisoned for marijuana offenses (three inmates have an IQ of 140 to 149), high intelligence is the exception and not the rule. Only 6.76 per cent have an IQ of 120 or above, and approximately one half of all marijuana inmates have below-average IQ's.

Among the most startling of all the marijuana statistics, however, are those which show the county of the offenders' residence. In the overwhelming majority of situations this county is the same as the one in which he was convicted, and the figures show remarkable discrepancies in treatment across Texas.

TABLE XVI  
COUNTY OF RESIDENCE OF MARIJUANA  
OFFENDERS

County	Number Inmates	Per Cent Inmates	County	Number Inmates	Per Cent Inmates
Atascosa	1	.12%	Kimble	1	.12%
Bastrop	1	.12%	Kleberg	3	.37%
Bell	16	2.00%	Lamb	1	.12%
Bexar	32	4.00%	Llano	1	.12%
Brazoria	2	.25%	Lubbock	6	.75%
Caldwell	3	.37%	McLennan	2	.25%
Calhoun	1	.12%	Madison	1	.12%
Callahan	1	.12%	Marion	1	.12%
Cameron	3	.37%	Matagorda	2	.25%
Cass	1	.12%	Midland	5	.62%
Castro	1	.12%	Montgomery	1	.12%
Collin	3	.37%	Nacogdoches	3	.37%
Coryell	1	.12%	Nueces	14	1.75%
Dallas	234	29.25%	Palo Pinto	2	.25%
Dawson	2	.25%	Parker	1	.12%
Deaf Smith	2	.25%	Pecos	1	.12%
Denton	9	1.12%	Potter	12	1.50%
Eastland	1	.12%	Reeves	1	.12%
Ector	6	.75%	Refugio	1	.12%
Ellis	1	.12%	Runnels	1	.12%
El Paso	2	.25%	San Patricio	6	.75%
Fannin	1	.12%	Smith	3	.37%
Galveston	12	1.50%	Tarrant	42	5.25%
Gonzales	1	.12%	Taylor	6	.75%
Grayson	1	.12%	Tom Green	4	.50%
Gregg	3	.37%	Travis	32	4.00%
Guadalupe	1	.12%	Val Verde	1	.12%
Hale	4	.50%	Victoria	2	.25%
Harris	212	26.50%	Ward	1	.12%
Hidalgo	4	.50%	Webb	2	.25%
Howard	4	.50%	Wheeler	1	.12%
Hunt	1	.12%	Wichita	1	.12%
Jasper	2	.25%	Wilbarger	2	.25%
Jefferson	21	2.62%	Williamson	1	.12%
Johnson	1	.12%	Wilson	1	.12%
Karnes	1	.12%	Winkler	1	.12%
Kaufman	1	.12%	Zavala	2	.25%
Kerr	1	.12%	Out of State	27	3.37%
			Not Specified	11	1.37%

As TABLE XVI indicates, nearly 30 per cent of all marijuana offenders sentenced to prison are from Dallas County – substantially more than from Harris County. Bexar County accounts for only four per cent of the marijuana prisoners, although it contains the third largest city in the State. El Paso County, which contains one fourth as many residents as Dallas, has imprisoned only two marijuana offenders compared to 234 from Dallas.

Sometimes neighboring counties show sharply divergent treatment of marijuana offenders. Jefferson County (Beaumont), with a population of 244,000, has imprisoned 21 persons; Orange County, population 71,000, has none.

Generally speaking, a marijuana user in North Texas stands a much greater chance of going to prison than one in South Texas. In the 14 Rio Grande Valley counties bordering Mexico from El Paso to Brownsville, which have a combined population of more than 800,000, only 10 persons are imprisoned for marijuana offenses. By contrast 12 persons are imprisoned from Potter County (Amarillo), with a population of 90,000. Even then, the statistical probability of prison is lower for a marijuana user in Amarillo than in Dallas.

**TABLE XVII**  
**VARIATION IN TREATMENT OF MARIJUANA**  
**OFFENDERS IN THE TEN LARGEST COUNTIES**

County	Percent of Total State Population	Percent of Total TDC Marijuana Prisoners	Percent Variation from Norm
Harris	15.6%	26.5%	+69.9%
Dallas	11.9%	29.3%	+146.2%
Bexar	7.4%	4.0%	-85.0%
Tarrant	6.4%	5.3%	-20.8%
El Paso	3.2%	0.3%	-966.7%
Travis	2.6%	4.0%	+53.9%
Jefferson	2.2%	2.6%	+18.2%
Nueces	2.1%	1.8%	-16.7%
Hidalgo	1.6%	0.5%	-120.0%
Lubbock	1.6%	0.8%	-100.0%

TABLE XVII illustrates the dramatic variation in treatment of marijuana offenders in the ten largest Texas counties. Harris County contains 15.6 per cent of the total population in Texas, but accounts for 26.5 per cent of the marijuana prisoners. Dallas County contains 11.9 per cent of the total state population, yet accounts for 29.3 per cent of the total marijuana prisoners. That this discrepancy is attributable to differences in the counties' criminal justice systems rather than to higher usage is indicated by the fact that other major urban centers such as Bexar County and Tarrant County, sent *less* than their proportional number of citizens to prison on marijuana charges. There is no evidence to suggest that marijuana usage is three times higher in Dallas than in Fort Worth, but a Dallas marijuana user stands a far greater chance of being sent to prison than a user in Fort Worth.

The difference in treatment of marijuana offenders between the fifth largest county (El Paso) and the sixth largest (Travis) is also worth noting. Thirty-two inmates are from Travis, and only two from El Paso. The fact that Travis County contains the 40,000-student Austin campus of The University of Texas is not alone sufficient to explain this huge variation; El Paso County has 60,000 more residents than Travis, adjoins the Mexican border, and is the site of the 11,000-student campus of The University of Texas at El Paso. Here as elsewhere, the primary difference appears to be in enforcement, not in usage.

It should be emphasized that in most cases the differing treatment of marijuana offenders does not seem to be attributable to deliberate discrimination, or to discrimination against persons on account of their political or social views. What exists is simply a wide difference of attitudes among persons involved in the criminal justice system from county to county across Texas. Some prosecutors, judges, and juries simply seem to regard marijuana violations as much more serious offenses than do their counterparts in other counties. Similar variations in attitudes probably could be found for other offenses as well. What makes them so noteworthy in the case of marijuana is the fact that Texas law permits an enormously wide range of penalties for these offenses, ranging from probation to life in prison. There is thus no check, no restraint, on the natural tendency to impose a widely scattered range of penalties; indeed, such differences are encouraged by the broadness of the law.

It has been said that the provision of Texas law which allows for "life" sentences for marijuana offenses is actually a dead letter, and that most sentences, if given at all, are relatively short. TABLE XVIII shows otherwise.

**TABLE XVIII**  
**LENGTH OF SENTENCE FOR**  
**MARIJUANA OFFENDERS**

Sentence in Years	TOTAL MARIJUANA OFFENDERS		MARIJUANA SALES OFFENDERS		MARIJUANA POSSESSION OFFENDERS		MARIJUANA SALE/POSSESSION OFFENDERS	
	Number Inmates	Percent Inmates	Number Inmates	Percent Inmates	Number Inmates	Percent Inmates	Number Inmates	Percent Inmates
2	104	13.00%	1	1.26%	102	14.76%	1	3.33%
3-4	153	19.13%	3	3.79%	149	21.56%	1	3.33%
5-6	219	27.38%	36	45.56%	176	25.46%	7	23.33%
7-8	75	9.38%	12	15.18%	58	8.38%	5	16.66%
9-10	98	12.25%	9	11.38%	81	11.71%	8	26.66%
11-15	50	6.25%	5	6.32%	43	6.19%	2	6.66%
16-20	38	4.75%	6	7.58%	27	3.88%	5	16.66%
21-25	24	3.00%	3	3.79%	20	2.89%	1	3.33%
26-30	7	.88%	2	2.53%	5	.72%	0	—
31-40	10	1.25%	0	—	10	1.43%	0	—
50+	8	1.00%	1	1.26%	7	1.00%	0	—
Life	14	1.75%	1	1.26%	13	1.88%	0	—
TOTAL	800	100.00%	79	100.00%	691	100.00%	30	100.00%

Only 13 per cent of marijuana offenders have been sentenced to the minimum term of two years. The number of persons who have been sentenced to terms ranging from 11 years to life exceeds the number who have been sentenced to the minimum.

Among those sentenced for marijuana possession, nearly two-thirds (540 persons) are serving prison sentences of five years or more. This is happening nowhere else in America. Even taking into account that some of these persons could have been prosecuted and possibly convicted for sale rather than possession, the range of sentences could exist in only a handful of other states.



The average sentence for marijuana possession offenders is 9.64 years; for sellers, 9.76 years. More striking than the average, however, is the deviation. Sentences run the gamut of the statutory range: from two years to life. Thirty persons are presently serving sentences of *more than thirty years* for possession. Thirteen of these have been sentenced to life imprisonment.

At the request of the Committee, the Texas Department of Corrections supplied additional information on the thirty marijuana possession offenders whose sentences exceed thirty years. Of the ten whose sentences range from thirty-one to forty years, all are male. Five are black, four are *chicano*, and one is white. Their ages range from 21 to 45. Eight were residents of Dallas County, one from Bell County, and one from Lamb County. Seven of the ten are serving time for other offenses besides marijuana; three are serving only a marijuana possession sentence. Of those three, two are first offenders and one is a recidivist.

Of the seven who have been sentenced to more than fifty years, all are male. Five are serving fifty-year sentences, one a seventy-five year sentence, and one a ninety-nine-year sentence. Five are black, two are white. Their ages range from 29 to 53. Five were residents of Dallas County, one from McLennan, and one from Tarrant. Five are serving time for other offenses, and two have been sentenced only for the marijuana possession conviction. One of these two is a first offender who was convicted in 1967 of possessing ten marijuana cigarettes.

Of the thirteen persons with life sentences, all are male. Eight are *chicano*, two are black, and three are white. Their ages range from 34 to 64. Eight were from Harris County, two from Galveston, and one each from Bexar, Travis, and Dallas. Three of the thirteen are serving concurrent sentences for other offenses, and ten are serving only the marijuana possession sentence. Of these ten, three are first offenders and seven are recidivists. One of the first offenders is serving his life sentence for conviction in 1962 of possessing one penny matchbox full of marijuana.

In sum, there are six first offenders serving sentences of thirty years or more for marijuana possession in Texas, three of whom have been sentenced to life.

It has been said that marijuana first offenders do not go to prison in Texas, but as TABLE XIX indicates, there are presently 446 first offenders in prison, 275 of whom have been convicted of possession. In fact, 55.76 per cent of all persons imprisoned for marijuana offenses are first offenders.

**TABLE XIX  
SEGREGATIVE CLASSIFICATION OF  
MARIJUANA OFFENDERS**

Segregative Class	TOTAL MARIJUANA OFFENDERS		MARIJUANA SALES OFFENDERS		MARIJUANA POSSESSION OFFENDERS		MARIJUANA SALE/POSSESSION OFFENDERS	
	Number Inmates	Percent Inmates	Number Inmates	Percent Inmates	Number Inmates	Percent Inmates	Number Inmates	Percent Inmates
First Offender Age 17-21	195	24.38%	27	34.17%	161	23.29%	7	23.33%
First Offender Age 22-25	147	18.38%	15	18.98%	127	18.37%	5	16.66%
First Offender Over 25	104	13.00%	12	15.18%	87	12.59%	5	16.66%
Recidivist Age 17-21	50	6.25%	4	5.06%	43	6.22%	3	10.00%
Recidivist Age 22-25	69	8.63%	4	5.06%	63	9.11%	2	6.66%
Recidivist Over 25	164	20.50%	13	16.45%	145	20.98%	6	20.00%
Habitual	52	6.50%	1	1.26%	49	7.08%	2	6.66%
Malcontents	7	.88%	1	1.26%	6	.85%	0	—
Not Specified	12	1.50%	2	2.53%	10	1.44%	0	—
<b>TOTAL</b>	<b>800</b>	<b>100.00%</b>	<b>79</b>	<b>100.00%</b>	<b>691</b>	<b>100.00%</b>	<b>30</b>	<b>100.00%</b>

It has also been said that the courts are lenient with young persons; but 245 persons under the age of 22 are now imprisoned on marijuana charges, 195 of these for a first offense. This age group comprises 30.63 per cent of all persons imprisoned for marijuana offenses.

There are 161 persons under the age of 22 now serving prison sentences for first offense marijuana possession in Texas.

The figures on marijuana prison sentences tell a story of discrimination in almost every conceivable way. The probability of a prison sentence is heavily influenced by a user's sex, his race, and his county of residence. The ignorant and the ill-educated bear a disproportionate risk of prison. The length of a sentence rests largely in the unbridled discretion of prosecutors, judges, and juries. Amid the chaotic and inconsistent treatment of these cases, only one central fact remains clear: in Texas, marijuana offenders still go to prison by the hundreds.

## SUMMARY OF FINDINGS AND POLICY ALTERNATIVES

The Texas marijuana laws are the harshest in the world. Forty-eight states and the federal government have made marijuana possession a misdemeanor; many of these have sentences of only a few months, and several have maximum sentences of as little as a few weeks or days. But in Texas it is a less serious offense to castrate a man than to give him a marijuana cigarette. It is less serious to administer poison or to commit murder without malice than to smoke marijuana in one's own home.

Arrests for violation of the marijuana laws have increased more than one thousand per cent in the last six years. The bulk of police activity in cases involving drugs is now directed against marijuana violators: more than fifty per cent of the current drug arrests are for marijuana. This phenomenon is reflected at each subsequent stage of the criminal justice process: a majority of the indictments in drug cases are for marijuana offenses, and marijuana convictions account for more than half of all drug convictions.

Substantial felony sentences are being imposed on marijuana law violators, sentences which are measured in years and which have virtually no counterpart in any other state. Although some of these sentences are probated, the stain of a felony conviction can never be fully removed in Texas, and even if the offender is able to regain his right to vote and other civil rights, his opportunity to obtain desirable employment and to be treated as an honorable citizen has been permanently impaired. Many of those convicted for marijuana offenses, moreover, are not given probation. More than 800 persons are currently incarcerated in the Texas Department of Corrections for marijuana violations; the average length of their sentences is 9.76 years. Many of them are first offenders and many are still teenagers.

### Do the Harshest Drug Laws Work?

Penal drug laws exist to deter people from using drugs. Because the Texas drug laws are harsher than those in any other state, they should — if they are accomplishing their purpose — cause a rate of drug usage lower in Texas than elsewhere. But there is no evidence that this is so. Usage of marijuana in Texas appears to be little different than it is in the rest of the country — indeed it may even be higher in Texas than in other states which have *lower* penalties.

When representatives of this Interim Committee visited Nebraska in January, 1972, the consensus of opinion among law enforcement officials there was that their state's seven day maximum for marijuana possession had not caused an increase in usage of the drug relative to the surrounding states, most of which had a one year misdemeanor penalty. Available figures from Nebraska indicate a lower rate of marijuana usage there than in Texas, even though the *cannabis sativa* plant grows wild over thousands of acres across the state.

The severity of the marijuana penalty seems to bear only a minor relationship, if any, to the actual incidence of marijuana usage. States which have lowered their penalties have not experienced a sudden or disproportionate rise in usage, and the possibility of a life sentence has clearly not prevented drug usage here from growing apace with the rest of the country.

Similarly, the severity of the marijuana penalty seems to have no effect on the development of a "hard drug" problem. According to Nebraska officials, usage of heroin and other narcotics has not increased at a rate greater than that of surrounding states. Nebraska has not become a "haven" for marijuana users, nor a magnet for heroin addicts. Recent medical studies consistently confirm the proposition that usage of marijuana does not lead to involvement with narcotic drugs in any causal sense, and the experience of states which have had moderate marijuana penalties for several years points in the same direction.

Nor do the Texas laws serve as an effective barrier against the importation of marijuana into this country from Mexico. All three of the other states which border Mexico treat marijuana possession as a misdemeanor; if felony penalties did effectively discourage importation, this fact would be reflected by the channelling of drugs into the misdemeanor border states. This has not occurred. According to the Federal Bureau of Narcotics and Dangerous Drugs:

It appears that the felony possession penalties in the present Texas drug laws have not had an appreciable effect on reducing the flow of illegal drugs across the Mexican border.

There is, in addition, dubious logic in the assertion that Texas should continue to direct felony possession penalties against its own citizens in order to "protect" the 48 interior states which have misdemeanor penalties themselves.

**What is the cost of marijuana law enforcement?**

A study of the financial costs involved in enforcing the marijuana laws is currently being prepared by the Committee staff. Many elements of the total cost are difficult to obtain, but one which is readily accessible is the cost of incarcerating drug offenders in the Texas prison system. According to Dr. George Beto, Director of the Department, the current cost of maintaining an inmate in the penitentiary system is \$4.21 per day. He has stated that "drug offenders normally do not cause a maintenance cost higher than that of the average inmate." TABLE XX computes the cost to the State of maintaining drug offenders in the prison system. It should be noted that we have excluded all "drug offenders" who are concurrently serving sentences for other crimes, leaving only those who have been incarcerated for a specified drug offense and no other.

**TABLE XX  
COST OF INCARCERATING  
PERSONS CONVICTED OF DRUG OFFENSES  
TEXAS DEPARTMENT OF CORRECTIONS**

<b>Offense</b>	<b>No. of Inmates</b>	<b>Total Cost Per Day</b>	<b>Total Cost Per Month</b>	<b>Total Cost Per Year</b>
Marijuana Possession (Only)	309	\$1,301	\$39,030	\$474,865
Marijuana Possession or Sale (Only)	353	\$1,486	\$44,580	\$542,390
Any Drug Possession (Only)	750	\$3,158	\$94,740	\$1,152,670
Any Drug Offense (Only)	836	\$3,520	\$105,600	\$1,284,800

As TABLE XX shows, the State is spending \$39,030 per month in order to keep behind bars persons convicted of marijuana possession. The annual cost for this group of prisoners is almost one-half million dollars.

These figures represent only a small fraction of the total financial costs of marijuana law enforcement. Other factors to be considered include the proportion of narcotics officers' time and equipment devoted to investigation of marijuana cases, processing of persons who have been arrested, and the entire gamut of costs within the criminal justice system — Grand Jury investigations, preparation of cases by prosecutors, trials in the District Court, appeals, and probationary supervision.

A hidden "cost" of the marijuana laws has been mentioned several times in this Report. Whatever the actual dollar cost of marijuana cases in the criminal justice system, time spent in handling them is necessarily time taken away from the other responsibilities of law enforcement officers, Grand Juries, prosecutors, and judges. In many cases it represents a diversion of law enforcement resources away from serious crimes against persons and property. When more than one-half of our law enforcement activity in drug cases is directed against marijuana offenders, and when more than one-half of all drug indictments and convictions involve these same persons, there is a serious question as to whether Texans are getting their money's worth from drug law enforcement. As Professor Packer has said in "The Limits of the Criminal Sanction" (Stanford, 1968):

We simply cannot have all the things we want, crime prevention included . . . every trivial, imaginary or otherwise dubious crime that is removed from the list of criminal offenses represents the freeing of substantial resources to deal more effectively with the high-priority needs of the criminal justice system.

#### **What Policy Alternatives are Available?**

Those who contend that the use of marijuana should remain a felony argue that if the evidence is uncertain, the status quo should be maintained. But the laws making marijuana a felony were enacted when legislators assumed that its dangers were far worse than a dispassionate examination of the evidence now available warrants. *If that evidence would not warrant enactment, now, of the felony prohibitions against marijuana use, it cannot justify their retention.*

The available alternatives for reform of the Texas marijuana possession law fall into five general categories:

1. Retention of felony penalty with judicial discretion to reduce sentence to misdemeanor level in certain cases.
2. Misdemeanor penalty with emphasis on jail sentence.
3. Misdemeanor penalty with emphasis on monetary fine.
4. Decriminalization of private use.
5. Legalization.

### Judicial Discretion

Some persons advocate retaining felony penalties for possession, while giving the judge power to reduce the sentence to misdemeanor level in cases he deems meritorious. This would permit the prosecution of suspected sellers on felony charges without the need to make a "buy." It has the advantage of convenience but it blurs the distinction between two very different types of acts: possession and sale. In essence, it calls for the retention of an artificially high penalty for one offense (possession) in order to convict persons of another offense (sale) which the authorities suspect but cannot prove. It is felt that this violates the historic legal precept that a man is innocent until proven guilty.

Without a change in the Penal Code definition of a felony offense (and perhaps without a constitutional amendment as well) the "judicial discretion" approach would apparently still leave all marijuana offenders subject to the civil disabilities imposed on convicted felons. Even though the term of *imprisonment* might be reduced to a length equivalent to a misdemeanor term, one would still have been convicted of a "felony offense." The same loss of civil rights and first-class citizenship which now occurs would thus continue.

Even if these statutory and constitutional problems could be circumvented, many problems still remain with the "judicial discretion" approach. Continuation of felony penalties in any form for simple possession would (1) require the accused to hire a lawyer to defend him on a felony charge, with concomitant higher fees; (2) perpetuate the use of broad felony search-and-seizure powers against persons who possessed the drug for personal use in their own homes; (3) permit the same extensive range of discrimination by race, economic status, life style, sex, and county of residence which now characterizes the Texas marijuana possession law; (4) permit the imposition of sentences for simple possession which are greater than the seriousness that the offense actually

warrants; and (5) fail to come to grips with the costliness — both socially and in dollars and cents — of the existing penalties. Critics of “judicial discretion” approach have observed that it might merely permit preferential treatment for white, middle class youths who are well represented by legal counsel, while retaining all the disabilities of the present law for those less fortunate.

Only four states attempt to handle marijuana possession in this way. The most important is California, and recent decisions of its Supreme Court have interpreted the law in such a way that very few marijuana possession cases are ever tried as felonies.

Most states have answered the problem of apprehending the “seller” without proving a sale by establishing a separate offense, called “possession with the intent to sell,” for which felony penalties are retained. This appears to offer a better way of restricting traffic in the drug, without exposing simple possessors to the possibility that an unsympathetic judge or jury will impose a sentence more severe than they deserve. “Intent to sell” may be proven by peripheral circumstances, such as the presence of commercial quantities, numerous small packages suitable for resale, and the presence of devices to cut, dry, or weigh the product.

#### **Misdemeanor (Jail Sentence)**

More than four-fifths of the states impose no more than a one year jail term for simple, first offense possession, and even this maximum appears to be observed only rarely in practice. As mentioned in the discussion of other states’ laws, probation or rehabilitative care are becoming the most frequently used alternatives, and in many of the states which do impose jail sentences, those sentences are very short. If the Committee wishes to retain a criminal sanction in the form of a jail sentence for the private use of marijuana, penalties such as those in Nebraska (seven days), New Mexico (fifteen days), Pennsylvania (thirty days), and Massachusetts (six months with automatic probation), seem to offer viable alternatives. Since the length of the possible sentence appears to bear no significant relation to deterrence of marijuana use, the Nebraska penalty appears adequate. It has been recommended for adoption in every state by the Select Committee on Crime of the U.S. House of Representatives.



### **Misdemeanor (Fine)**

Most states provide an alternative penalty in the form of a monetary fine, and many are beginning to rely heavily upon it. As mentioned above, the actual punishment for marijuana possession in some states is often no more than a fine equivalent to the fine for under-age possession of alcohol. The Study Draft of a New Criminal Code, prepared by the staff of The National Commission on Reform of Federal Criminal Laws, proposes that possession of marijuana for personal use only shall be an infraction, carrying with it a sanction of probation or unconditional discharge, or a maximum fine of \$500. The April, 1970, Interim Report of the Canadian LeDain Commission of Inquiry into the Nonmedical Use of Drugs tentatively concluded that illegal possession of marijuana should be subject to no criminal penalty, but recommended a maximum of a \$100 fine for this offense pending issuance of the commission's final report.

Advocates of a misdemeanor penalty in the form of a fine argue that such an approach would continue to express official disapproval of marijuana usage, permit the imposition of a penalty against violators, but insure that no persons will be placed behind bars merely for using or possessing the substance.

### **Decriminalization**

In a statement critical of present marijuana laws, the National Coordinating Council on Drug Education observed that

... the application of these laws, which treat the marijuana user as a criminal, frequently causes serious social, economic and psychological consequences for the individual and society that appear to be more serious than any apparent direct consequence of using the substance. These laws and variations in enforcement appear to contribute to a lack of respect among young people for laws in general and drug control laws in particular.

The absence of any convincing evidence that marijuana is as harmful as alcohol or tobacco has led many observers to question the entire concept of criminalizing private marijuana use. The view has been expressed that "we don't yet know enough about marijuana to say that it should be sold over-the-counter (legalized), but we do know enough to say that no one should be treated as a criminal merely for using it." This viewpoint has

given rise to the concept of “decriminalization,” which removes possession and use of marijuana from the ambit of the criminal law while retaining criminal penalties for sale of the drug.

Decriminalization is based on two premises: first, that the social and medical effects of marijuana have not been proved to be so serious that the state should make criminals of its citizens who choose to experiment with the drug at their own risk; and second, that marijuana has, however, not yet been shown safe enough that the state should put its seal of approval on the drug by allowing it to be sold and distributed legally. In effect, the decriminalization approach would put the moral authority of the state against marijuana by prohibiting its sale, but it would not make a criminal of the citizen who chooses to obtain the drug and use it privately. It would concentrate the law enforcement effort against illegal sale rather than against possession for personal use. It would acknowledge that if a person is willing to assume the risk of using marijuana, and to accept strict liability for the full legal consequences of any act which he may commit while under the influence of marijuana, the state has no compelling interest in restricting his freedom of choice.

The decriminalization approach is not without precedent in American law. During prohibition, only five states prohibited the *possession* of alcoholic beverages for private use in the home although *sale* of alcoholic beverages was of course forbidden. Imposition of the legal sanction on the seller rather than the buyer is implicit in the penalties controlling such vices as prostitution. If society wishes to impose criminal penalties for distribution of a substance which it deems undesirable, there is neither a logical nor an ethical necessity that it go further and punish those who merely use the substance.

After completing the most comprehensive study of marijuana ever undertaken in this country, the National Commission on Marihuana and Drug Abuse concluded that no criminal penalties for the private use of marijuana could be justified on a social, legal, or medical basis. Accordingly they recommended decriminalization of possession for private use in the home. This approach has also been advocated by the Committee on Drug Abuse of the American Bar Association’s Section on Criminal Law, the former Deputy Director of the Federal Bureau of Narcotics and Dangerous Drugs, and numerous other authorities who testified before the Commission. Dr. Bertram S. Brown, Director of the National Institute of Mental Health in the Department of Health, Education and Welfare,

presented his agency's second Annual Report on Marijuana to the Congress in February, 1972, with the observation that on the basis of the medical findings summarized in the Report, possession of marijuana should be decriminalized or made subject only to "token penalties" such as letters of reprimand. Critics of decriminalization contend that it might encourage further marijuana experimentation, but proponents of the plan have responded that the present criminal sanctions have apparently done little to discourage marijuana use, and in any event the social costs of continuing to treat marijuana users as criminals far outweigh the disadvantages which might result from increased usage.

### Legalization

Many persons conversant with the marijuana problem have suggested that the solution is to end "Marijuana Prohibition" just as the prohibition of alcohol was ended: by establishing statewide regulatory systems which would allow the drug to be sold over the counter as alcohol is sold. Most advocates of legalization do not contend that marijuana is intrinsically good or beneficial, arguing instead that, since the present criminalization has clearly failed to prevent or substantially control use of the drug, the public interest would best be served by making marijuana available to adults through legal channels with carefully controlled quality and heavy taxation. Since usage will obviously continue regardless of whether the drug is made legal, these persons argue that society would benefit most by refraining from pushing the marijuana user into the black market and instead accepting the substance as simply another recreational drug like alcohol. Initial revenues from marijuana taxation could be earmarked for treatment of problems associated with excessive usage, and the remainder could be contributed to the state's general revenue.

Legalization of marijuana has been recommended by, among others, the Committee on Alcoholism and Drug Reform of the American Bar Association's Section on Individual Rights and Responsibilities. Federal treaty obligations which can be interpreted as preventing marijuana legalization are currently being reassessed by the Federal Bureau of Narcotics and Dangerous Drugs.

However, while legalization would alleviate some of the most serious problems associated with marijuana use as it is practiced today (including the labeling of a substantial portion of the public as felons, and the involvement of the marijuana distribution system with underworld

activity), it is not a realistic possibility for Texas at this time. The Texas Legislature cannot “legalize” a substance, possession of which is a crime under federal law. Thus, until the federal misdemeanor penalty for marijuana possession is repealed, the most substantial step that any state can take is to remove its own criminal penalties — in effect, to decriminalize. Bipartisan legislation to repeal the federal possession penalty is currently pending in Congress.

### **Marijuana Sale**

Whichever alternative the Legislature chooses for reform of the marijuana possession penalty, additional attention must still be given to the penalties for marijuana distribution. Because a “sale” is defined to include any transfer (even the exchange of exceedingly small quantities among friends for no remuneration), the penalties for sale encompass an extremely wide range of conduct, all of which is not equally culpable. There is no meaningful comparison between the supplier of marijuana who sells a ton to another distributor, and the college student who gives a few cigarettes to a friend. Many states treat nonprofit transfers of small amounts as misdemeanors; so does the federal government. The life sentences presently permissible under Texas law for the sale of marijuana are, like the possession penalties, grossly out of line with other state laws. The maximum penalty for marijuana sale under federal law is five years; among states which have recently recodified their drug laws, the usual maximum for this offense is in the three to five year range. Only ten other states permit a sentence longer than ten years. The same considerations which justify revision of the marijuana possession penalty also justify a careful reexamination of the laws regarding sale.

## A FINAL WORD

More than one observer of drug abuse problems has been moved to comment that, “the worst thing about marijuana is the laws we have against it.” The central question now facing this Committee and the Texas Legislature can be put this way: *In view of the present state of knowledge about marijuana’s medical and social effects, should a person go to jail merely for using it?* The consensus of medical and legal authority in the English-speaking world answers this question overwhelmingly in the negative.

In Part One of this Report, we found that an estimated 800,000 to one million Texans have used marijuana at least once. Only a tiny fraction of these have actually been convicted – the number is probably well below 20,000. The rest are free. In the contemplation of the law, however, they are merely unapprehended felons who should be incarcerated in Huntsville, Gatesville, or another state facility. Were it possible for the law enforcement authorities to apprehend them all and sentence them to prison as the law provides, nearly one-tenth of the total population of the state of Texas would be put behind bars and supported at public expense by the remainder of the citizenry. The education of more than 200,000 Texas college students and more than 100,000 high school students would be continued, if at all, inside prison walls. The ranks of teachers, doctors, housewives, labor union members, lawyers, and even public officials would be visibly reduced. When the disparity between felonious conduct and actual social practice becomes as wide as this, it is necessary to remind ourselves that “the law is made for people – not the other way around.”