

Marijuana laws put pressure on prisons

Contributed by Dale Gieringer, Ph.D

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You can let him know what you think online at www.govmail.ca.gov/ or by mail:

Gov. Arnold Schwarzenegger

State Capitol, Sacramento CA 95814

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The costs of cannabis enforcement are unduly inflated by the fact that minor but common activities, such as small-scale cultivation and distribution, are felonies. Simply downgrading them to misdemeanors would save the state's taxpayers court and imprisonment costs. Similar laws have been adopted, in Alaska, Maine, Colorado, Ohio, Australia and elsewhere.

A recent Evans-McDonough poll shows that 58 percent of state voters agree that reducing cannabis penalties is a good way to reduce prison crowding.

Governor Schwarzenegger, however, recently proposed spending even more money on new prisons. He also proposes cutting Prop 36 drug treatment programs intended to keep offenders out of prison, and vetoed a 2004 legislative effort to improve access to medical marijuana.

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Tell him it's time to stop wasting taxpayers' money imprisoning people for victimless cannabis offenses. How? By eliminating felony penalties for minor offenses, such as home cultivation, petty sales and possession of hashish.

California NORML has recommended several concrete legislative decriminalization proposals to reduce the number of non-violent cannabis prisoners.

- Under current law (Health and Safety Code 11358), cultivation of any amount of cannabis is a felony — even a single plant. This perversely encourages otherwise responsible, adult cannabis users to buy from criminal traffickers rather than grow their own at home, since the former is subject to at most misdemeanor possession charges, while the latter is punished as a felony.

While “personal use” cultivation defendants can apply for “deferred entry of judgment” under PC 1000, this is subject to numerous restrictions and involves burdensome diversion and court costs. The present law is especially burdensome to medical marijuana patients, who, even though they are legally entitled to grow under Prop 215, are still often arrested and taken to court on felony charges, an expensive and harrowing ordeal.

California could make small-scale personal use home cultivation a minor misdemeanor punishable by a fine below a certain threshold. This policy has been adopted in Ohio, Colorado and some Australian states. A more liberal approach was recommended by California’s Research Advisory Panel in 1990, calling for complete elimination of criminal penalties for personal possession and cultivation of cannabis. This is currently the law in Alaska.

California could make other low-level cultivation offenses regular misdemeanors (punishable by possible jail time), provided they take place on property owned or controlled by the grower. This would create a useful distinction between small, private gardens and large-scale plantations that are currently being grown by organized criminal gangs on public lands, which are more properly treated as felonies.

- Under current law (HS 11359 and 11360), sale, transportation, distribution and possession with intent to sell or distribute are felonies for ANY amount of cannabis — even a single joint. (Giving away or transporting less than an ounce are minor misdemeanors). In contrast, assault and battery are misdemeanors, although they cause direct violence to others. This sends an irresponsible message about the relative harm of marijuana crimes.

Convictions for intent to sell account for the majority of the marijuana felonies that are currently crowding prisons. Many involve petty dealers, who are more commonly arrested than major traffickers. As a public nuisance, petty dealing is akin to prostitution, which is presently treated as a misdemeanor. Moreover, the personal stash of a heavy-consumer who keeps a few pounds on hand is often cited as showing an intent to sell.

Downgrade minor sales to a misdemeanor or wobbler. This is presently done in the state of Maine, where sales of one pound or less, or cultivation of 100 plants or less, are punished as misdemeanors.

One possible alternative: make first-time sale/intent to sell for one ounce or less a misdemeanor; other sales of less than 10 pounds a wobbler.

- Under current law (HS 11357A), possession of hashish or concentrated cannabis is a wobbler punishable as an optional felony, and is not eligible for the standard \$100 misdemeanor fine. The distinction between hashish and marijuana is obsolescent given recent increases in marijuana potency. Hashish is not distinguished from marijuana under

California's medical marijuana law, H&SC 11362.5. In its 2002 budget cut proposals, the LAO estimated that treating hashish as a misdemeanor would save the state \$4.8 million.

California could treat hashish like marijuana, at a ratio of 1 ounce marijuana = 1/4 ounce of concentrated cannabis. This would make possession of <1/4 oz hashish a minor misdemeanor, >1/4 oz. a regular misdemeanor, and in no case would it be a felony.

California spends far too much of its resources imprisoning citizens for cannabis and victimless drug crimes, and should at least adopt proposals along these lines.