



FLORIDA ALCOHOL & DRUG ABUSE ASSOCIATION



Florida Marijuana Possession Laws
Public Policy Options for Effective Intervention

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EXECUTIVE SUMMARY

Respected organizations throughout the U.S. are advocating for reform to existing public policies that address how law enforcement responds to cases involving possession of small amounts of marijuana. Whether in reaction to zero-tolerance policies, or efforts to improve police/community relationships, the calls for reform focus on finding alternatives to arrest and criminal prosecution. The purpose of this paper is to review the outcomes of current enforcement policies and examine options for local policy-makers who are seeking more effective ways to deal with cultural changes related to marijuana.

Current Florida law allows courts, upon conviction, to sentence someone found in possession of less than 20 grams of marijuana for up to one year incarceration and up to a \$1,000 fine. While these sanctions have been in place for many years, they have had little if any deterrent value. Most states have similar laws against possession of marijuana and yet marijuana use continues to increase throughout the U.S. The National Survey on Drug Use and Health found that the number of people who used marijuana increased from 14.6 million during 2004 to 19.9 million in 2013. More striking was the increase in "high frequency" use. Between 2004 and 2013 the number of people who used marijuana on almost a daily basis increased from 4.9 million to over 8.0 million. As a result of increased use, the number of marijuana users who were formally diagnosed with a marijuana use disorder almost doubled between 2001 and 2013.¹

The majority of enforcement policies for marijuana possession have led to overburdened courts, arrests for a minor offense, racial disparity, and an expensive system for taxpayers to fund. The collateral damage of being arrested extends to the arrestee for a life-time. A simple misdemeanor arrest, regardless of conviction, results in barriers to employment, housing, and education. Lives are being ruined and the resulting economic erosion impacts almost every community.

A significant number of policy-makers are turning to evidence-based research and information to find alternatives to the way simple marijuana possession arrests are processed through the current criminal justice system. By aligning desired outcomes with policy options there are several alternatives to arrest and criminal prosecution available for law enforcement. It is important to acknowledge, however, that arresting for marijuana possession should remain an option for law enforcement as an effective short-term tactic especially as part of a broader crime control strategy. For long-term change, however, more discretionary options involving intervention and treatment should be considered.

One discretionary option that has been adopted, or is under consideration, in several major Florida counties is the use of a simple \$100 civil fine - much like a traffic ticket. Because this alternative is new, its effectiveness is uncertain. Increased use of pre-trial diversion programs is also an alternative that can eliminate a criminal conviction record, but it doesn't remove the original arrest record. Pre-arrest diversion for adults is an emerging alternative. Modeled after Florida's successful Juvenile Civil Citation program, the Adult Civil Citation program created as a public/private partnership in Tallahassee, Florida, combines law enforcement discretion and accountability for the offense with assessment and intervention services. Successful completion of an assessment and intervention protocol results in the person not having an arrest record and the life-long stigma that attaches to a criminal record.

¹ Deborah Hasin et. al., (2015) "Prevalence of Marijuana Use Disorders in the United States Between 2001-2002 and 2012-2013" JAMA Psychiatry Online. Retrieved from: <http://archpsyc.jamanetwork.com/article.aspx?articleid=2464591>

INTRODUCTION

Faced with the calls to reform existing public policies for simple possession of marijuana, officials are realizing the need to review existing practices and consider the adoption of new and more effective approaches. Some of the increasingly strident calls for reform result from community-based reactions to the damage caused by arresting individuals for these minor non-violent offenses under "zero-tolerance" policing strategies. Others are seeking ways to improve community-oriented policing programs and neighborhood/police relationships. The current public policy debate related to marijuana possession ranges from legalization to continued strict enforcement. The purpose of this paper is not to enter into this on-going debate, but rather to present local policy-makers with evidence-based information about the existing approaches to marijuana enforcement and the range of policy options available.

A primary reason for this becoming an important topic in the public forum are the calls for reform emanating from respected community leaders, criminal justice groups, and professional associations. Many of these sources are the ones policy-makers have traditionally turned to for accurate and well conceived policy recommendations. Three examples of this are policy papers published by the American Bar Association, the President's Task Force on 21st Century Policing, and Florida Tax Watch.

- American Bar Association: *"The ABA urges states to implement civil citation programs for non-violent, minor misdemeanors to promote judicial efficiency and save taxpayer money."*²
- President's Task Force on 21st Century Policing: *"Law enforcement agencies should consider adopting preferences for seeking 'least harm' resolutions, such as diversion programs or warnings and citations in lieu of arrest for minor infractions."*³
- Florida Tax Watch: *"The state should put in place the guidelines for an Adult Civil Citation program, patterned on the existing Juvenile Civil Citation program, which offers an alternative process to misdemeanor arrest for first-time nonviolent youth offenders. The adult program must include law enforcement discretion, as the responding officer is still in the best position to determine whether the use of civil citation is preferred to actual arrest."*⁴

At a fundamental level, the criminal justice system has two tools for enforcing the law and deterring future crime: sanctioning offenders with a monetary punishment, such as a fine, and the restriction of freedom through probation or incarceration. Policy-makers around the State of Florida are finding that incarceration for possession of marijuana is a disproportional approach to simple possession of marijuana. Rather than arrest and criminally prosecute offenders, several jurisdictions have implemented or are considering implementing non-criminal fines as an alternative law enforcement tool for possession of small amounts of marijuana.

² American Bar Association, State Policy Implementation Project. (2012) "Civil Citations for Minor Offenses" Retrieved from: http://www.americanbar.org/content/dam/aba/administrative/criminal_justice/spip_civilcitations.authcheckdam.pdf

³ U.S. Department of Justice, Office of Community Oriented Policing Services. (2015) "Final Report of the President's Task Force on 21st Century Policing." Retrieved from: http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

⁴ Florida Tax Watch. (2014) "An Adult Civil Citation Can Save Tax Dollars" Retrieved from: <http://floridataxwatch.org/resources/pdf/ACCBriefingFINAL.pdf>

A simple fine or arrest, however, ignores an underlying structure that led the person to possess marijuana. Whether we realize it or not, most of our behaviors include a determination of risk and reward. The perception of risk and reward for marijuana use is shaped by existing laws and enforcement practices, known health risks, and the cultural acceptance of marijuana use. Each of these is pertinent to public policy development.

THE LEGAL PERSPECTIVE

By the mid-1930's almost all states had some form of marijuana regulation prompted by the Uniform State Narcotic Act. However, the first person arrested for selling marijuana and convicted in a U.S. Federal Court was Samuel Caldwell. Mr. Caldwell was arrested in Denver, Colorado, October 27, 1937. The Denver court convicted him and then sentenced him to four years in Leavenworth prison and payment of a \$1,000 fine. His "customer," Moses Baca, was also arrested for possession of marijuana and sentenced to 18 months in prison. These arrests immediately followed passage of the "Marihuana Tax Act," which began a significant shift in evolving public policies making possession of marijuana illegal throughout the U.S.

Over the last 80 years there have been countless efforts to legalize marijuana either for medical or recreational use. However, it wasn't until 2012 that the states of Washington and Colorado became the first to legalize the commercial cultivation, sale, possession, and personal use of marijuana. Just last year, two more states, Alaska and Oregon, as well as the District of Columbia, legalized the personal use of marijuana. Nineteen other states have now enacted legislation permitting either medical marijuana use or eliminating jail time for possession of small amounts of marijuana.

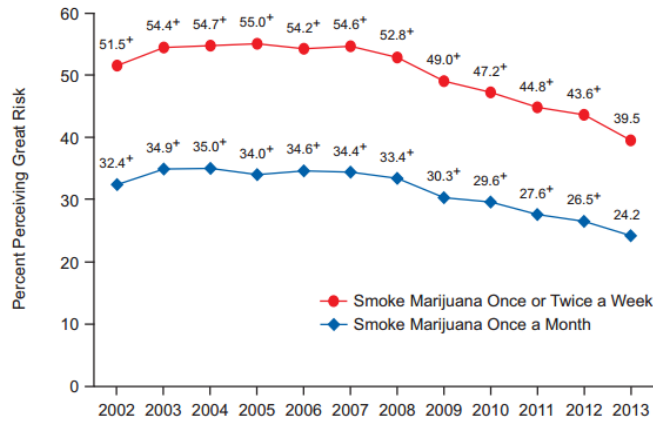
Florida's marijuana possession laws were first enrolled into statute following the 1973 Legislative Session. Section 893.13 (1)(f) F.S. defined possession of 5 grams or less of marijuana - legally termed "cannabis" - as a first degree misdemeanor. Current Florida statutes, as subsequently amended in Section 893.13 (6)(b), defines the possession of 20 grams or less of cannabis as a first degree misdemeanor. The statutes that govern penalties for this level offense allow courts, upon conviction, to sentence the person for up to one year incarceration and a fine of up to \$1,000 (Section 775.082 F.S. & Section 775.083 F.S.). While the maximum penalties are used most frequently for repeat offenders, the "risk" of such a significant punishment is still in place for someone with a one-time conviction for possession of 20 grams or less of marijuana.⁵

Deterrence is the basis for laws that impose sanctions against behavior deemed unacceptable. The natural conclusion is by increasing the risk of negative consequences, as well as the severity of the consequences, the behavior will hopefully be eliminated or at least the frequency considerably reduced. For marijuana use, significantly increasing criminal penalties, such as the "war on drugs," did not have the desired outcome. Two key indicators that clearly inform public policy based on a risk/reward model of behavior modification related to marijuana use are perceived risk and frequency of marijuana use. These critical indicators are included in the annual National Survey on Drug Use and Health (NSDUH). The survey contains information that show how these two indicators have changed over time as laws continue to be revised and our culture's general acceptance of marijuana use changes. The clear picture from the NSDUH data is that perceived risk for marijuana use among surveyed youth has significantly decreased. And, not surprisingly, as the perception of risk decreased, the total number of marijuana users increased - 14.6 million in 2004 and 19.9 million in 2013.⁶ Not only did the number of users significantly increase, there was also a striking increase in the frequency of use among users of all ages.

⁵ 20 grams of marijuana is equal to approximately 35 marijuana "joints."

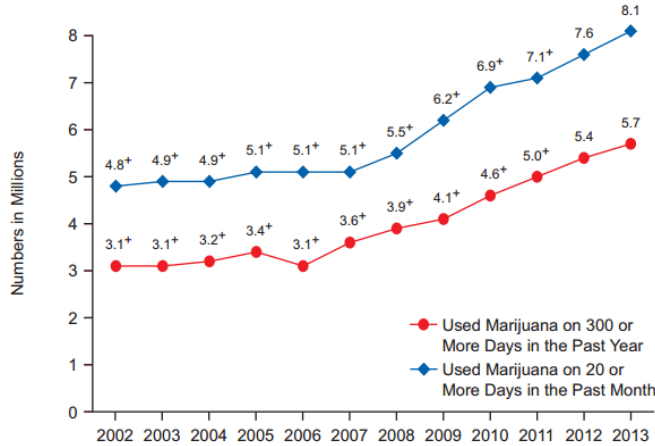
⁶ National Survey of Drug Use and Health (2013) Retrieved from: <http://www.samhsa.gov/data/sites/default/files/NSDUHresultsPDFWHTML2013/Web/NSDUHresults2013.pdf>

Perceived "Great Risk" Smoking Marijuana - Youth Aged 12-17



⁺ Difference between this estimate and the 2013 estimate is statistically significant at the .05 level.
 "Great Risk" was defined as doing physical harm and harm in other ways by participating in illicit drug use.

High Frequency Use of Marijuana - All Ages



⁺ Difference between this estimate and the 2013 estimate is statistically significant at the .05 level.

[Charts from: <http://www.samhsa.gov/data/sites/default/files/NSDUHresultsPDFWHTML2013/Web/NSDUHresults2013.pdf>]

Arrest totals for possession of marijuana have changed along with the country's overall declining crime rate. As a percentage of all drug arrests, however, the rate of arrests for marijuana possession remains relatively constant with a slight increase at the national level and for the State of Florida between 2002 and 2013:

United States	2002	2013
Total Drug Abuse Arrests	1,538,813	976,882
Arrests for Possession of Marijuana	613,986	396,614
Marijuana Possession as Percentage of Total Drug Abuse Arrests	39.9%	40.6%
Florida		
Total Drug Abuse Arrests	126,087	122,190
Arrests for Possession of Marijuana	61,278	60,240
Marijuana Possession as Percentage of Total Drug Abuse Arrests	48.6%	49.3%

Data Source: Federal Bureau of Investigation - Annual Crime In the United States Reports; Florida Department of Law Enforcement - Uniform Crime Report Arrest Data

The NSDUH survey data showing marijuana usage increasing while crime data shows the number of arrests for marijuana possession decreasing reflects the changing priority for enforcement of marijuana possession laws. Marijuana use per capita is up as is the frequency of use and yet the number of arrests in Florida fell 3% between 2002 and 2013.

When these statistical changes are analyzed along with recent marijuana dependence research, policy-makers should consider alternatives, preferably those that address the high rates of marijuana use that are likely contributing to marijuana possession. One recent study, conducted by leading substance abuse and criminology experts, found the frequency of marijuana use was directly correlated with the individual's level of dependence, as well as the probability of arrest. The researchers stated, "This evidence suggests drug dependence was a preeminent factor in the likelihood arrestees were charged with drug possession. Criminal justice policies should prioritize dependence assessment and formulate individualized treatment plans to realize a significant reduction in the amount of possession cases processed through the system."⁷ Extensive research into marijuana addiction and the advances in evidence-based treatment options, support the need to address marijuana use through treatment rather than just arrest and punishment.

MARIJUANA ADDICTION/TREATMENT

Marijuana remains one of the most widely used illicit substances in the United States and prevalence of marijuana use disorders has been increasing among adults and adolescents in the United States. The fifth edition of the Diagnostic and Statistical Manual (DSM-V), is the guidebook for standard classifications of mental disorders used by mental health professionals throughout the U.S. Substance Use Disorder, includes marijuana, and is defined in the DSM-5 as, "... the recurrent use of alcohol and/or drugs causes clinically and functionally significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home."⁸ Although the concept of marijuana use disorders is questioned by some, diagnostic, epidemiological, laboratory, and clinical studies clearly indicate that the condition exists, is important, and causes harm.⁹

A team of medical researchers conducted an analysis of longitudinal survey data to determine if the number of American's using marijuana has changed over a twelve year period and, as a consequence, if there has there been a change in the number of reported marijuana use disorder diagnoses. The findings of the research were striking:

- The use of marijuana in the United States more than doubled between 2001 and 2013.
 - 4.1% of survey respondents reported using marijuana during 2001, increasing to 9.5% during 2013.
- The number of marijuana users who were diagnosed with a marijuana use disorder almost doubled during the same time period.
 - 1.5% during 2001, increasing to 2.9% during 2013.
 - While the percentage is small, the total number of users during 2013 with a marijuana use disorder was approximately 6,846,000. Roughly three out of every 10 marijuana users.

⁷Kopak, A. M. & Hoffmann, N. G. (2014). "The Association Between Drug Dependence and Drug Possession Charges" *Drugs and Alcohol Today*, 14(2).

⁸ "Substance Abuse Disorders," Substance Abuse and Mental Health Services Administration, Accessed November 2, 2015. <http://www.samhsa.gov/disorders/substance-use>

⁹ Kopak, A.M., Proctor, S. L., & Hoffmann, N. G. (2012). "An Assessment of the Compatibility of DSM-IV and Proposed DSM-5 Criteria in the Diagnosis of Cannabis Use Disorders." *Substance Use & Misuse*, 47.

The research article, published by the Journal of the American Medical Association, concluded, "...the clear risk for marijuana use disorders among users (approximately 30%) suggests that as the number of U.S. users grows, so will the number of those experiencing problems related to such use."¹⁰

Marijuana dependence as experienced in clinical populations appears very similar to other substance use disorders, although it is likely to be less severe. Adults seeking treatment for marijuana use disorders average more than 10 years of near-daily use and more than six serious attempts at quitting.¹¹ They continue to smoke the drug despite social, psychological, and physical impairments, commonly citing consequences such as relationship and family problems, guilt associated with use of the drug, financial difficulties, low energy and self-esteem, dissatisfaction with productivity levels, sleep and memory problems, and low life satisfaction.¹² Most perceive themselves as unable to stop, and most experience a withdrawal syndrome upon cessation.

Among individuals who enter treatment for marijuana use about half are under 25 years of age and report a distinctive profile of associated problems, perhaps due to their age and involvement in other risky behaviors.¹³ Adolescents who smoke marijuana are at enhanced risk of adverse health and other consequences, including sexually transmitted diseases and pregnancy, early school dropout, delinquency, legal problems, and lowered educational and occupational aspirations. Heavy marijuana use in the teen years may cause a loss of several IQ points that are not regained even if users later quit in adulthood.¹⁴ Unfortunately, the drug's popularity among teens is growing—possibly due in part to legalization advocates touting marijuana as a “safe” drug. Nor do most young people appreciate the grave safety risks posed by abuse of other substances like prescription opioids and stimulants or newly popular synthetic cannabinoids (“Spice”). To complicate this, scientists still do not fully understand how abusing these drugs may affect the developing brain. The science on the impact of drugs on the brain is new and developing.

Systematic research on substance use disorder treatment for marijuana use began nearly 30 years ago. Behavioral treatments, such as motivational enhancement therapy (MET), cognitive-behavioral therapy (CBT), and contingency management (CM), as well as family-based treatments have been carefully evaluated and have shown promise. Seven published, randomized efficacy trials for primary adult marijuana abuse and dependence have consistently demonstrated that outpatient treatments can reduce marijuana consumption and engender abstinence. The most commonly tested interventions are adaptations of interventions initially developed to treat alcohol or cocaine dependence, in particular MET and CBT (also known as coping skills training). Recently, trials have examined the use of CM to enhance the potency of MET- and CBT-based treatments. The cumulative findings indicate:

- Each of these interventions represents a reasonable and efficacious treatment approach;
- The combination of MET and CBT is probably more potent than MET alone;

¹⁰ Deborah Hasin et. al., (2015) "Prevalence of Marijuana Use Disorders in the United States Between 2001-2002 and 2012-2013" JAMA Psychiatry Online. Retrieved from: <http://archpsyc.jamanetwork.com/article.aspx?articleid=2464591>

¹¹ Substance Abuse and Mental Health Services Administration (SAMHSA), (2007) (Budney, 2006; Budney and Hughes, 2006; Copeland, 2004; Roffman and Stephens, 2006).

¹² Budney, 2006; Copeland et al., 2001; Stephens et al., 2002).

¹³ Gruber et al., 2003; Stephens et al., 2002

¹⁴ Meier, M.H.; Caspi, A.; Ambler, A.; Harrington, H.L.; Houts, R.; Keefe, R.S.E.; McDonald, K.; Ward, A.; Poulton, R.; and Moffitt, T.E. Persistent cannabis users show neuropsychological decline from childhood to midlife *Proceedings of the National Academy of Sciences of the United States of America* Oct 2;109(40):E2657–E2664, 2012.

- An intervention that integrates all three approaches—MET, CBT, and CM— is most likely to produce positive outcomes, especially as measured by rates of abstinence from marijuana.¹⁵

There is uncertainty how the expanded use of medical marijuana will impact the trends on addiction and treatment. When the general public is faced with voting for or against legalizing medical marijuana most do so without a real understanding of the safety issues surrounding medical marijuana. The term "medical" seems to indicate a level of product testing and health safety that is associated with approved pharmaceuticals. In fact, there are few safeguards. A leading marijuana researcher from the University of Mississippi¹⁶ found that:

- Not one marijuana medicine maker in any medical marijuana state has submitted his product to FDA for approval as safe and effective to market to the public.
- There have been no randomized, controlled trials (RCTs) of any legal medical marijuana product to demonstrate that it is a safe or effective treatment for any disease.
- None have been purified, tested in animals for safety, or tested in humans for efficacy.
- Most states do not require testing for contaminants or potency - random tests are finding mold, mildew, pesticides, E. coli, and salmonella in medical marijuana.

A number of highly respected professional organizations actively oppose the legalization of medical marijuana for reasons that include a lack of health safety regulations:

- | | |
|--|------------------------------------|
| • American Epilepsy Society | • American Academy of Pediatrics |
| • American Society of Addiction Medicine | • National Eye Institute |
| • American Cancer Society | • National Institutes of Health |
| • National Multiple Sclerosis Society | • American Psychiatric Association |
| • American Glaucoma Foundation | |

With the political push and pull of special interest groups and conflicting "expert" opinions it is difficult to implement effective public policies for enforcement. Flexibility for law enforcement and behavioral intervention should be considered essential elements of any policy.

OUTCOMES OF EVOLVING ENFORCEMENT PRACTICES

The ebb and flow of the cultural acceptance of marijuana use directly influences law enforcement practices. With steadily increasing portions of communities across the country becoming more tolerant of marijuana use, the corresponding pressure on elected policy-makers has led to development of enforcement policies that result in less criminal enforcement and a broader acceptance of options other than arrest. To reduce any confusion in terminology, decriminalization is not legalization. While four states - Colorado, Washington, Alaska, and Oregon - have legalized manufacturing, sale, possession, and personal use of marijuana, the majority of policy-makers seeking alternatives to criminal prosecution look to structured civil fines as an alternative. The result is decriminalizing possession of small amounts of marijuana and making it a "fineable" offense much like a minor traffic violation at the discretion of law enforcement.

¹⁵ Tims et al., 2002

¹⁶ ElSohly M. (2015, December). "Marijuana: The Complex Botanical Product, Can it be a Prescription Drug?" PowerPoint presentation 2015 Smart Justice Conference, Sarasota, FL

While leaning away from legalization, the Florida legislature passed legislation allowing the medical use of marijuana. A number of cities and counties in Florida are debating the best way to handle possession of small amounts of marijuana for personal use. A good example is Dade County which recently passed a county ordinance making possession of less than 20 grams of marijuana a civil fine of \$100. It is important to note that the Dade County ordinance allows police discretion on whether to fine the violator or make a criminal arrest.

This recent policy shift towards decriminalization transitions law enforcement practices away from "Zero-Tolerance" and "Broken Windows" policing practices that were implemented during the 1980's and 1990's. The outcomes of these tough-on-crime approaches are the focus of many studies and the findings are becoming vital to the public policy debates surrounding possession of marijuana. Many policy-makers are now looking to the evidence-based research as a guide for policy direction. For the purpose of this paper, the findings from three research areas are fundamental to addressing marijuana possession and will be discussed in more detail; 1) perception vs. reality of what happens in Florida's misdemeanor courtrooms; 2) the negative consequences of arrest; and 3) racial disparity for marijuana possession arrests.

For most people who have never experienced a courtroom, the general perception of the process is based on how popular media represents courts and the legal process.¹⁷ This creates a significant gap between perception and reality. One study published in the *American Journal of Sociology* concluded, "One of the most striking things about misdemeanor courts in New York City is that so much paperwork, personnel, effort, and other resources go into delivering effectively no criminal convictions and no formal punishment."¹⁸ This reality is not limited to over-crowded major cities. In an extensive 2009 study of misdemeanor courts throughout the United States, researchers found widespread outcomes that included, "...guilty pleas by the innocent, inappropriate sentences, and wrongful incarceration, all at taxpayer expense."¹⁹

A more recent study was conducted by researchers at the University of Tampa, Department of Criminology and Criminal Justice, and focused on misdemeanor courts in Florida. They found that out of the nearly 500,000 misdemeanor cases processed annually, nearly 70% of defendants pled guilty or no contest during arraignment. The most striking finding was the average time for each arraignment was under three minutes and 66% of defendants were not represented by legal counsel.²⁰

The collateral damage resulting from this approach to justice is well documented within an emerging body of research. To some, a misdemeanor arrest record may seem inconsequential. It can however, be life-altering even without a corresponding conviction. The consequence of being arrested and jailed, if only until arraignment, was succinctly described in a recent study published by the Vera Institute of Justice, "Yet too often we see ordinary people, some even our neighbors, held for minor violations such as driving with a suspended license, public intoxication, or shoplifting because they cannot afford bail as low as \$500. Single parents may lose custody of

¹⁷ Rottman, David, et al. (August 2003) " Perceptions of the Courts in Your Community: The Influence of Experience, Race and Ethnicity, Final Report." National Center for State Courts. Retrieved from: <https://www.ncjrs.gov/pdffiles1/nij/grants/201302.pdf>

¹⁸ Kohler-Hausmann. (September 2013) "Misdemeanor Justice: Control without Conviction," *American Journal of Sociology*, Vol. 119, No.2, pp.351-393

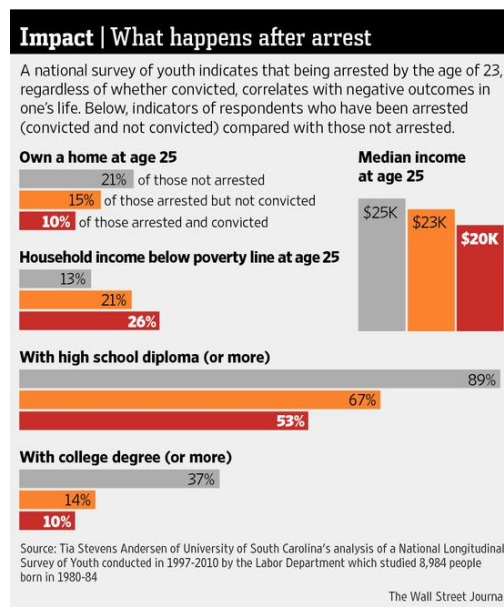
¹⁹ Boruchowitz, R., Brink, M., Dimino, M. (April 2009) . *Minor Crimes, Massive Waste: The Terrible Toll of America's Broken Misdemeanor Courts*: National Association of Criminal Defense Lawyers. Retrieved from http://www.opensocietyfoundations.org/sites/default/files/misdemeanor_20090401.pdf

²⁰ National Association of Criminal Defense Lawyers. (July 2011). *Three-Minute Justice: Haste and Waste in Florida's Misdemeanor Courts*: Authors Smith, A., Maddan, S. Retrieved from <http://www.nacdl.org/WorkArea/DownloadAsset.aspx?id=20794>

their children, sole wage-earners in families, their jobs....²¹ Being arrested for possession of marijuana can also result in loss of college scholarships, denial of access to public housing, revocation of professional licensures, and lifelong limitations to employment opportunities.

The State of Florida and many local communities have implemented economic policies and spent millions of dollars to create jobs. These jobs are meaningless for many people with a misdemeanor arrest record because they are no longer eligible to take advantage of these employment opportunities. A study published last year in the journal "Criminology," documented the impact low-level arrest records had on applicants applying for entry-level jobs. Results showed that because in most states arrest records are publically available, an arrest record for a misdemeanor offense, even without a conviction, still had a significantly negative impact on successfully finding low-level employment²². The economic erosion resulting from under-employment and a lack of future opportunity is significant; and most significantly felt in low-income minority communities where arrest rates are the highest. The Center for American Progress in their report, "One Strike and You're Out," estimates that employment losses due to criminal records (felony and misdemeanor) resulted in a \$65 billion loss in gross domestic product output during 2008.²³

Using data from a national survey conducted by the U.S. Labor Department, the Wall Street Journal wrote an article that compared several indicators related to economic success and the effect of being arrested. The survey used to produce the chart below included arrests for felony and misdemeanor offenses:



Retrieved from: <http://www.wsj.com/articles/as-arrest-records-rise-americans-find-consequences-can-last-a-lifetime-1408415402>

²¹ Center on Sentencing and Corrections. (February 2015) "Incarceration's Front Door: The misuse of Jails in America," Vera Institute of Justice. Retrieved from: <http://www.vera.org/sites/default/files/resources/downloads/incarcerations-front-door-report.pdf>

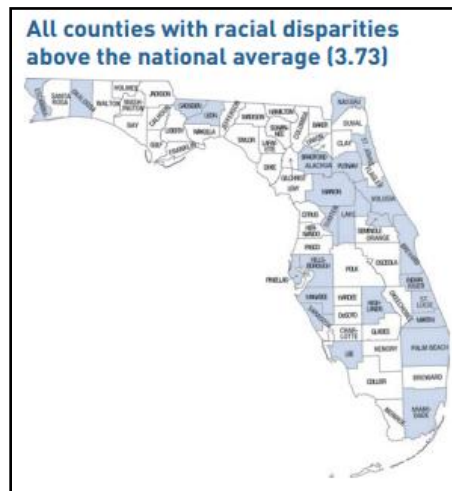
²² Uggen, Christopher. (2014) "The Edge of Stigma: An Experimental Audit of the Effects of Low-Level Criminal Records on Employment," *Criminology*, Volume 52, No. 4, pp.627-654.

²³ Vallas, R., Dietrich, S. (2014) Center for American Progress. "One Strike and You're Out" Retrieved from: <https://cdn.americanprogress.org/wp-content/uploads/2014/12/VallasCriminalRecordsReport.pdf>

Other recent research concludes that being arrested, even without a subsequent conviction, has life-long consequences that include additional criminal activity²⁴. While there is extensive data on recidivism among those who commit felony level offenses, national recidivism data for first-time misdemeanor arrestees is an area that still requires detailed research. In an effort to help fill the existing knowledge gap related to misdemeanor recidivism, the Oregon Criminal Justice Commission charged the state's Statistical Analysis Center to examine state-level court data to determine recidivism rates for offenders with a first-time misdemeanor conviction. They found a reconviction rate over a three-year period ranged from approximately 40% to over 50% depending on the type of offense.²⁵ Even without comprehensive research it is probably safe to extrapolate that nationwide recidivism rates for marijuana possession are within this range.

Minority over-representation in the criminal justice system is a well-documented topic that receives extensive policy debate and many reform efforts. While some headway is evident overall, disparate representation of blacks in the arrest rates for marijuana possession remain fairly constant in Florida even though the use of marijuana is approximately equal between blacks and whites. A June 2013 report published by the ACLU²⁶, used data from the National Household Survey on Drug Abuse and Health, to estimate that during 2010, 14% of blacks and 12% of whites used marijuana during the previous year. While for 2001 the marijuana use rate was 9% for blacks and 10% for whites.

Despite the fact that marijuana use is similar between blacks and whites, throughout the U.S. blacks are 3.7 time more likely to be arrested for marijuana possession than whites. In Florida, blacks are 4.2 times more likely than whites to be arrested for marijuana possession. The map below from the ACLU report reflects Florida counties that exceed the national average for disparate arrest rates for marijuana possession:



The court fees and fines paid by each defendant arrested, whether for possession of marijuana or other charges, become part of the revenue stream used to fund court operations. As reported on the Florida Office of State Courts Administrator's website, the Florida court system collects approximately \$1 billion annually, even though

²⁴ Brame, Robert. (2014) "Demographic Patterns of Cumulative Arrest Prevalence by Ages 18 and 23," *Crime & Delinquency*, published online January 6, 2014.

²⁵ Jones, Richard A. (2005) "Analysis of the Oregon Computerized Criminal History Records," Oregon Criminal Justice Commission. Retrieved from: <http://www.oregon.gov/CJC/docs/cch98.pdf>

²⁶ American Civil Liberties Union (2013) "The War on Marijuana in Black and White." Retrieved from: <https://www.aclu.org/files/assets/aclu-thewaronmarijuana-rel2.pdf>

the actual cost to operate the statewide system is less than the \$1 billion collected. Funding collected in excess of the courts system's annual budget allocation is included as General Revenue and used by the Legislature for non-court related purposes.²⁷ Any change in public policy that reduces the number of cases being processed through the courts system will disrupt this budgetary equilibrium and the consequence of such will need to be considered by policy makers.

The increasing reliance on courts as revenue centers, at the local and state level, led the Conference of State Court Administrators to publish a policy paper that included principals for how court-generated revenue should be used. The report stated, "Most courts agree that court costs imposed in criminal proceedings must bear a reasonable relationship to the expenses of prosecution."²⁸ When taken to the extreme, the result of using court-generated revenue to supplement local budgets can be tragic. The U.S. Department of Justice investigation into the circumstances surrounding the events in Ferguson, Missouri, found police practices were emphasized to create revenue for the city's budget. This in turn led to police officers viewing residents as offenders and sources of revenue - not as citizens to be protected.²⁹

POLICY OPTIONS

Effective policy development usually starts with determining the desired outcome. For the purpose of marijuana possession these are just some of the possible outcomes that can be the result of effective policies:

- Reducing low-level, non-violent crime through enforcement of marijuana possession laws.
- Reducing law enforcement/court system workload and thereby the costs associated with criminal enforcement.
- Aligning public policy more closely with the culture's acceptance of marijuana use.
- Reducing the number of criminal arrests for possession of marijuana in recognition of the negative consequences.
- Providing a process that increases access to substance abuse intervention services.

While it may seem overly simplistic there are three terms that need to be defined before delving into the details of various policy options. These terms are critical because they have come to have different meanings depending on the context in which they are being used:

- Arrest - this can mean either a physical arrest where the person is taken to jail and booked, or the person is issued a "notice to appear" and released on-scene with a future court date.
- Civil citation - issuing a civil citation holds the person accountable, usually in the form of a fine, for committing a violation without criminally prosecuting them. A Uniform Traffic Citation is a form of a civil citation.
- Diversion - typically this term is used in the context of a "pretrial" diversion program where the person is arrested for a minor offense and is provided an option to participate in a pre-trial diversion program in

²⁷ Florida Office of State Courts Administrator. Retrieved from: <http://www.flcourts.org/administration-funding/court-funding-budget/>

²⁸ Conference of State Court Administrators (2012). 2011-2012 Policy Paper. *Courts Are Not Revenue Centers*. Retrieved from: <http://cosca.ncsc.org/~media/Microsites/Files/COSCA/Policy%20Papers/CourtsAreNotRevenueCenters-Final.ashx>

²⁹ U.S. Department of Justice, Civil Rights Division (2015). *Investigation of Ferguson Police Department*. Retrieved from: http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf

exchange for not being criminally prosecuted. There are also "pre-arrest" diversion programs. Florida's Juvenile Civil Citation program is probably the best example of a widely known pre-arrest program.

Enforcement of Florida's misdemeanor marijuana possession laws typically start during a citizen/law enforcement encounter. During the interaction, if it becomes known to the officer that the person has possession of a possible illegal substance the person is detained and the substance field tested and weighed. Once verified to be marijuana and the weight is under 20 grams an arrest is most often the consequence. The totality of the circumstances, i.e. person's attitude, previous arrest record, local employment, place of residence, and other factors, will determine if the officer issues a notice to appear or takes the person to jail to be booked. Either way, the person now has an arrest record.

Except under unusual circumstances, most current policies provide only two choices for a law enforcement officer to make when someone is found to be in possession of marijuana - either let them go or arrest them. Following the above scenario, a "zero-tolerance" policy would end in arrest no matter how little marijuana the person had in their possession or the totality of the circumstances. Zero-tolerance removes all officer discretion. The end result is every person caught committing the unlawful behavior is arrested and criminally prosecuted. Until recently, this type of approach has been widely accepted as part of broader crime control strategies. Especially in high crime areas, zero-tolerance strategies have been credited with decreases in overall crime rates. When dealing with crime "hot-spots" zero-tolerance policing is seen as an effective crime control technique over a short time period. The long-term use of these types of programs, however, leads to high arrest rates particularly in low-income, minority neighborhoods. This in turn contributes to mistrust of law enforcement and, when taken to the extreme, a breakdown in police/community relationships.

Unless a community is willing to accept the long-term consequences of zero-tolerance enforcement, the prevalence of marijuana and the growing acceptance of its recreational use places law enforcement officers in a difficult situation. Most officers and deputies are well-educated professionals who understand that arresting someone for possession of marijuana will have lasting consequences for the person and their family. Because of this, policy-makers need to provide officers and the criminal justice system with alternatives that can be applied fairly and impartially.

Rather than zero-tolerance, another policy option leverages community resources and police discretion. The widely adopted Community Oriented Policing approach emphasizes law enforcement strategies that address neighborhood priorities and concerns. Community policing moved policy-makers and law enforcement officials away from an attitude of "cops know best" to an attitude of "our community knows best." This is especially relevant in the area of marijuana possession, because every community has its own culture for what is acceptable or unacceptable for the use of marijuana. An example of this type of approach would involve law enforcement operations that address those responsible for growing illegal marijuana as opposed to targeting areas where they know individuals possess small amounts of marijuana. Joined with this "supply-side" enforcement would be a well-coordinated outreach effort by law enforcement and community drug abuse service providers informing at-risk neighborhoods and schools about the dangers of marijuana use and the treatment options that are available.

A form of discretionary enforcement is being implemented in Dade County, Florida through the use of a civil fine. As part of the recent debate in Dade County regarding marijuana enforcement policy options, reporters from CBS4, a local Miami television station, reviewed 44,860 marijuana possession cases closed by the Miami-Dade

court between 2010 and 2014.³⁰ Their findings confirmed several key elements of the national research reviewed earlier in this paper:

- Court Workload - misdemeanor arrests for marijuana possession accounted for 10% of all criminal filings in the Miami-Dade court system.
- Racial Disparity - blacks make up less than 20% of the Miami-Dade population, but 55% of the marijuana cases had a black defendant. 75% of those convicted were black.
- Perception vs. Reality - only 2% of the cases resulted in conviction.

Responding to increased public pressure, the Dade County Board of County Commissioners implemented an ordinance that permits law enforcement officers to issue a \$100 fine instead of making an arrest. The decision to arrest or issue a citation is at the discretion of the officer. The impact of this policy is uncertain because the ordinance was only passed June 30, 2015. In addition, there remains several questions including how the fine collection process will work, how the program will be monitored to determine if multiple citations are being issued to the same person, and how the new ordinance will ultimately impact arrests for marijuana possession.

Several major counties in Florida are considering adoption of a citation and fine model similar to the one implemented by Miami-Dade. For example, the Broward County Board of County Commissioners is doing their due diligence on the expected outcomes of implementing a non-criminal, \$100 fine in-lieu of arrest for first time offenders and a \$250 fine for subsequent citations. The county's Office of Management Budget conducted a fiscal analysis and estimated a 25% collection rate for levied fines with first year revenue totaling approximately \$18,000.³¹

Rather than implementing just discretionary civil fines, improving drug intervention and treatment services available through existing pre-trial diversion programs creates another policy alternative. The number of pre-trial diversion programs implemented throughout the United States reflects the acceptance that changes to our country's existing criminal justice policies are possible. According to a report by the National Conference of State Legislatures, 42 states, including Florida, have implemented some form of pre-trial diversion.³² These programs are used only for eligible types of offenders or for specific offenses.

In Florida, misdemeanor pre-trial diversion programs were originally established by statute in cooperation with State Attorney Offices. Programs can vary significantly, but most require payment of a fee, community service hours, and completion of educational courses designed to reduce recidivism. In some jurisdictions an additional fee can be paid instead of participating in the required number of community service hours. Successful completion of a program will usually result in charges either being dropped or having adjudication withheld. Regardless of outcome, however, the person still has, at minimum, an arrest record with the arresting law enforcement agency.

While some general pre-trial diversion programs include drug-related offenses, many do not have the necessary expertise to provide drug treatment services. During the 1990's, Drug Courts were developed to fill this gap in

³⁰ DeFede, Jim. (2015) "Race Matters: Marijuana Cases Flood Court System" Online article retrieved from: <http://miami.cbslocal.com/2015/06/29/race-matters-marijuana-cases-flood-court-system/>

³¹ Olsen, Kayla. (September 29, 2015) Broward County Office of Management and Budget Memorandum. Retrieved from: http://205.166.161.204/docs/2015/CCCM/20151006_459/20356_Exhibit%203%20-%20Cannabis%20Ordinance%20Fiscal%20Impact%20Statement.pdf

³² National Conference of State Legislatures. (June 2013) "Pretrial Diversion." Retrieved from: <http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-diversion.aspx>

services and to improve "therapeutic jurisprudence" by providing judges an avenue to compel drug treatment. From the nation's first drug court in Dade County, Florida, the drug court concept gained popularity because, as Mullen (2002) described, "In drug cases, judges faced two equally unpalatable alternatives—probation or incarceration, neither of which could promise to do anything about the offender's underlying substance abuse problem. Here at last a clear and compelling case could be made for bringing together criminal justice and public health interests in a new, problem-solving approach to justice."³³ Pretrial diversion and drug court programs have a common desired outcome - providing drug education/treatment services in an effort to reduce future criminal activity.

An extensive research project sponsored by the National Institute of Justice reviewed multiple studies of drug courts operating throughout the U.S. Across all programs studied, including several in Florida, researchers found that rearrest rates - felony or misdemeanor - for drug court participants ranged from 26% to 54%. For drug offenders processed through the traditional criminal justice system the rearrest rates ranged from 27% to 86%.³⁴ A project sponsored by the Bureau of Justice Assistance reported a lack of research focus in determining how pretrial diversion programs impact recidivism. The primary reason cited for this was that only a limited number of programs collect recidivism data.³⁵

"Pre-arrest" diversion is a promising alternative for first-time misdemeanor offenders. Use of this type of program allows pretrial and drug court resources to be used for more serious offenses. The first-in-the-nation program operating in Tallahassee, Florida builds upon Florida's successful Juvenile Civil Citation program. Several communities in Florida created civil citation programs for juveniles during the early 1990's. The intent of the programs was to intervene with appropriate services when a juvenile committed a first-time low-level misdemeanor offense rather than use the traditional juvenile justice system. The Florida Legislature enacted legislation during the 2006 session formally approving the use of juvenile citations as a pre-arrest alternative for youth. Currently, law enforcement agencies in almost every county in Florida issue juvenile civil citations. Between June 2014 and July 2015, 8,961 youth received a civil citation.³⁶ This represents a 29% increase over a three year period, reflecting a growing acceptance of this approach.

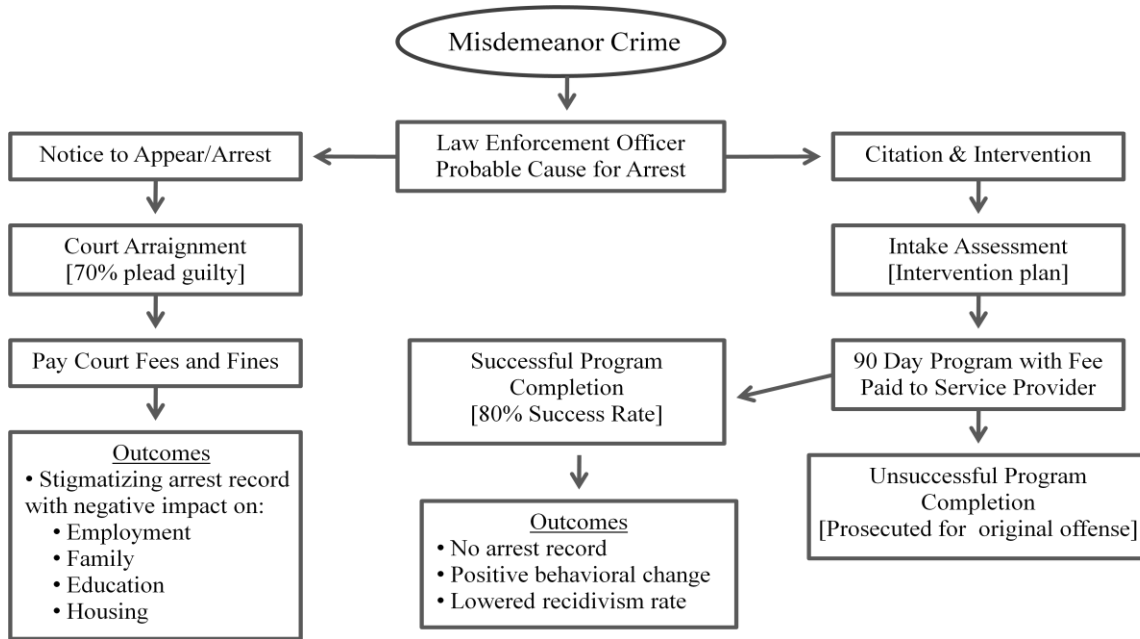
The adult civil citation program implemented in Tallahassee and Leon County March 2013, provides law enforcement a "pre-arrest" diversion alternative for adults. While the program in Leon County approves the use of civil citations with intervention services for specific eligible misdemeanor offenses, one of the offenses included is possession of less than 20 grams of marijuana. Central to the program is the direct diversion of offenders by law enforcement officers to a local social services agency. Successfully completing the voluntary program in 90 days results in the person not having an arrest record. However, if the person fails the program they are then arrested and charged for the offense. The following flow chart compares the traditional criminal prosecution policy process with a citation and intervention model and the corresponding outcomes:

³³ Mullen, Joan. (2002) "Pretrial Diversion." *Encyclopedia of Crime and Justice*. Retrieved from: <http://www.encyclopedia.com/doc/1G2-3403000194.html>

³⁴ Truitt, Linda, et al. (2000) "Evaluations of Escambia County, Florida and Jackson County, Missouri, Drug Courts. Abt Associates Inc. Retrieved from: <https://www.ncjrs.gov/pdffiles1/nij/grants/198477.pdf>

³⁵ Camilletti, Catherine. (2010) "Pretrial Diversion Programs." BJA Research Summary. Retrieved from: <https://www.bja.gov/Publications/PretrialDiversionResearchSummary.pdf>

³⁶ Florida Department of Juvenile Justice, Juvenile Civil Citation Online Dashboard. Retrieved from: <http://www.djj.state.fl.us/research/delinquency-data/civil-citation-dashboard/civil-citation-by-fiscal-year>

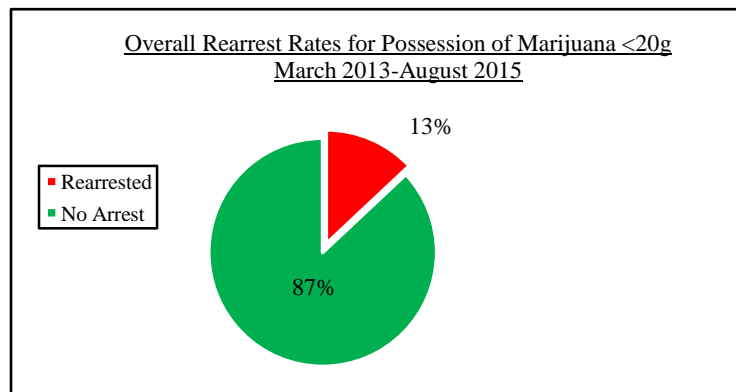
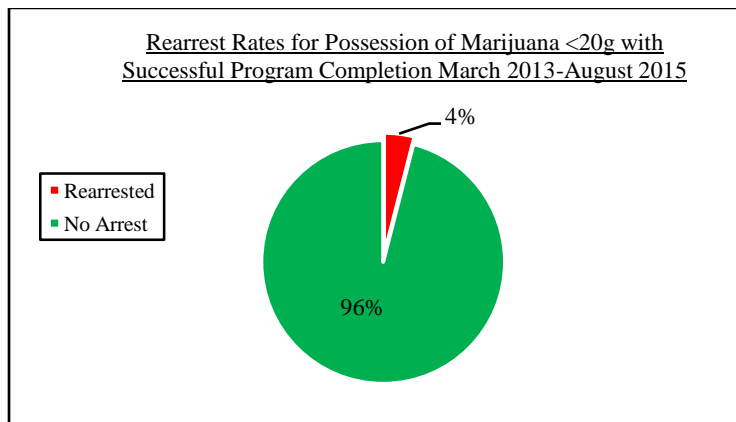


In Leon County once an adult civil citation is issued there are several phases to the intervention process:

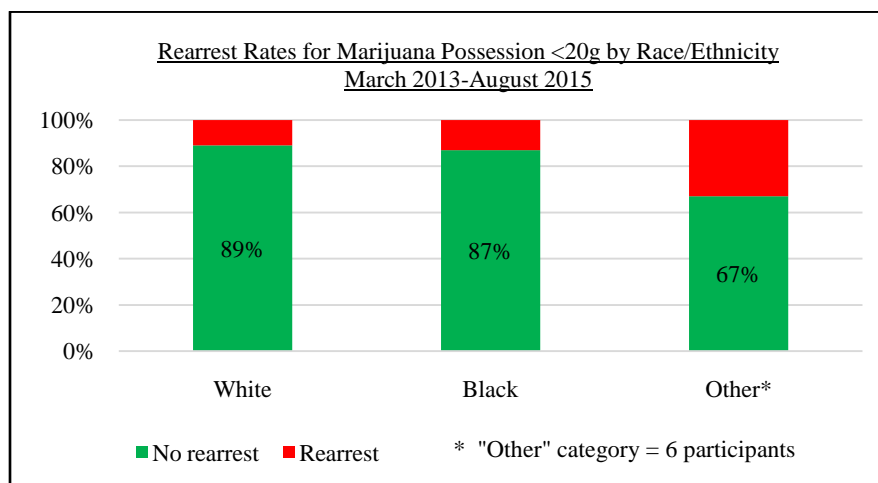
- Assessment:
 - An evidence-based assessment tool is used to determine what intervention services are needed and appropriate for each participant. The individualized, comprehensive intervention plan targets behaviors that impact all areas of the person's life, e.g. substance abuse, family relationships, mental illness, emotional disorders, cognitive disabilities, stress management.
- Intervention:
 - Minimum of three counseling sessions using cognitive behavioral therapy
 - All staff trained in motivational interviewing
 - Drug screening
 - Substance abuse treatment
 - Attendance at two NA or AA meetings
 - On-line courses created by The Change Companies®
 - Drug education
 - Responsible decision making
 - Anger management
 - Life/job skills training
- Case management:
 - 25 hours community service
 - Payment of fees and restitution
 - Referral for other support services as needed based on assessment
 - Coordination with referring law enforcement agency

- Program fee
 - No cost to participating law enforcement agencies
 - Program fee is paid by participant to private service provider
 - Flexible payment plans
 - Payment reductions and waivers available for participants who are indigent

Dr. Albert Kopak, Assistant Professor at the Western Carolina University, Department of Criminology and Criminal Justice recently completed an initial review of recidivism rates for individuals who participated in the Tallahassee/Leon County Adult Civil Citation program. His analysis included those charged with possession of less than 20 grams of marijuana. Dr. Kopak documented that since the program started during March 2013, a total of 825 adults participated in the program with 200 receiving a citation for possession of less than 20 grams of marijuana. 80% of those in the program for marijuana possession completed the program successfully. A total of 4% of participants who successfully completed the program were rearrested. *Rearrest was defined as an arrest for any offense anywhere in the state of Florida subsequent to receiving a civil citation March 2013-August 2015.* Regardless of completing the program successfully or unsuccessfully, the overall rearrest rate was 13%.³⁷ In addition to overall rearrest data, the initial analysis included rearrest rates based on race. The following charts reflect these outcome data:



³⁷ A. Kopak, Personal Communications, October 23, 2015.



The rearrest rates for pre-arrest citations with intervention services supports the desired policy outcomes of reducing workload within the criminal justice system, having fewer people suffer from the negative consequences of being arrested, and improving access to assessment and intervention services.

CONCLUSION

As a result of the rapidly shifting social culture surrounding the use of marijuana, changes are needed to existing public safety policies and law enforcement practices. Continuing to arrest and criminally prosecute individuals for possession of less than 20 grams of marijuana marginalizes those who are arrested and increases the social tension between law enforcement agencies and those who support the changing acceptance of marijuana use. An emerging body of research clearly documents the personal and social harm that results from the growing number of marijuana users and current policies for enforcement of marijuana possession laws.

Providing law enforcement officers the discretion to divert individuals who possess small amounts of marijuana away from the traditional criminal justice system, at the earliest point possible, avoids the negative consequences of an arrest record. There are two approaches described in this paper that directly address this desired outcome. The first is the use of a civil fine; and second is pre-arrest diversion that includes assessment and intervention services.

Creating policies that allow law enforcement discretion to issue a civil fine instead of making an arrest for marijuana possession has the short-term potential to reduce the workload for law enforcement and the court system. It also aligns public policy more closely with the growing acceptance of marijuana use. It does not, however, improve access to substance abuse treatment and intervention services, nor does it help curb the increasing use of marijuana. And the long-term outcome may be counterproductive. For some groups, a civil fine rather than criminal arrest legitimizes the use of marijuana. The national survey data cited above in the "Marijuana Addiction/Treatment" section reflect the increasing use of marijuana and the corresponding increase in the number of individuals who are diagnosed with marijuana use disorder. Implementing civil fine policies may be a "win" politically, but without an intervention component lives will continue to be ruined through drug addiction and the corresponding threat to public safety.

The on-going debate in many communities will hopefully lead to policies that are more evidence-based and deliberate in how the criminal justice system responds to cases involving possession of marijuana. Pre-arrest

diversion is an example that moves public policy beyond the traditional enforcement tools of fines and incarceration. The appropriate use of pre-arrest diversion gives law enforcement officers a new tool and provides an alternative to arrest that includes evidence-based assessment and effective behavioral intervention services. Tallahassee's Adult Civil Citation program is clearly an emerging model that benefits the individual who is caught by law enforcement in possession of marijuana. In addition, the misdemeanor court system benefits from a reduction in workload and, more importantly, public safety is improved through lowered recidivism rates.
