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How Will the Legalization of Marijuana Affect the Incarcerated in Illinois?

Kevin Anderson

This article will dive into the statistics of people incarcerated in Illinois and the legalization of cannabis. “Illinois has the 22nd lowest incarceration rate in the country,” which puts the state near the middle.¹ For every 100,000 people in Illinois, about 341 were incarcerated for over a year or more in 2016.² With that number in mind, Illinois totaled about 43,657 people in state prisons in 2016.³ This figure includes only those incarcerated in state prisons in Illinois, not the federal.⁴ In addition, there are probably more people incarcerated in Illinois than the 43,657 individuals because the U.S. Department of Justice counts prisoners as “sentenced” to a year or more in prison.⁵ Thus, the government’s number is not fully representative because many individuals are sentenced to less than a year.⁶

First, let us start with a historical background on how marijuana is perceived in Illinois and how that perception has evolved over the years. In an interview with Kathleen Panozzo, a former assistant state’s attorney in Illinois and a current Judge at Markham Court House, she described how the perception of marijuana has transformed overtime.⁷ Judge Panozzo described marijuana as part of the war on drugs in the 80’s and 90’s when she first started out in the State’s Attorney’s Office.⁸ The perception of marijuana “vilified dealers and users” and this perception went all the way up to the president, which is in part how the War on Drugs began.⁹ Looking at the numbers, Judge Panozzo describes that this line of vilifying affected mainly Hispanics and blacks, and instead of offering treatment many of the “villains” were prosecuted and sent to jail.¹⁰ As the years when on and as Judge Panozzo became a judge in 2007,

¹ Shannon Antinori, *Illinois Incarceration Rate: See How It Stacks Up to Other States Stone Mountain-Lithonia*, GA PATCH (Jan. 21, 2018), <https://patch.com/illinois/across-illinois-incarceration-rate-see-how-it-stacks-other-states> (last visited Feb 27, 2019).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Phone Interview with Kathleen Panozzo, *Marijuana and the Law* (2019).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

she noticed a shift in the tides.¹¹ People's perception of marijuana changed drastically and they began to see it as a non-addictive substance for recreational use.¹² With that change the courts have altered their perception on punishment and instead of jail time, many of the judges, especially Judge Panazzo, seek to get an individual treatment.¹³ However, even as the tides shift to a more liberal use of marijuana there is still a significant number of people incarcerated because of their use with marijuana, and it is important to get a head count to analyze how much of an effect legalization would have in Illinois.

According to Illinois Policy, 672 people in Illinois were serving time for violating the Cannabis Control Act, with another 731 people violating the act while on parole.¹⁴ In any case, about 3% of the Illinois incarcerated population is sentenced to a year or more for cannabis charges.¹⁵ This percentage is taken from the total number of people involved in cannabis related crimes in Illinois (672 plus 731) divided by the total population of incarcerated people in Illinois (43,657).

There are different types of cannabis crimes in Illinois. Under one statute, anything over 2.5 grams is criminalized.¹⁶ Under the statute, a person caught with 2.5 plus grams of cannabis can serve 30 days to 6 months of jail time.¹⁷ Along with possible jail time, individuals caught with marijuana can face other difficulties such as fines imposed by the state; depending on the county you are in or city, you can get an additional fine that can total close to a \$1,000.¹⁸ Under another statute, it is unlawful for any person to deliver cannabis to another person, possess cannabis with intent to deliver it or to manufacture marijuana.¹⁹ Illinois also used to have a zero-tolerance law which meant any trace of THC in an individual's body was charged with a DUI.²⁰ However the law has loosened its reigns a little bit to allow for 5 nanograms.²¹ Here it is

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Vincent Carruso, *Marijuana Convictions Soon Might Come Off Illinois Criminal Records*, ILLINOIS POLICY INSTITUTE (Nov. 30, 2018), <https://www.illinoispolicy.org/marijuana-convictions-soon-might-come-off-illinois-criminal-records/> (last visited Feb 27, 2019).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Cannabis or Marijuana Laws and Penalties Basics*, ILLINOIS LEGAL AID ONLINE, <https://www.illinoislegalaid.org/legal-information/cannabis-or-marijuana-laws-and-penalties-basics> (last visited Feb 27, 2019).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

important to note that in their statistics, the government only includes incarcerated people with sentences longer than one year.²² Thus, these numbers are underinclusive, but they form a general basis on what's to come in the future for Illinois, and that it is the basic evidence for this article.

A logical next question is how will legalizing cannabis in Illinois affect those numbers? One primary study done by McMaster Health Forum looked into the potential effects, circumstances, and data for cannabis use and how that would translate to society.²³ The forum found that when the United States was compared to the purchasing of cannabis in “the Netherlands, where its use is de facto decriminalized (i.e., where possession of cannabis remains a crime but is not enforced).”²⁴ “The Study looked into economic and fiscal impacts of legalization, one cost-benefit analysis compared a status quo policy (where cannabis would remain a criminal offense) to a regulated-legalized model in Australia.”²⁵ The study found when projected government revenue is included there was “a higher net social benefit of a legalized model than the status quo policy government.”²⁶

Basically, the study did a wide scale scope of the potential effects of legalization and criminalization in different countries.²⁷ In the places that criminalized cannabis and marijuana, the largest expenditure was related to “criminal penalties, followed by policing costs.”²⁸ In the places that legalized cannabis and marijuana, the largest payouts were directed towards “personal costs of licensing, followed by consumer information, and prevention and education services.”²⁹ The study found that the money involved with cannabis differed on reasons why the money was being spent, policing and prosecuting versus controlling and information.³⁰

With this in mind, Illinois could achieve a similar cost balance through legalization. Illinois would spend less money on controlling cannabis than on prosecuting and incarcerating. Not only would Illinois have fewer prosecutions and incarcerated people from cannabis, but it ideally would save a couple extra

²² *Id.*

²³ Wayne Hall & Michael Lynskey, *Evaluating the Public Health Impacts of Legalizing Recreational Cannabis Use in the United States*, 111 *ADDICTION* 1764–1773 (2016).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

bucks in the meantime. The connection being made here is that if there is less money being spent on prosecuting charges based on cannabis when legalized, as the study showed, it implies that not many people are being charged for crimes of cannabis. With fewer charges against people, there is less potential for people to be incarcerated.

Take Colorado as an example. In 2012, Colorado passed legislation making the state one of the first states to legalize marijuana.³¹ In the first month that marijuana stores opened in Colorado, profits exceeded \$14 million and medical sales more than doubled that amount at \$32.5 million.³² The recreational use of marijuana has given Colorado a steady increase in capital over the past few years from 2014 to 2017.³³ By 2017, recreational profits had produced almost \$1.1 billion in revenue, and in addition medical marijuana profits were at around \$417 million.³⁴ Thus, in 2017, Colorado exceeded 1.5 billion in total combined marijuana sales.³⁵

In terms of the criminal side of marijuana in Colorado, between 2012 and 2014, the number of marijuana arrests fell almost 50% because of legalization.³⁶

As a result, Illinois is going to benefit from the legalization from cannabis. Not only would this help decrease the incarcerated population, but would create revenue and minimize expenses for Illinois.

³¹ Alison Felix, *The Economic Effects of the Marijuana Industry in Colorado* Federal Reserve Bank of Kansas City, FEDERAL RESERVE BANK OF KANSAS CITY (Apr. 16, 2018), <https://www.kansascityfed.org/en/publications/research/rme/articles/2018/rme-1q-2018> (last visited Apr 7, 2019).

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*