

Clogging the Courts

Effects of Marijuana Criminalization on our Local Court Systems

Lehigh Valley Justice Institute
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ABSTRACT

Marijuana legalization is a hotly debated issue that continues throughout the United States. Today, many states have decriminalized marijuana, but Pennsylvania and the Lehigh Valley retain outdated and racially discriminatory marijuana laws. We investigate and quantify how marijuana criminalization affects our communities and court systems to get a better picture of this contemporary issue and provide local lawmakers with evidence for informed decriminalization reform.

FINDINGS

- Marijuana criminalization disproportionately affects Black residents.***
Black residents are 6.4 times more likely to be arrested for marijuana.
- The courts are clogged up with marijuana cases.***
One in six cases regarded marijuana.
- Most offenses alongside marijuana charges are not serious.***
Only 4% of co-charges were violent.
- Bethlehem's decriminalization ordinance shows promise in legalization efforts to reduce court and community burden.***
Consistent enforcement is necessary to deliver reform.

Background

The legality of marijuana has been a contentious subject throughout United States history, and this debate persists today. Starting with the Marijuana Tax Act of 1937 and catapulting into the racist and detrimental “War on Drugs” enacted by the Nixon administration in 1971, marijuana continued its descent into notoriety, eventually being labeled a “gateway drug” and prompting detentions and hefty fines. Despite the initial outcry, the perception of marijuana is shifting, in part from improved evidence on the drug’s dangers, medical uses, and racist history. While chronic misuse has been linked to mental and physical health problems,¹ responsible use has medical benefits such as chronic pain,² nausea,² anxiety,³ and epilepsy relief.¹ The “gateway drug” label has also been debunked, as it is more likely an individual will resort to other substances such as alcohol or nicotine and increase their dosage before choosing marijuana.¹ Marijuana is less of a gateway drug than it is a gateway into the criminal justice system.⁴

Today, eighteen states have fully legalized marijuana,ⁱ eleven have decriminalized it,ⁱⁱ and eighteen have legalized it for medical reasons.ⁱⁱⁱ Where criminalization lingers, users can expect potentially life-altering penalties if they are caught. In Pennsylvania, possession of fewer than 30 grams of the plant incurs a maximum \$500 fine and a jail sentence of up to 30 days, but this is only the beginning. A marijuana conviction can derail a person’s entire livelihood by creating barriers to affordable housing, employment, student financial aid, and even child custody.⁵ Moreover, it is well-documented that marijuana prohibition harms minority groups. Nationally, Black people are 3.64 times more likely to be arrested for marijuana than White people.⁶

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ⁱ WA, OR, MT, CA, NV, AK, CO, AZ, NM, IL, MI, VA, NY, NJ, CT, RI, MA, VT, and ME.

ⁱⁱ ND, MN, MO, OH, MD, DE, MS, NH, NE, and NC.

ⁱⁱⁱ ND, MN, MO, OH, MD, DE, MS, NH, SD, UT, OK, AR, LA, AL, FL, WV, and PA.

Not only does marijuana criminalization harm individuals and communities (disproportionately so for Black communities), but it is also onerous to the criminal justice system. In 2018, there were 692,965 total marijuana-related arrests, and nine out of ten were for possession.⁶ The American Civil Liberties Union (ACLU) estimates that marijuana criminalization cost the U.S. \$3.6 billion in 2010, money that could have been spent on revitalizing communities and addressing more serious crime.⁵ Pennsylvania alone spent more than \$100 million on marijuana prohibition in 2010.⁵

These figures beg the question: what is the impact of marijuana criminalization on local courts and criminal justice systems? Through a criminal justice lens, this report seeks to measure how this affects our communities and how legalization might alleviate unnecessary stressors on our courts. Using Bethlehem’s decriminalization ordinance as a model for the application of broader decriminalization efforts, we aspire to provide officials with information to make knowledgeable decisions for the well-being of Lehigh Valley courts and, by extension, its residents.

Methodology

The dataset was obtained from the Administrative Office of Pennsylvania Courts (AOPC) and contained information on all criminal cases filed in Northampton and Lehigh Counties between January 1, 2018, and March 31, 2021. Cases were determined by charges filed upon arrest; dismissed, withdrawn, or acquitted charges remained in the dataset. A case that involved a marijuana charge was labeled as a marijuana case.

District population numbers were obtained from the U.S. Census Bureau’s 2019 American Community Survey (ACS). Area designations of urban, suburban, and rural were determined using the Bureau of Justice Statistics’ Weighted Housing-Unit Density.⁷

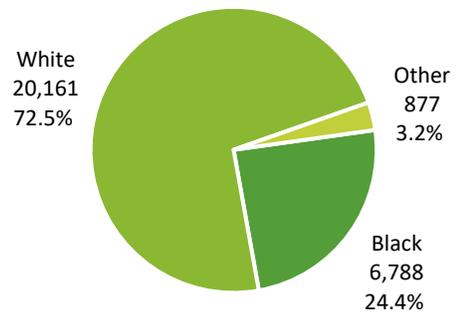
The AOPC contends that some cases may have been removed from the dataset as per the Clean Slate law. The final dataset contained 27,826 cases.

Results

Marijuana criminalization excessively affects Black residents.

Black defendants were more likely to be charged with a marijuana offense than White defendants, despite a 2016 national survey indicating that both races use marijuana at the same rate of 14-17%.⁸ As shown in Figure 1,^{iv} one-third (32.9%) of marijuana cases had Black defendants while one-quarter (24.4%) of all cases had Black defendants. Keep in mind that only 6.6% of the Lehigh Valley’s population is Black. Furthermore, 22.1% of cases involving Black defendants contained a marijuana charge, while 14.4% of cases involving White defendants contained a marijuana charge. This suggests that not only are Black residents more likely to be arrested, but they are also more likely to receive a marijuana charge. Police may be over-policing Black neighborhoods, letting White offenders off the hook for marijuana offenses, or both.

All Cases



Marijuana Cases

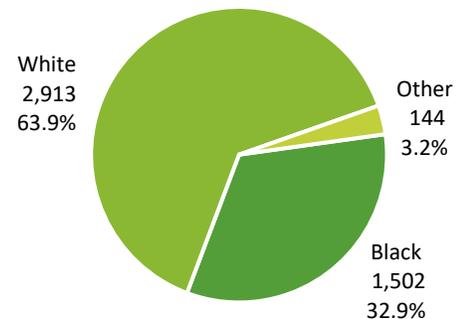


FIGURE 1. RACE DISTRIBUTION OF DEFENDANTS IN (A) ALL CASES AND (B) MARIJUANA CASES.

^{iv} The “Other” category includes Asian, Asian/Pacific Islander, Bi-Racial, Native American/Alaskan Native, Native Hawaiian/Pacific Islander, Unknown/Unreported, and NA.

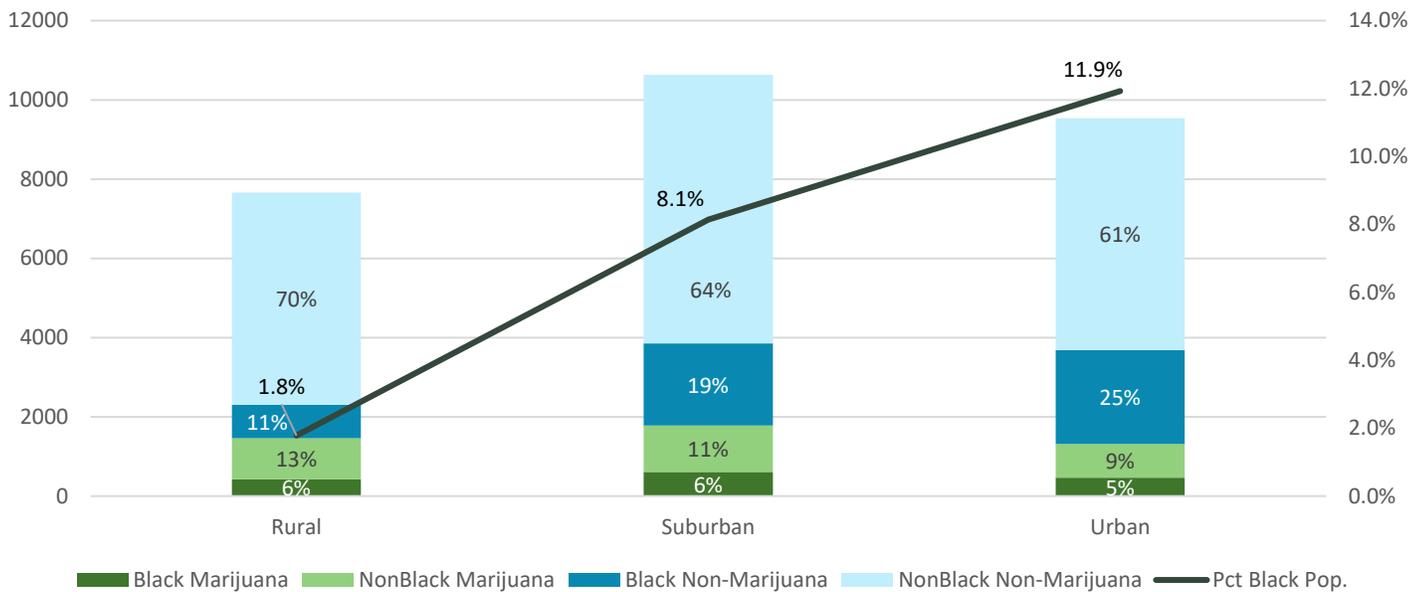


FIGURE 2. COUNTS OF CASES BY REGION, RACE, AND MARIJUANA INVOLVEMENT.

According to the 2019 ACS, the Lehigh Valley has 44,196 Black residents and 548,600 White residents. Between January 2018 and March 2021, there were 1,502 marijuana cases with Black defendants and 2,913 marijuana cases with White defendants. *This means that Black residents were 6.4 times more likely to be arrested for marijuana than White residents.*

Figure 2 investigates racial disparity in different geographic locations. While rural districts had fewer cases than urban districts overall, they had the largest proportion of

marijuana cases at 19%. In fact, urban districts, with a Black proportion of 11.9%, had the smallest proportion of marijuana cases at 14%. Black people were more likely to receive a marijuana charge in rural areas than urban areas: 16% of urban Black cases regarded marijuana, while 34% of rural Black cases regarded marijuana. This suggests that marijuana laws affect rural more than urban residents and rural Black neighborhoods are overpoliced.

Younger people were more affected by marijuana laws; no differences were found by gender.

Marijuana charges were more common among younger defendants, as Figure 3 demonstrates. Four in ten (39.5%) cases with defendants aged 18-25 involved a marijuana charge. While 46.8% of all defendants were 26-40 years old, 45.7% of defendants in marijuana cases were 18-25 years old. One-third (31.8%) of cases with 18-year-old defendants involved a marijuana charge. As convictions can seriously hamper employment and housing opportunities, these young people are at a disadvantage that is difficult to bounce back from, even if they never use marijuana again after their case closes.

Marijuana case rates were similar for males and females. Marijuana charges existed in 16.9% of cases with male defendants and 14.7% of cases with female defendants.

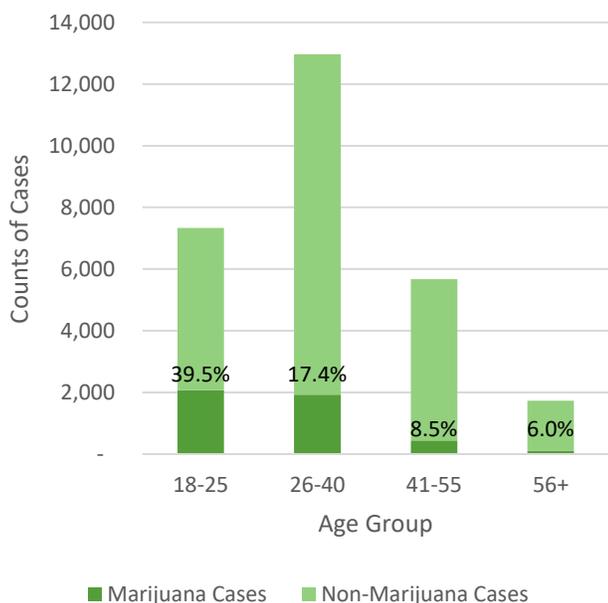


FIGURE 3. CASE COUNTS BY AGE GROUP AND MARIJUANA STATUS

Marijuana criminalization clogs the courts.

Marijuana criminalization slows down our criminal justice system by introducing lengthy cases into overworked courts, detaining nonviolent defendants in overcrowded jails on bail, and burdening understaffed public defenders. Of the 27,826 cases in the dataset, 4,559, or 16.4%, contained a marijuana charge. Equivalently, one in six cases regarded marijuana, but Figure 4 shows that this rate varied by district. In districts 03205 and 03212, representing Easton in Northampton County, 6.9% and 9.4% of cases had a marijuana charge. Just north in district 03209, 23.7% of cases had a marijuana charge. In Lehigh County’s 31103, Coopersburg, this rate was 7.9% but in the neighboring 03204, Hellertown, the rate was 36.3%. These variations, in addition to the geographic disparities discussed earlier, suggest massive differences in policing and attitudes toward marijuana crimes in the Valley. Thus, marijuana criminalization burdens courts differently.

Most court cases take months to complete, and marijuana cases are no exception. Among all cases, the average case lasted 162 days, which is more than five months. Criminalizing marijuana adds more extensive cases to the courts. Half of the marijuana cases took almost four months

(3.75) to complete. The longest marijuana case took 1,129 days, more than three years, to complete. The charges were the summary charge for disorderly conduct and the state misdemeanor charge for possession of a small amount of marijuana – and the disorderly conduct charge was withdrawn.

These cases also burden the local jails by detaining defendants who do not post cash bail. A total of 952 (20.9%) marijuana cases involved pretrial detention for at least three days due to failure to post bail, equating to one in five. While this proportion is lower than that of the entire dataset (40.6% of all cases had defendants detained pretrial on bail), this still contributes to jail overcrowding, as 8.4% of all defendants held on bail were charged with a marijuana offense.

Public defenders are overworked, understaffed, and underfunded,⁹ and marijuana criminalization worsens this problem. Three in ten (31.1%) marijuana cases retained a public defender, and marijuana cases accounted for 10.9% of cases with a public defender. Legalization would have unloaded 1,418 cases from public defenders’ offices between January 2018 and March 2021.

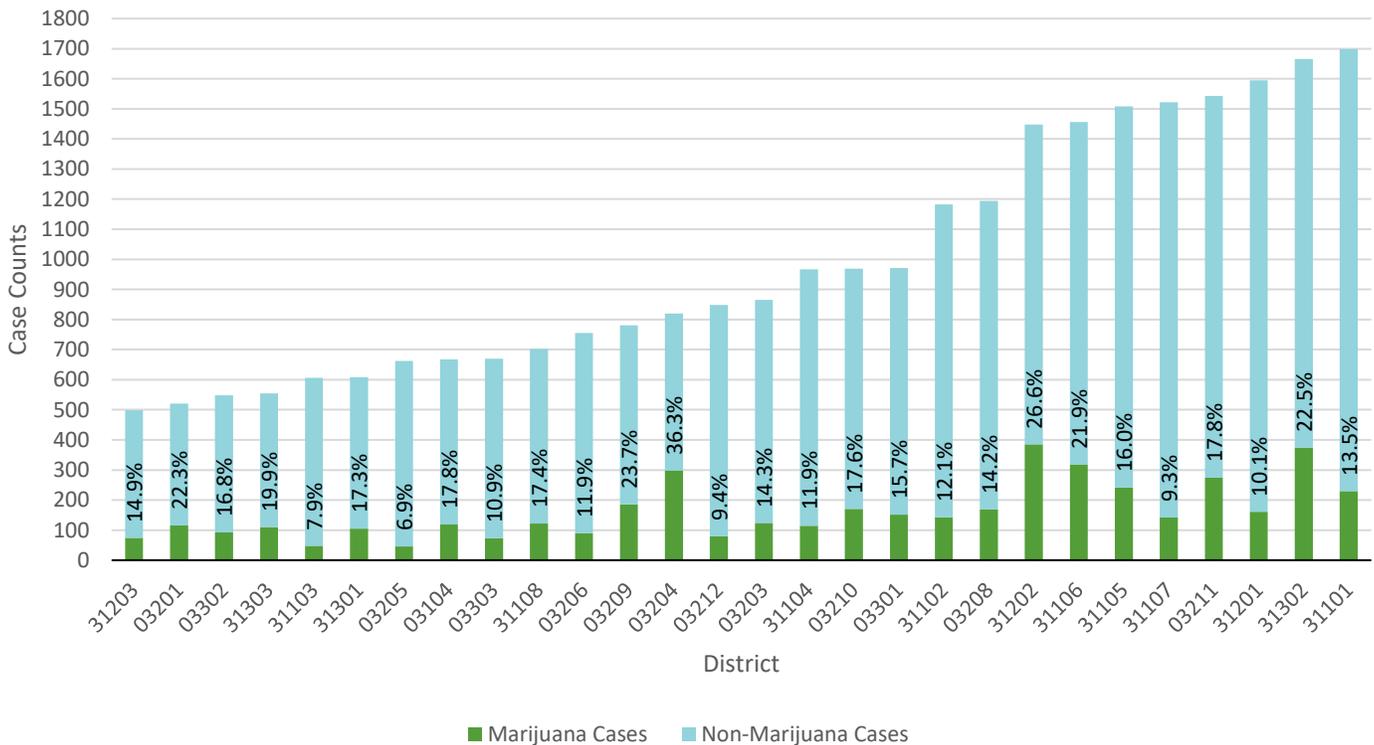


FIGURE 4. COUNTS OF CASES AND THE MARIJUANA CASE RATE IN EACH DISTRICT.

The co-charges were often not violent.

Ninety-six percent of the offenses charged in tandem with marijuana crimes were not violent. Figure 5 and Table 1 show that most are traffic violations such as careless driving, disregarding traffic lanes, taillight or headlight issues, and license matters. A considerable portion was first-offense DUIs. Figure 6 shows that just 8% of co-charges are felonies; the remaining are misdemeanors and summaries. This suggests that many defendants arrested on marijuana charges are not violent criminals and were likely charged with marijuana offenses after being pulled over in traffic.

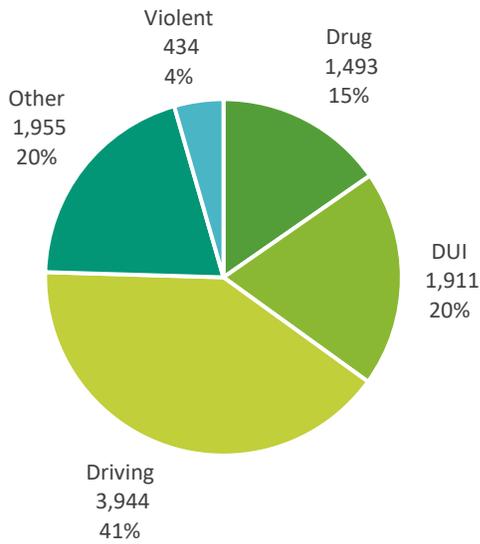


FIGURE 5. DISTRIBUTION OF MARIJUANA CO-CHARGES.

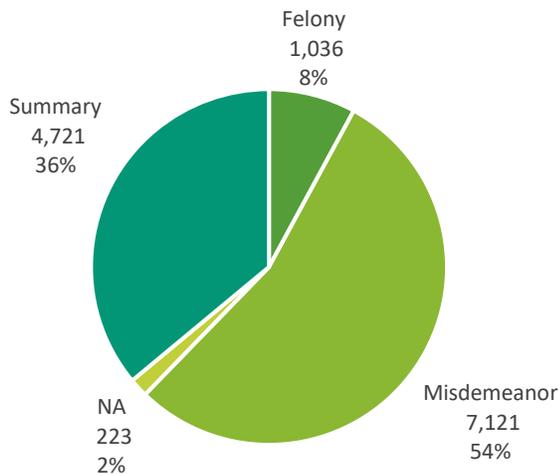


FIGURE 6. DISTRIBUTION OF MARIJUANA CHARGE CO-CHARGES' OFFENSE GRADES.

Charge	Frequency Count	Relative Frequency	Grade	Type
Int Poss Contr Subst by Per Not Reg	1,035	10.63%	M	Drug
DUI: Controlled Substance - Impaired Ability - 1st Offense	558	5.73%	M1	DUI
DUI: Controlled Substance - Schedule 1 - 1st Offense	555	5.70%	M1	DUI
Driv While Oper Priv Susp or Revoked	542	5.56%	S	Driving
Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver	350	3.59%	F	Drug
Dr Unregist Veh	327	3.36%	S	Driving
Careless Driving	308	3.16%	S	Driving
Disregard Traffic Lane (Single)	304	3.12%	S	Driving
Driving W/O A License	279	2.86%	S	Driving
DUI: Controlled Substance - Metabolite - 1st Offense	229	2.35%	M	DUI
No Rear Lights	225	2.31%	S	Driving

TABLE 1. MARIJUANA CO-CHARGES.

Bethlehem's local ordinance shows promise in alleviating consequences.

Pennsylvania and the Lehigh Valley have been working on decriminalization, which is reducing or removing criminal classifications and/or penalties while preserving some regulation, with varying degrees of success. In 2018, two of the Valley's major cities, Allentown and Bethlehem, passed ordinances to decriminalize marijuana in small amounts. They overlap the state laws for small use and possession of up to 30 grams of marijuana. The purpose was to lessen the negative impact of petty marijuana charges on defendants and to keep police officers on the streets instead of in court.¹⁰ The state laws are misdemeanors and carry penalties of a \$500 fine and up to 30 days in prison. The local ordinances (LO) reduce these offenses to summaries, which don't require an arrest, don't necessitate officers to appear in court, and only carry a \$25 fine.^{11,12} Summary offenses are less severe than misdemeanor offenses in that they can be expunged after 5 years if the defendant is not rearrested. Table 2 summarizes these charges.

	State	LO
Possession Charge	35 §780-113 §§A31 Possession of a small amount of marijuana (<=30 g)	LO §744.02 §§a Possession of a small amount of marijuana (<=30 g)
Paraphernalia Charge	Title 35 §780-113 §§A32 Possession of drug paraphernalia	LO §744.02 §§b1 Possession of marijuana paraphernalia
Grade	Misdemeanor (M)	Summary (S)
Sentence	\$500 fine and up to 30 days in jail.	\$25 fine (first offense)

TABLE 2. STATE AND BETHLEHEM LO CHARGES FOR SMALL AMOUNT OF MARIJUANA POSSESSION AND PARAPHERNALIA.

Allentown¹³ and Bethlehem¹¹ passed their LOs in May 2018 and June 2018 respectively, but Lehigh County District Attorney Jim Martin prevented their execution. Mr. Martin stated that conflict with state law prohibits officers from enforcing the LOs.¹⁰ Bethlehem's districts, however, are split between Lehigh and Northampton Counties. This resulted in LO enforcement in Bethlehem's Northampton County districts while remaining unenforced in its Lehigh County district, 31106. This caused stress and confusion

among police officers and raised concerns of fairness¹⁰ – a person could be charged with a misdemeanor rather than a summary because of what side of the street they were on. To address this, the Bethlehem Public Safety Committee decided that officers were allowed the discretion to file both the LO and the state law and leave the decision up to the district magistrate on which charge to retain.^{10,11}

The ability to double-charge defeats the purpose of the LO: to lighten the load on the criminal justice system and to decriminalize small amounts of marijuana. If two charges are filed, the magistrate must decide which charge to pursue, which takes up the court's time. With the ability to double-charge, the LO's benefits become void at the discretion of the officer, allowing for personal judgment and potential bias to replace a standard rule of law.

The data reflect these decisions. Table 3 shows the number of cases in each Bethlehem district that were charged with the local ordinance (LO), state charge, and both after the ordinance was implemented in late June 2018. While officers had the option to charge the LO or to double-charge, 97% of cases only regarded state charges. The LO was filed in 196 cases, but double-charging occurred in 137 (70%). The different rates among districts imply that violators are more likely to receive harsher punishment based on their geography within a city, the officer they encounter, and the magistrate they receive.

District	Both	LO	State	Total
03211	64 (16%)	39 (10%)	287 (74%)	390
03210	41 (17%)	9 (4%)	196 (80%)	246
03201	22 (14%)	9 (6%)	127 (80%)	158
03104	7 (4%)	2 (1%)	173 (95%)	182
31106	3 (1%)	0 (0%)	401 (99%)	404
Total	137	59	6854	

TABLE 3. COUNTS OF LO AND STATE CHARGES IN BETHLEHEM DISTRICTS.

In Table 4 we investigate the outcomes of the double-charged cases for patterns in judicial decisions. Of the 137 cases with double-charging, 62 were completed at the time of data acquisition. In 45% of these cases, judges rejected the state charge for the LO. However, in 19% of cases judges rejected the LO in favor of the state charge. Further, in 23% of cases, both the LO and the state charge were sentenced!

Case Outcome	Frequency	Relative Frequency
State charge sentenced; LO charge tossed	12	19%
State charge tossed; LO charge sentenced	28	45%
Both charges tossed	8	13%
Both charges sentenced	14	23%

TABLE 4. CHARGE OUTCOMES OF DOUBLE-CHARGED CASES.

The double-charging rule and execution disagreements limited usage of the LO, but evidence suggests that it would have an impact on reducing the burden to the criminal justice system if marijuana were fully decriminalized. Firstly, the average completion time for a case with only LO charges (38) was 2.77 months, one month less than the average marijuana case. Secondly, defendants charged with the LO were more likely to represent themselves and not employ a public defender than those charged with the misdemeanor, as shown in Figure 7.^v

One charge of the Allentown LO was found. If Allentown^{vi} had enforced its LO, 1,246 marijuana charges in 696 cases would have been summaries instead of misdemeanors.

Discussion

This study supports the findings of other research that a cornucopia of negative ramifications accompanies marijuana laws. Nationally, Black people are 3.64 times more likely to be charged with a marijuana offense than White people, but this rate is worse in the Lehigh Valley. Here, Black residents were 6.4 times more likely to be charged with a marijuana crime. Criminalization victimizes Black and Brown populations, further subjugating these communities and exacerbating the distrust they have in law enforcement and criminal justice processes. These laws also unduly afflict young people by inducting them into the criminal justice system and tacking on a criminal record that hampers their ability to reach their full economic and social potential.

^v LO cases include all cases that contained the LO charge, and state cases include all cases that contained the state charge. Cases that had both charges were not included in this chart. State cases came from all Lehigh Valley districts.

^{vi} Allentown districts include 31101, 31102, 31103, 31104, and 31201.

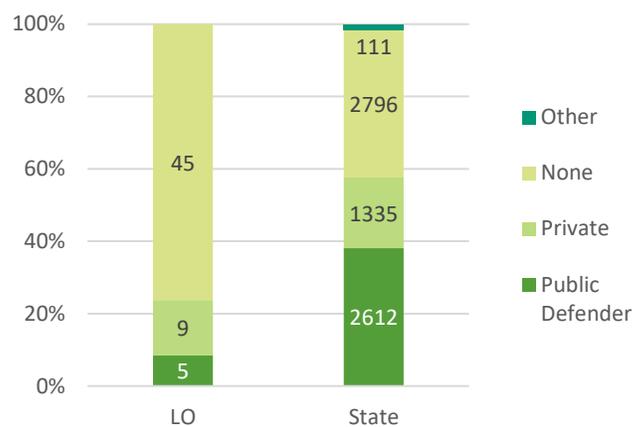


FIGURE 7. REPRESENTATION BY CHARGE TYPE.

While these reasons are enough to initiate marijuana reform, this study highlights another important result: criminalization weighs down the courts. In three years, there were 4,559 marijuana cases in the Valley, one in every six criminal cases. Each case takes approximately four months to finish, and three in ten involve public defenders, who are often so overworked they provide substandard defenses.¹⁴ One in five of these largely nonviolent offenders were stored in overcrowded jails due to failure to post cash bail, removing their economic prosperity from their families and their neighborhood. This does nothing but weaken our community and criminal justice system.

Though usage was limited, Bethlehem's decriminalization LO showed promise in lessening some of these costs. LO case lengths were approximately one month shorter than state charge cases and they were less likely to utilize public defenders. Nonetheless, varying enforcement rates and double-charging followed the chaotic execution of the LO. This not only resulted in the LO's benefits being subject to officers' and judges' potential biases, but it also resulted in some defendants being subject to two sentences for the same crime. It is time to do something about these pointless laws that only harm our citizens and communities.

Recommendations

#1. Pass and enforce local ordinances.

Our analysis suggests that marijuana criminalization not only floods courts with unnecessary cases, but also burdens public defenders, hampers courts' ability to act efficiently,

contributes to jail overcrowding, and targets already marginalized Black and Brown citizens. Results from Bethlehem's LO support decriminalization efforts by demonstrating that they may alleviate the burden placed on the courts and that placed on residents by a harmful criminal record. *Therefore, we endorse the immediate implementation of decriminalization LOs throughout the Lehigh Valley while we wait for statewide decriminalization from Harrisburg.* However, as Allentown's and Bethlehem's stories exhibit, appropriately enforcing these LOs is just as important to ensure their intentions are actualized. Elected officials are representatives of the people, and hence the police departments, prosecutors, and judges that serve them should respect LOs. Not only would this benefit Lehigh Valley residents and courts, but it would also serve as a model for how statewide decriminalization could affect the diverse regions of Pennsylvania.

#2. Address marijuana health concerns through public health initiatives.

Misuse of any drug is dangerous. Decriminalization of marijuana possession is not intended to endorse substance use, but to redirect resources into curbing addictions and dependencies at their source. *Instead of turning users into convicts whose economic struggles frequently fuel a cycle of drug abuse,¹⁵ marijuana should be addressed through wellness programs, drug education, and public health initiatives.* Jail cells and punitive measures have not been found to reduce drug use rates, but substance abuse treatment and prevention strategies have.¹⁵ Steering chronic users and addicts towards rehabilitation efforts can help them reorient their lives instead of the criminal justice system taking them away. This would also allow our police officers to focus on more serious crimes.

Limitations and Future Work

This study experienced limitations that were outside of our control. First, research was limited by the few cases in which Bethlehem's LO was invoked, so we could not complete statistical tests on the LO's effects. Second, we were unable to study variations in marijuana charges of defendants with Hispanic ethnicity because the AOPC does not accurately track ethnic identities. Many Hispanic people are labeled as White, and this may have skewed the racial

analysis as there is a difference in Hispanic marijuana arrest rates in other locations.¹⁶ This is another example of how appropriately tracking racial and ethnic identifiers is crucial for criminal justice research.

Many cases were unfinished at the time of data obtention, and as such sentencing information about these cases was unavailable. In the future, an investigation into sentences for marijuana crimes would supplement the current study's results by examining how these sentences affect people, their families, and the criminal justice system.

Conclusion

Proponents of marijuana criminalization claim that it serves and protects the public,¹⁷ but this is not supported by evidence.¹⁵ Studies on legalized states indicate that legalization had no effect on violent crime,¹⁸ traffic fatalities,¹⁷ economic conditions,¹⁷ or usage trends among adults and youth.^{15,17} Instead, marijuana criminalization devastates countless individuals and disenfranchised communities. It widens racial injustices, ensnares young people in the criminal justice system, and damages communities by limiting or eradicating employment, housing, and economic opportunities for their residents. It costs our courts millions by introducing lengthy cases for public defenders to represent nonviolent offenders and crowding them in jails. As decriminalization in Bethlehem demonstrated, legalization has the potential to reduce these burdens, and it could even create a significant source of revenue for the state. Legalized states report as much as \$20 million per month in marijuana tax revenue.¹⁷ Laws should be indicative of necessity and prioritize the safety and well-being of the community. It is time for the Lehigh Valley to fix the unjust and discriminatory practices that plague our citizens, law enforcement, and criminal justice systems, and reap the benefits of common-sense marijuana regulation.

Contributors

This report was authored by Ms. Victoria Wrigley, M.S., Data Scientist; Ms. Nicole Levy, researcher; and Ms. Allison Stanley, LVJI intern. Ms. Wrigley and Ms. Stanley executed all data analysis. This report was completed under the direction of Mr. Joseph E. Welsh, Executive Director of LVJI.

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